

## **The complaint**

Mr D says Gain Credit LLC (trading as Lending Stream) lent to him irresponsibly.

## **What happened**

Our adjudicator dismissed Mr D's complaint. Mr D did not agree with the adjudicator's view that this service couldn't consider the complaint. The complaint was then passed to me.

I issued my provisional decision explaining the reasons why our service may have dismissed the complaint but as Lending Stream agreed we could look at the complaint, I then considered the merits of the complaint. My provisional decision also explained why I was not intending to uphold the merits of Mr D's complaint.

A copy of the background to the complaint and my provisional findings follow this and form part of this final decision.

## **What I said in my provisional decision:**

*I've provided a brief timeline of what I consider to be the key milestones in two complaints Mr D has brought to our service about Lending Stream.*

### *Complaint – Case reference ending 7402 (“the first complaint”)*

- *25 June 2018 - A Claim's Management Company (CMC) referred Mr D's complaint about unaffordable lending to our service. The CMC submitted authority documents showing they were the representatives acting on behalf of Mr D. Mr D's representative confirmed they had not received a final response letter (“FRL”) from Lending Stream.*
- *28 August 2018 – Lending Stream issued its FRL not upholding Mr D's complaint. The FRL explained that Mr D had six months to refer his complaint to our service if he was unhappy with the response.*
- *14 September 2018 – Mr D's representatives asked our service to withdraw Mr D's complaint as he had only taken out one loan with Lending Stream.*
- *10 October 2018 – Mr D's complaint was closed at our service.*

### *Current Complaint (“the second complaint”)*

- *23 September 2020 – Mr D brought a second complaint against Lending Stream to our Service. Mr D provided us with a FRL from the third party who appeared to have purchased the debt from Lending Stream. The FRL stated Lending Stream are responsible for his complaint about ‘irresponsible lending’.*
- *23 December 2020 – Lending Stream said it had already investigated Mr D's complaint under another complaint reference at our service.*
- *6 January 2021 – Our service asked Mr D for further information about his complaint which was referred to us in 2018. Mr D said he never agreed for the CMC to act on his behalf, therefore the 2018 complaint was not a valid one. He asked our service to continue investigating his complaint about Lending Stream.*

- 11 March 2021 – Lending Stream said its FRL dated 28 August 2018 is the only response it issued about Mr D's complaint. And it considers the case closed.

One of our adjudicators reviewed Mr D's second complaint and he concluded that we shouldn't consider this complaint further. The adjudicator explained that Mr D's representatives asked us to withdraw his complaint. And, as it had been more than two years since our service closed Mr D's complaint, the adjudicator didn't think we could take Mr D's complaint further.

After receiving our adjudicator's opinion, Mr D said he didn't agree. Mr D further explained that he didn't know the CMC were acting for him. Mr D said the CMC acted without his knowledge by filing the complaint and then by withdrawing it. Mr D asked for an ombudsman to consider his complaint.

Our adjudicator responded to Mr D's comments. The adjudicator explained that our service received several complaints about other short-term lenders from the CMC on behalf of Mr D in 2018. And that Mr D was sent correspondence by another short-term lender which explained that the CMC was representing him. So, the adjudicator thought Mr D ought to have been aware of the CMC's involvement in his complaints.

After receiving the adjudicator's comments, Mr D re-iterated that he would like an ombudsman to consider his complaint and make a decision.

As no agreement could be reached the case has now been passed to me.

### **What I've provisionally 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.

As I've explained above, the adjudicator who considered the complaint didn't think this was a case this service could take forward – for the reasons that have been outlined above. And it was on this basis that the case was passed me to decide.

I don't think the outcome reached by the adjudicator in those circumstances was unreasonable, and I can see grounds in which this complaint could be dismissed. After all, a CMC acting for Mr D brought a complaint to this service, that it later wanted to be withdrawn. And while Mr D may not have been aware what had gone on, I don't think that would've been sufficient in the circumstances to have concluded this was a case we could take forward. Indeed, by closing the complaint this was an acknowledgment that there was no longer any outstanding dispute to be investigated.

But having said this, Lending Stream has now supplied its business file containing all the information that is needed to form an opinion about the merit of Mr D's complaint. And it doesn't appear to have been asking for us to continue with the dismissal. It now seems that Lending Stream is happy for us to deal with the irresponsible lending nature of the complaint. Therefore, in order to save time, and to give an answer to Mr D at the earliest opportunity, I've decided to issue a provisional decision dealing with the merits of the case because I have sufficient information to be able to do so. Having looked at the information that I've been given, I don't think Lending Stream made an error when approving the loan, and I've outlined below why I think this is the case.

### **Unaffordable lending**

I've also taken into account the law, any relevant regulatory rules and good industry practice

at the time these loans were provided.

Based on the information Lending Stream has provided us Mr D took one loan for £300 on 28 March 2017. Mr D was due to make 24 weekly payments of no more than £31.80. Mr D has had some problems repaying his loan, and based on what Lending Stream has supplied, the outstanding balance due on the loan was sold to a third party.

Lending Stream needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr D could repay these 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 think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that Lending Stream should fairly and reasonably have done more to establish that any lending was sustainable for Mr D. These factors include:

- the lower a consumer'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 has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

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

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr D's complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loan was provided. When Mr D applied for his first loan, Lending Stream asked him to declare his monthly income and expenditure, and it completed a credit check. Mr D declared that he had a monthly income of £2,175 and that his monthly expenditure amounted to £1,170.

Lending Stream completed some checks into Mr D's income and credit expenditure, and it adjusted Mr D's declared figures accordingly. Subsequently, Lending Stream recorded Mr D's income as £2,175 and his expenditure as £1,250. This would have left Mr D with a sufficient disposable income to meet the largest weekly repayments of no more than £31.80. The largest monthly payment would've been £130.80 which Mr D would have to pay Lending Stream in June 2017.

I think the repayments appeared affordable based on the information declared by Mr D and the adjustments made by Lending Stream to these figures.

Lending Stream also completed a credit check to understand more about Mr D's credit expenditure. The results of the credit checks show Mr D had nine active accounts. But Lending Stream was not privy to which types of accounts Mr D held i.e. short-term loans, credit cards etc. The checks also didn't show any defaults, but it did highlight that one loan had entered delinquency, but that was some 35 months before Mr D's loan was approved. So, I don't think this would've prompted Lending Stream to either decline his application or to carry out further or more in-depth checks.

*So, for Mr D's loan I think Lending Stream carried out proportionate checks which showed Mr D was likely to be able to afford the repayments he was committing to making. And there wasn't anything else in the information Lending Stream gathered that would've made it think that the lending was unsustainable or that Mr D was having wider financial problems. Finally, given this was the first and only loan I don't think the checks needed to extend to verifying the information Mr D was providing so for example checking his bank statements.*

*Overall, I think the checks Lending Stream carried out were proportionate and showed it that Mr D was likely to be able to afford the loan. So, I'm intending to not uphold the complaint about the sale of Mr D's loan.*

### **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.

Lending Stream acknowledged receipt of the provisional decision but it didn't have any further comments or information for me to consider.

Mr D did not provide any information for me to consider following my provisional decision.

Due to no new information being provided I see no reason to depart from the findings that I reached in the provisional decision. And I still think Lending Stream carried out proportionate checks before it granted the loan, and the checks showed that Mr D was likely to be able to afford the repayments he was committed to making.

I appreciate Mr D will be disappointed by the outcome of his complaint, but I hope my explanation has been useful in explaining why I've reached the outcome that I have.

### **My final decision**

For the reasons I've explained above and in my provisional decision, I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 August 2021.

Robert Walker  
**Ombudsman**