

### The complaint

Ms J says Gain Credit LLC (trading as 'Lending Stream') irresponsibly gave her loans that she couldn't afford because she was gambling at the time and on a low income. She said her credit file was poor and that Lending Stream provided the loans without doing proper checks.

### What happened

Lending Stream gave Ms J loans as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	*Highest monthly repayment
1	11/02/2014	2/06/2014	6	£100.00	£54.00
2	30/05/2014	6/01/2015	6	£150.00	£107.80
3	31/05/2014	25/11/2014	6	£300.00	£269.80
4	7/06/2014	27/07/2014	6	£50.00	£270.00
5	3/09/2014	18/02/2015	6	£170.00	£227.70
6	25/09/2014	27/04/2015	6	£200.00	£278.60
7	17/10/2014	18/02/2015	6	£130.00	**
8	27/12/2014	Sold	6	£190.00	**
9	7/02/2015	Sold	6	£210.00	**
10	19/02/2015	Sold	6	£250.00	**
11	21/02/2015	Sold	6	£250.00	**
12	15/05/2015	Outstanding	6	£140.00	**

\*combined repayment amount where loans overlap

\*\* this information isn't relevant to my decision so I have not included it

When Ms J complained to Lending Stream it said it had worked out that all these loans were affordable as she had enough spare cash to make the repayments. But after thinking about the number of loans and the time that passed between each loan being opened Lending Stream said it could see that it might not have been a good idea to provide loans 6-12. So it made an offer to refund these loans.

Ms J didn't feel this went far enough to settle her complaint and so she brought her complaint to us.

After carefully reviewing all the available information, our adjudicator thought that he hadn't seen enough to say it was unfair of Lending Stream to have provided loans 1–5. So he didn't uphold Ms J's complaint about those loans. But he said Lending Stream shouldn't have provided loans 6-12 to Ms J. He explained why and set out the steps he said Lending Stream should take to put things right for Ms J – this included some additional redress that went beyond what Lending Stream had previously offered in terms of the information about loans 6-12 that would remain on Ms J's credit file.

Lending Stream reconsidered its position in the light of what our adjudicator had said and told us that it was willing to accept the outcome of our adjudicator's findings and his settlement recommendations. Lending Stream sent us details showing the figures it had worked out and we forwarded this information to Ms J.

Ms J isn't happy with this proposed settlement. She mainly says that from the start her credit score was poor and she was addicted to gambling and borrowing from other lenders throughout. So she feels that Lending Stream shouldn't have provided her with any of these loans.

### **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. 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 Ms J 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 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 the consumer. 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. Lending Stream was required to establish whether Ms J could sustainably repay her 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 doesn't automatically follow this is the case. This is because the relevant

regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments, as well as without having to borrow to meet the repayments.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make repayments without borrowing further. I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Ms J's complaint.

I've independently looked at Ms J's complaint afresh and considered all the loans that Lending Stream provided to her. I've come to the same view as our adjudicator – and for the same reasons that the adjudicator has explained. But I'll say a bit more about why I say this – and even though it's not the outcome Ms J is looking for, I hope this is helpful in explaining my decision.

When assessing affordability Lending Stream asked Ms J about her income and expenditure and did some background checks to verify what she had said, including looking at payslips, doing its own credit checks and, for the later loans, asking to see some bank statements.

### *Loans 1-3*

I've thought carefully about the information Lending Stream recorded for Ms J, including income and expenditure details from the time and the checks it carried out. I've taken into account the loan repayment amounts and what was apparent about Ms J's circumstances at the time. Even after boosting the amount Ms J said she spent each month, Loan 1 still looked easily affordable for Ms J based on what she'd told Lending Stream about her financial situation and the information it had gathered. As this was her first loan, I don't think Lending Stream had any reason to think it needed to ask for any more information from Ms J or do more to check what she was saying about her circumstances.

Ms J took out loans 2 and 3 just a day or so apart and a few days before she repaid her first loan so she had three outstanding loans with Lending Stream and the total amount she owed had gone up considerably – loan 3 was three times the amount she had borrowed when she took out loan 1. I've thought carefully about what conclusions it would be reasonable to expect Lending Stream to draw from this. On balance, I don't think these things on their own, at this early stage in the relationship between Lending Stream and Ms J, are enough to have alerted Lending Stream to the possibility that Ms J might've been finding it hard to repay her borrowing. Loans 2 and 3 should still have been comfortably affordable for Ms J looking at the financial information Lending Stream had relied on.

Overall, looking at the repayments that Ms J needed to make on the first three loans, the amounts would've seemed relatively affordable compared with the disposable income recorded for her. And I haven't seen enough to make me think that even if Lending Stream had done more in-depth checks it would've seen the amount of information that would be needed to show the lending was unsustainable before agreeing the first three loans. So that's why I'm not upholding Ms J's complaint about loans 1 - 3.

#### *loan 4*

Ms J applied to borrow loan 4 just a week or so after taking loan 3 – and she was still paying loans 2 and 3. But she was borrowing just £50 – this was by far the smallest loan she'd asked Lending Stream for. So I don't think Lending Stream would've been concerned that this was a sign of money problems. The loan still looked affordable - the information Ms J gave Lending Stream suggested she had ample disposable income.

Ms J has sent me some bank statements from around this time which show me in more detail what she was spending her money on. And this has given me some insight into her financial situation at the time. Having thought carefully about this information, I haven't seen enough to show that Lending Stream should've decided not to agree this loan had it asked all the questions I think it should've done. For this reason, I'm not upholding Ms J's complaint about loan 4.

#### *loan 5*

Ms J increased the amount of her borrowing again and she hadn't cleared all her previous loans with Lending Stream. I think Lending Stream needed to take more steps than it has shown me it did to ensure it had a proper understanding of Ms J's financial situation before agreeing to lend further. But that's not enough of a reason on its own for me to be able to uphold Ms J's complaint about this loan. I say this because I haven't seen anything in the information available to me, which includes bank statements from Ms J, which shows Lending Stream would have decided not to agree this loan had it done what I consider would've been a more proportionate check. For this reason, I'm not planning to uphold Ms J's complaint about loan 5.

#### *loan 6*

Like our adjudicator, I think Lending Stream was correct to acknowledge that it shouldn't have provided loan 6 onwards. By loan 6, I think Lending Stream should've realised that Ms J's overall pattern of borrowing suggested she had become persistently reliant on short-term loans. So I don't think Lending Stream should've provided loan 6 to Ms J or any of the loans that followed. As Lending Stream has accepted our adjudicator's view and confirmed it is willing to take the steps he suggested to put things right for Ms J, I don't think I need to say more about why it's fair to uphold the complaint from this point on.

And I agree with the way the adjudicator suggested resolving the complaint. It's in line with our approach when thinking about what's fair and reasonable in these circumstances, bearing in mind that Ms J has had the benefit of the money she borrowed. So I think Lending Stream should now do what it has agreed to do to put things right.

### **Putting things right**

In deciding what redress Lending Stream should fairly pay in this case I've thought about what might have happened if it hadn't provided lending to Ms J, as I'm satisfied it ought to have.

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

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

Or, she may 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 she 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 may or may not have been the same is now impossible to reconstruct accurately.

From what I've seen in this case, I don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Ms J in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Ms J would more likely than not have taken up any one of these options.

So it wouldn't be fair now to reduce Lending Stream's liability in this case for what I'm satisfied it has done wrong and should put right.

So Lending Stream should do the following in respect of loans 6-12:

Lending Stream should buy back any outstanding debt it sold if able to do so and then take the following steps.

Or if Lending Stream isn't able to buy back debt it has sold, then it should liaise with the new debt owner to achieve the following:

A) add together the total of the repayments made by Ms J towards interest fees and charges on all upheld loans without an outstanding balance, not including anything already refunded

B) calculate 8% simple interest\* on the individual payments made by Ms J which were considered as part of "A", calculated from the date Ms J originally made the payments, to the date the complaint is settled

C) remove all interest, fees and charges from the balance on any upheld outstanding loans and treat any repayments made by Ms J as though they had been repayments of the principal on all outstanding loans. If this results in Ms J having made overpayments then refund these overpayments with 8% simple interest\* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Then refund the amounts calculated in "A" and "B" and move to step "E"

D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Ms J. However if there is still an outstanding balance then Lending Stream should try to agree an affordable repayment plan with Ms J and shouldn't pursue outstanding balances made up of principal already written-off

E) The overall pattern of Ms J's borrowing by loan 6 means any information recorded about loan 6 onwards is adverse, so ultimately these loans should be removed entirely from Ms J's credit file. Lending Stream does not have to remove outstanding loans from Ms J's credit file until these have been repaid, but meanwhile it should still remove any adverse information recorded about these loans.

\* HM Revenue & Customs requires Lending Stream to take off tax from this interest. Lending Stream must give Ms J a certificate showing how much tax it has taken off if she asks for one.

**My final decision**

For the reasons given above, I'm partly upholding Ms J's complaint. Gain Credit LLC (trading as 'Lending Stream') should take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 17 January 2022.

Susan Webb  
**Ombudsman**