

## The complaint

Mr B, through a representative, complains that Gain Credit LLC trading as Lending Stream (“Lending Stream”) gave him loans without carrying out sufficient affordability checks.

## What happened

A summary of Mr B’s borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£300.00	11/08/2020	25/01/2021	6	£91.96
2	£400.00	07/09/2020	26/02/2021	6	£125.48
3	£150.00	06/11/2020	28/04/2021	6	£47.04
4	£140.00	15/12/2020	28/06/2021	6	£50.61
5	£350.00	28/01/2021	28/07/2021	6	£116.07
6	£120.00	05/08/2021	21/12/2021	6	£38.21
7	£100.00	09/08/2021	26/01/2022	6	£30.98
8	£250.00	01/02/2022	03/05/2023	6	£81.22
9	£430.00	04/02/2022	03/05/2023	6	£136.97

The “*highest repayment*” column above is the largest payment per loan, but of course where loans overlapped the total cost to Mr B would be greater. For example, by September 2020, when Mr B had two loans running concurrently, he was due to pay Lending Stream £217.44 per month.

Following Mr B’s complaint Lending Stream wrote to him to explain why it wasn’t going to uphold the complaint about loans 1 - 6. However, Lending Stream did say for loans 7 - 9

*“Although these loans were affordable, we have thought about the number of loans and the time between each loan being taken out. We can see that it might not have been a good idea for us to make these loans.”*

It then explained it would refund the interest Mr B paid towards the loans along with 8% simple interest per annum. It then agreed to remove these loans entirely from Mr B’s credit file. However, as an outstanding balance remained due, Lending Stream said it would use the refund to offset the balance and then send any remaining refund to Mr B.

Mr B’s representative then referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator, and she didn’t uphold the complaint about loans 1 to 3. But she thought loans 4 to 6 should be upheld because at the time Mr B had at least four loans running concurrently. Finally, she concluded the offer made for loans 7 to 9 was in line with what she would’ve asked Lending Stream to do, had she decided to uphold those loans.

Lending Stream didn't fully agree with the investigator's outcome. It did agree, that in addition to its offer of loans 7 to 9 that it would also uphold loan 6. But it disagreed that loans 4 and 5 ought to be upheld. In summary it said:

- Mr B borrowed similar sums for these loans as he had for the previous loans.
- There had been no significant changes to Mr B's circumstances.
- Further checks were carried out before these loans were approved which included increasing Mr B's declared expenses and even after doing that Mr B still had sufficient income to afford the repayments.
- Mr B didn't notify Lending Stream of any financial difficulties and he repaid the loans by the due date.

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

### **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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Lending Stream had to assess the lending to check if Mr B could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances of the applications. Lending Stream's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr B's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Lending Stream should have done more to establish that any lending was sustainable for Mr B. These factors include:

- Mr B having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- Mr B having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mr B coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr B. The investigator didn't consider this applied to loans 1 to 6 and I would agree.

Lending Stream was required to establish whether Mr B could *sustainably* repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr B was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr B's complaint.

### Loans 1 – 3

The investigator didn't uphold these loans as part of her assessment and neither Lending Stream nor Mr B (or his representative) appeared to disagree with this outcome. As such these loans appear to no longer be in dispute and therefore I make no further finding about them. But I have kept them in mind when thinking about Lending Stream's checks for loans 4 and 5.

### Loans 4 and 5

As part of his application for these loans, Mr B declared, and Lending Stream has recorded a monthly income of £1,450 for loan 4 and £1,500 for loan 5. Lending Stream says it didn't feel it needed to make any adjustments to the income figures based on what it knew about Mr B.

Mr B also declared monthly outgoings of £750 for loan 4 and £600 for loan 5. For each of his loans the monthly expenditure figure was broken down as either "*normal expenses*" or "*credit-specific commitments*".

Lending Stream says it looks at other information such as available statistics that relate to the general population and it considered how much people typically spend with their income. Having carried out this further check, Lending Stream increased Mr B's outgoings for loan 4 by a further £305 and a further £89 for loan 5.

It's worth pointing out here for loan 4 Mr B declared zero costs for other credit commitments whereas following its further checks Lending Stream increased these costs to £216 a month. So it was already on notice that Mr B's declared credit expenses couldn't be right given that Lending Stream was aware loans 1 – 3 were still running at the time.

Overall based on what Mr B declared as well as the additional amounts added to the totals provided by Lending Stream it may have been reasonable to believe these loans were potentially affordable. But that doesn't mean the loans were sustainable for him.

Before each loan was approved Lending Stream also carried out a credit search and it has provided the Financial Ombudsman with a summary spreadsheet of the results it received from the credit reference agency. And the results it received were fairly similar for both loans and showed that Mr B hadn't defaulted on any accounts for at least 70 months, and he didn't have any accounts in delinquency.

Lending Stream was also entitled to rely on the information it was given by the credit reference agency. So, I've looked at the results to see whether there was anything contained within it that would've either prompted Lending Stream to have carried out further checks or possibly have declined Mr B's application.

As part of his application for loan 5, Mr B declared that he had monthly credit commitments of £50 and no adjustments were made to this sum. But this amount was clearly incorrect, given it knew that Mr B had loans 2 – 4 still active at the time and the credit check results showed that he likely had monthly credit commitment costs of at least £263.

However, as the investigator pointed out after these loans were approved Mr M would've had four loans running concurrently at the same time. Loans 1 – 4 and then loans 2 – 5. The monthly cost was also increasing, so when loans 1 – 4 were running Mr B's monthly credit commitment was over £315 and then nearly £340 per month when loans 2 – 5 were running.

It's worth noting that Mr B's monthly credit commitment had increased each month since he had started to borrow from Lending Stream. So, while Lending Stream is correct in as much as Mr B was borrowing similar sums from it. In actual fact, his monthly commitment had increased each time he had taken further funds from Lending Stream.

So, in my view, by loans 4 and 5 Mr B had at four loans running at the same time. This given with the increased monthly commitment to Lending Stream and the discrepancies in what Mr B was declaring each month ought to have alerted Lending Stream that Mr B was potentially having problems managing his money. Especially as he kept needing to return for new loans before the previous loans had been repaid. So, this ought to have led Lending Stream to conclude that Mr B wouldn't be in a position to take on further borrowing and repay what he borrowed in a sustainable manner.

I've also thought about what Lending Stream says about Mr B having a good repayment history and repaying the loans early. However, when loan 4 was approved none of Mr B's loans had been repaid and he had returned for loan 5 three days after loan 1 had been settled. So, I'm not persuaded that Mr B repaying one loan early, by the time of loan 5 was an indicator that Mr B wasn't likely having difficulties.

Taking everything into account, I also uphold Mr B's complaint about loans 4 and 5.

### **Loans 6 to 9**

In the final response letter and in response to the investigator's assessment Lending Stream has already accepted these loans ought to not have been advanced to Mr B and so these loans are no longer in dispute. So, I will not make a finding about the.

But for completeness I've outlined below what Lending Stream needs to do and what it accepts that it needs to do in order to put things right for Mr B for these loans.

### **Putting things right**

In deciding what redress Lending Stream should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr B from loan 4, 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 Mr B may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they 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 they 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 impossible to now accurately reconstruct. From what I've seen in this case, I certainly 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 Mr B 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 Mr B would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Lending Stream's liability in this case for what I'm satisfied it has done wrong and should put right.

I have included the redress wording with an outstanding balance, because there was one at the time the final response letter was issued. It's possible, given the closure dates provided by Lending Stream that the refund for loans 7 to 9 has already been processed. If not, Lending Stream should still take the action below.

Lending Stream shouldn't have given Mr B loans 4 to 9. If Lending Stream has sold the outstanding debts Lending Stream should buy these back if it is able to do so and then take the following steps. If Lending Stream are not able to buy the debts back then Lending Stream should liaise with the new debt owner to achieve the results outlined below.

- A. Lending Stream should add together the total of the repayments made by Mr B towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Lending Stream may have already refunded.
- B. Lending Stream should calculate 8% simple interest\* on the individual payments made by Mr B which were considered as part of "A", calculated from the date Mr B originally made the payments, to the date the complaint is settled.
- C. Lending Stream should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr B as though they had been repayments of the principal on all outstanding loans. If this results in Mr B having made overpayments then Lending Stream should 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. Lending Stream should 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" can be used to repay any balance remaining on outstanding loans. If this results in a surplus, then the surplus should be paid to Mr B. However, if there is still an outstanding balance then Lending Stream should try to agree an affordable repayment plan with Mr B. Lending Stream shouldn't pursue outstanding balances made up of principal Lending Stream have already written-off.
- E. It should remove any adverse information recorded on Mr B's credit file in relation to loans 4, 5 and 6. And in line with Lending Stream's final response letter it should remove loans 7 to 9 entirely from Mr B's credit file.

\*HM Revenue & Customs requires Lending Stream to deduct tax from this interest. Lending Stream should give Mr B a certificate showing how much tax Lending Stream has deducted, if he asks for one.

### **My final decision**

For the reasons given above, I am upholding Mr B's complaint in part.

Gain Credit LLC trading as Lending Stream should put things right for Mr B as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 February 2024.

Robert Walker  
**Ombudsman**