

The complaint

Miss S complains that Gain Credit LLC trading as Lending Stream (“Lending Stream”) allowed her to take out loans which she couldn’t afford to repay.

What happened

A summary of Miss S’s borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date
1	£100.00	27-05-2021	12-11-2021
2	£100.00	26-09-2021	11-03-2022
3	£100.00	28-09-2021	18-03-2022
4	£100.00	18-04-2022	07-10-2022
5	£100.00	09-05-2022	23-10-2022
6	£770.00	04-11-2022	15-03-2023

These were all instalment loans paid through weekly payments.

Following Miss S’s complaint, Lending Stream wrote to her to explain why it wasn’t going to uphold the complaint about loans 1 and 2. But Lending Stream did accept for loans 3 – 6 that “...it might not have been a good idea for us to make these loans.” It then outlined the offer that it was prepared to make:

- Refund the interest Miss S had paid towards loans 3 – 6 and to that sum it would add 8% simple interest and then deduct the required tax at a rate of 20%.
- Use this refund to offset any outstanding balance.
- Any adverse information about loans 3, 4 and 5 was to be removed from Miss S’s credit file.
- It will also ask to delete the credit file record in relation to loan 6.

Unhappy with this response, Miss S referred the complaint to the Financial Ombudsman.

The case was then considered by an adjudicator. She firstly said the offer Lending Stream had made was in line with what we would’ve recommended had we upheld the complaint about loans 3 - 6. So, she didn’t consider those loans further.

Secondly, she didn’t uphold the complaint about loans 1 and 2 because Lending Stream had carried out proportionate checks which showed the loans to be potentially affordable. There also wasn’t anything else to suggest the two loans were unsustainable for her.

Miss S didn’t agree with the adjudicator’s assessment and instead asked for an ombudsman to review the complaint. The complaint has then been passed to me to resolve.

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 Miss S could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances of the application. 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 Miss S'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 Miss S. These factors include:

- Miss S 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);
- Miss S 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);
- Miss S 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 Miss S. The adjudicator didn't consider this applied in Miss S's complaint in relation to loans 1 and 2 and I would agree.

Lending Stream was required to establish whether Miss S could *sustainably* repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss S was able to repay her 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 Miss S's complaint.

Loans 1 and 2

As part of her application for these loans, Miss S declared a monthly income of £1,520 for both loans. Lending Stream says it didn't feel it needed to make any adjustments to this income figure based on what it knew about Miss S.

Miss S also declared monthly outgoings of £450 for loan 1 and £325 for loan 2. For loan 1 this was broken down as £350 for "*normal expenses*" with £100 being attributed to credit commitments. However, Lending Stream says it looks at other information such as 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 added an additional £339 per month to Miss S's declared expenditure.

The same process was carried out for loan 2, and this time Lending Stream only added £89 to Miss S's declared outgoings. Even based on the amended expenditure information, the loans looked affordable.

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. I want to add that, although Lending Stream carried out a credit search, there isn't a regulatory requirement to do one, let alone one to a specific standard.

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 Miss S's application.

Having looked at the credit check results, in my view there wasn't anything that would've prompted Lending Stream to have carried out further checks before either loan was advanced.

Lending Stream knew for loan 1 that Miss S had five active accounts leading to an estimated monthly repayment to service those accounts of £136 per month. For loan 2, Miss S had nine active accounts with estimated monthly payments of £267.

Now, these payments are larger than the commitments that Miss S declared to Lending Stream as part of her application. So really Lending Stream ought to have used the figures it was given from the credit reference agency when thinking about Miss S's credit commitments. It didn't do this, but had Lending Stream done that, it would've come to the same conclusion. That Miss S had sufficient disposable income to potentially afford the combined weekly repayment of £15.75 when loans 1 and 2 were running concurrently.

For both loans Lending Stream was told that Miss S hadn't defaulted on any accounts within the last three years or had any delinquent accounts either. Overall, there wasn't any signs, from the credit check to indicate Miss S was in financial difficulties, or to have prompted Lending Stream to carry out further checks.

Given it was early on in the lending relationship – at this point Miss S had only been granted two loans. I think it was reasonable for Lending Stream to have relied on the information Miss S provided to it – which showed she had sufficient disposable income to afford the repayments. There also wasn't anything to suggest that Miss S was having either current financial difficulties or to indicate the loan repayments would be unsustainable for her.

Taking everything into account, I do not uphold Miss S's complaint about loans 1 and 2.

Loans 3 - 6

Lending Stream has also accepted, in the final response letter that these four loans ought to not have been provided – I therefore don't need to make a finding on that aspect because these loans are no longer in dispute.

In addition, the redress Lending Stream has proposed is in line with what the Financial Ombudsmen would've recommended, if it was decided those loans ought to not have been granted.

I've set out below what Lending Stream has agreed to do to put things right as a fair outcome for the complaint.

Putting things right

It's possible, this refund has already been made, but for clarity and completeness, Lending Stream needs to do the following and which it has already agreed to do – if it has not already done so. If the redress has already been paid, Lending Stream won't need to take any further action.

Although Lending Stream has said, in the file that loan 6 has been repaid, for the purposes of this redress, and to mirror what it originally offered it should do:

- A. Lending Stream should add together the total of the repayments made by Miss S towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Lending Stream have already refunded.
- B. Lending Stream should calculate 8% simple interest* on the individual payments made by Miss S which were considered as part of "A", calculated from the date Miss S 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 loan – loan 6, and treat any repayments made by Miss S as though they had been repayments of the principal on all outstanding loans. If this results in Miss S 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" should be used to repay any balance remaining on the outstanding loan. If this results in a surplus, then the surplus should be paid to Miss S. However, if there is still an outstanding balance then Lending Stream should try to agree an affordable repayment plan with Miss S.
- E. Lending Stream should remove any adverse information recorded on Miss S's credit file in relation to loans 3, 4 and 5. The overall pattern of Miss S's borrowing for loan 6 means any information recorded about it is adverse, so Lending Stream should remove the loan entirely from Miss S's credit file. Lending Stream does not have to remove loan 6 from Miss S's credit file until it has been repaid, but Lending Stream should still remove any adverse information recorded about it.

*HM Revenue & Customs requires Lending Stream to deduct tax from this interest. Lending Stream should give Miss S a certificate showing how much tax it has deducted, if she asks for one.

My final decision

Gain Credit LLC has already made an offer for loans 3 – 6 as outline in the final response letter to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Gain Credit LLC should pay the offer it has already agreed to pay, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 December 2023.

Robert Walker
Ombudsman

