

## The complaint

Mr P complains about eleven loans that he took out with Gain Credit LLC, trading as Lending Stream, ("LS"), which he said were unaffordable. The complaint is brought to this service on Mr P's behalf by a claims management company. But for ease, I shall refer below to all actions being taken by Mr P.

## What happened

Mr P was given 11 instalment loans by LS from June 2011 to August 2015. All the loans were repayable by six monthly instalments and all have been repaid.

A summary of the loans taken out by Mr P is shown below:

Loan number	Date of loan	Repayment date	Loan amount
1.	27/6/11	2/12/11	£350
2.	21/8/12	25/1/13	£535
3.	4/12/12	17/5/13	£210
4.	11/2/13	14/6/13	£280
5.	14/4/13	14/6/13	£150
6.	24/6/13	9/8/13	£200
7.	12/9/14	21/2/15	£660
8.	27/12/14	9/2/15	£540
9.	24/4/15	2/10/15	£770
10.	14/7/15	2/10/15	£330
11.	26/8/15	8/10/15	£610

Mr P said that he had a gambling addiction and he was gambling big amounts of money nearly every day for a number of years. He was using payday loans to fund his gambling addiction. He stopped gambling in 2013 but he is still dealing with the debt that he got into when he was a heavy gambler. He had to continue borrowing from LS as he was still in a lot of debt and needed to pay his debts and his essential bills. He was borrowing from two to three payday lenders each week to fund his gambling. This has caused him a lot of stress and worry.

LS's final response letter said that it had asked Mr P for his income and his costs for items like rent, utilities, food, transport, and dependent care. It checked what Mr P had told it with statistical information. If required, it adjusted Mr P's expenses upward and used the new figures in its calculations. LS said that it also asked Mr P for his expenses for other loans and credit agreements and it checked this information with an independent credit reference agency. It also adjusted these expenses upward where required and used the new figures in its calculations. LS said that the money that Mr P had available after his expenses were subtracted from his income was more than the amount needed to pay it each month and would still have left him with some money to spend on other things. This meant that the loans were affordable.

### *Our adjudicator's view*

The adjudicator didn't recommend that the complaint should be upheld. He noted there were three chains of lending due to significant gaps in lending between Loans 1 and 2 and Loans 6 and 7. For the later loans, he thought the lender should've taken steps to build a more detailed picture of Mr P's financial situation. But he hadn't seen anything in the information provided which suggested the lender would've known that Mr P wouldn't have been able to sustainably make the repayments he needed to for these loans. And overall, the adjudicator didn't think that the number of loans Mr P took, the amounts they were for or the period of time he was borrowing meant Mr P's loan history, on its own, should've shown LS he might've been experiencing underlying financial difficulty.

Mr P asked for an ombudsman to review the complaint.

As this complaint hadn't been resolved informally, it was passed to me, an ombudsman, to investigate.

### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr P and to LS on 18 January 2021. I summarise my findings:

I'd said that I was sorry to hear that Mr P's borrowing had caused him a lot of stress and worry.

I'd noted that when LS lent Loans 1 to 6 to Mr P the regulator was the Office of Fair Trading and relevant regulations and guidance included its Irresponsible Lending Guidance (ILG). The ILG contained guidance for lenders about responsible lending.

When LS lent Loans 7 to 11 to Mr P the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

The ILG and CONC contained similar guidance for lenders about responsible lending. LS needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Mr P could repay the loans in a sustainable manner.

These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I thought less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that LS should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors included:

- the lower a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the greater the number and frequency of loans, and the longer the period of time during which a customer had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

There might even come a point where the lending history and pattern of lending itself clearly demonstrated that the lending was unsustainable.

I thought that it was important for me to say that LS was required to establish whether Mr P could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it didn't automatically follow this was the case. This was because the CONC defined sustainable as being without undue difficulties and in particular the consumer should be able to make repayments, while meeting other reasonable commitments, as well as without having to borrow to meet the repayments. And it followed that a lender should realise, or it ought fairly and reasonably to realise, that a consumer wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Mr P's complaint.

As I'd said above, Mr P's loans were repayable by six monthly instalments. So, the amounts that Mr P needed to repay each time were smaller than if he'd taken a normal payday loan. But he was also committing to making those repayments over a far longer period. In addition, Mr P sometimes had a number of loans outstanding at the same time. So, I'd considered the total amount that Mr P needed to repay to LS each month.

LS did a number of checks before it lent to Mr P. I could see that it had asked Mr P for details of his monthly income and expenditure and it had carried out credit checks.

I'd seen brief results from LS's credit checks. I could see there were defaults that were at least three years old and delinquent accounts that had occurred at least 30 months previously. But I didn't think they should have caused the lender additional concerns in view of their age. And I didn't think it was unreasonable for LS to be more interested in Mr P's more recent credit history for the purposes of assessing whether the loans were affordable.

We'd received Mr P's credit report which contained entries relevant to Loans 8 onwards and I'd referred to these in my provisional decision.

LS had told us about the checks it did before lending Loan 1 to Mr P. It asked for his income which he'd declared as £1,400 and his expenses. On LS's application form and its loan/credit data sheet Mr P's expenses were shown as £1,120. There was a lower expenses figure shown in the schedule on LS's final response letter for Loan 1. The schedule on the final response letter also didn't show the highest loan repayment amount. There were also differences between the figures shown on the final response letter and the application form and loan/credit data sheet for most of Mr P's other loans. So, I'd mostly used the expense

figures shown in the loan applications and the loan/credit data sheet (where these were higher) and the loan repayment amounts shown in the loan agreements in my decision.

I'd noted that for Loan 1, Mr P needed to make six monthly repayments and the highest monthly repayment was around £175.

I could see that the repayments that Mr P needed to make on Loan 1 were relatively moderate compared to the income that he'd declared to LS. I didn't think the repayment amounts for Loan 1 were so large that it's obvious they would've caused Mr P financial difficulty. So, given Mr P's repayment amounts for Loan 1 and that this was his first loan with LS, I didn't think it would've been proportionate for LS to have asked him for the amount of information that would have been needed to show the lending was unsustainable. And at that stage, I didn't think it would've been proportionate to start verifying what Mr P was saying. So, I didn't think LS was wrong to give Loan 1 to Mr P.

After Mr P repaid Loan 1, there was then a gap of around eight months before he'd asked to borrow again. I thought that gap was long enough to give LS some confidence that Mr P had overcome whatever problems had caused him to borrow in the past. So, I'd thought LS was entitled to treat Mr P as a new customer when he asked for Loan 2 and based its checks accordingly.

I could see that Mr P had asked for a loan of £740. But LS had provided a loan of £535. So, it appeared that LS had concerns about Mr P's creditworthiness. I'd noted that Mr P's declared income had reduced to £1,320 and his declared expenses were £1,010.

I'd also noted that Mr P needed to make a highest monthly repayment of around £268 for Loan 2. Looking at Mr P's financial situation, I didn't think he would have had enough disposable income to meet some of the repayments on Loan 2 in a sustainable way. He would only have had a small amount of money left for unforeseen expenses. So, I didn't think it was reasonable for LS to have given Loan 2 to Mr P.

Loan 2 was still outstanding when Mr P took out Loan 3. The highest total monthly repayment for both loans was around £244. I could again see that after repaying some of the loan repayments, Mr P would have been left with very little disposable income to meet any unexpected expenses. So, I didn't think a responsible lender would have considered Loan 3 a sustainable loan.

Mr P applied for Loan 4 whilst Loan 3 was outstanding. His declared expenses had reduced so he had more disposable income. But Loan 4 was Mr P's third loan in almost six months without any break in his borrowing. And the loan amount was £70 higher than his previous loan. So, I'd thought all this suggested that LS could no longer safely rely on the information Mr P had provided about his financial situation. And I'd thought this might have prompted the lender to supplement the information it held by gathering information about Mr P's borrowing from other short-term lenders. As far as I could see it didn't do this.

We'd asked Mr P for copies of his bank statements so we could see what better checks would have suggested. He didn't provide these to us. So, I wasn't able to say that better checks would have suggested to LS that it shouldn't have lent Loan 4 to Mr P.

And by the time of Loans 5 and 6, I'd thought LS should have been looking to build a clearer picture about Mr P's finances before lending to him again. By the time of Loan 5 he'd been borrowing from LS for almost eight months without any break and by the time of Loan 6, he'd been borrowing from LS for almost ten months with only a break of ten days. When a consumer had been borrowing short term loans with hardly any breaks over a number of months, I'd thought this showed that the loans weren't being used in the way that they were

intended to be used. It should have concerned LS that Mr P wasn't using these loans to meet a one-off shortfall in his income but rather it was likely he needed to borrow to meet an ongoing need.

As I'd said above, we'd asked Mr P for copies of his bank statements so we could see what better checks would have suggested. He didn't provide these to us. So, I wasn't able to say that better checks would have suggested to LS that it shouldn't have lent Loans 5 and 6 to Mr P.

There was then a gap of around 13 months before Mr P asked to borrow again. I'd thought that gap was long enough to give LS some confidence that Mr P had overcome whatever problems had caused him to borrow in the past. So, I'd thought LS was entitled to treat Mr P as a new customer when he'd asked for Loan 7 and based its checks accordingly.

I could see that Mr P had asked for a loan of £660. This was his highest loan so far. Mr P's declared income had increased to £1,440 and his declared expenses were substantially lower than previously. But I'd also noted that the highest monthly repayment was a significant proportion of Mr P's income. I'd thought this might have caused LS some concerns and might have prompted the lender to have supplemented the information it held by gathering information about Mr P's borrowing from other short-term lenders. As far as I could see it didn't do this.

As I'd said above, we had asked Mr P for copies of his bank statements so we could see what better checks would have suggested. He didn't provide these to us. So, I wasn't able to say that better checks would have suggested to LS that it shouldn't have lent Loan 7 to Mr P.

Loan 7 was still outstanding when Mr P applied for Loan 8. The highest total monthly repayment for both loans was around £406 which was again a significant proportion of his declared income. I'd thought this might again have prompted the lender to have supplemented the information it held by gathering information about Mr P's borrowing from other short-term lenders.

I'd looked at Mr P's credit report to see what better checks would have suggested. In addition to his outstanding loan with LS, Mr P also had two short term loans outstanding with other lenders. I'd thought these three outstanding short-term loans might have suggested to LS that Mr P's finances were under pressure and that he was having difficulties managing his money. As such there was a real risk that Mr P wasn't going to be able to sustainably repay Loan 8. So as a responsible lender, I didn't think LS should have given Loan 8 to Mr P.

Loan 9 was Mr P's highest loan amount yet. I could see that Mr P had asked for a loan of £1,000. But LS had provided a loan of £770. So, it appeared that LS had concerns about Mr P's creditworthiness. LS would have been aware that Mr P had repaid Loan 7 a day late and he'd repaid Loan 8 early. These actions might have suggested that Mr P was having difficulties managing his money. The highest monthly repayment was again a significant proportion of Mr P's income. I'd thought the increasing amount of Mr P's borrowing was such that it wasn't reasonable for LS to have relied on the information provided by Mr P by the time of Loan 9. And I'd thought it should have taken steps at that time to have independently verified Mr P's true financial position.

I'd reviewed Mr P's credit report to see what better checks would have suggested. I could see that Mr P had taken out two short term loans totalling around £2,460 the previous month from other high cost credit lenders. I'd thought these loans might again have suggested to LS that Mr P was facing problems managing his money and unlikely to be able to repay Loan 9 in a sustainable manner. So, I didn't think LS should have given Loan 9 to Mr P.

And for similar reasons as I'd set out above for Loan 9, I'd thought it would have again been proportionate for LS to have independently reviewed the true state of Mr P's finances before Loans 10 and 11. If it had carried out better checks, I'd thought these would have suggested that Mr P's situation wasn't improving. I'd seen this on Mr P's credit report. I'd thought if LS had made proportionate checks, these would have suggested that Mr P was still facing significant problems managing his money and unlikely to have been able to repay Loans 10 and 11 in a sustainable manner. And as a responsible lender it wouldn't have agreed to lend Loans 10 and 11 to him.

I'd noted that LS had said that the money that Mr P had available after his expenses were subtracted from his income was more than the amount needed to pay it each month and would still have left him with some money to spend on other things. But LS was required to establish whether Mr P could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. And LS would have known from previous decisions (as well as what was set out on our website) that there were cases where this service considered the overall lending pattern and not just the affordability of each loan.

When a consumer borrowed numerous loans over a long period of time, it was most likely that the loans weren't being used for their intended purpose of temporary cash flow problems. As LS would have known, the FCA made it clear in a letter to CEOs of high cost lending firms that "a high volume of relending.....might be symptomatic of unsustainable lending patterns". And I thought that was the case here.

Subject to any further representations by Mr P or LS my provisional decision was that I intended to uphold this complaint in part. I intended to order LS to put things right as shown below.

I'd also said that if Mr P could provide his bank statements from around the time of Loans 4 to 7 in his response to this provisional decision, I would reconsider my decision in relation to those loans.

In deciding what redress LS should fairly pay in this case I'd thought about what might have happened had it not lent Loans 2 and 3 to Mr P and had it stopped lending to Mr P from Loan 8 as I was satisfied it ought to have.

Clearly there were a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr P might have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between Mr P and this particular lender which he might not have had with others. If this wasn't a viable option, he might have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he might have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if he had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which might or might not have been the same is impossible to now accurately reconstruct. From what I'd seen in this case, I certainly didn't think I could fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr P in a compliant way at that time.

Having thought about all of these possibilities, I wasn't persuaded it would have been fair or reasonable to have concluded that Mr P would more likely than not have taken up any one of

these options. So, I'd said that it wouldn't be fair to now reduce LS's liability in this case for what I was satisfied it had done wrong and should put right.

### **putting things right – what LS needs to do**

1. Refund the interest and fees Mr P paid for Loans 2, 3 and 8 to 11;
2. Pay interest on these refunds at 8% simple\* per year from the dates of payment to the dates of settlement; and
3. Remove any adverse information about Loans 2, 3 and 8 to 11 from Mr P's credit file.

\*HM Revenue & Customs requires LS to take off tax from this interest. LS must give Mr P a certificate showing how much tax it has taken off if he asks for one.

Neither LS nor Mr P have provided a response to my provisional decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Given that Mr P and LS have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require LS to pay Mr P some compensation and take the steps set out below.

### **My final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order Gain Credit LLC, trading as Lending Stream, to:

1. Refund the interest and fees Mr P paid for Loans 2, 3 and 8 to 11;
2. Pay interest on these refunds at 8% simple\* per year from the dates of payment to the dates of settlement; and
3. Remove any adverse information about Loans 2, 3 and 8 to 11 from Mr P's credit file.

\*HM Revenue & Customs requires LS to take off tax from this interest. LS must give Mr P a certificate showing how much tax it has taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 March 2021.

Roslyn Rawson  
**Ombudsman**