

## The complaint

Mr H complains that Gain Credit LLC trading as Lending Stream ("Lending Stream") gave him loans without carrying out the correct affordability checks.

## What happened

A summary of Mr H's borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	Largest monthly repayment per loan
1	£600.00	27/02/2017	01/08/2017	£254.40
2	£140.00	06/05/2017	03/09/2017	£60.48
3	£200.00	16/06/2017	Sold	£84.80
4	£500.00	06/08/2017	Sold	£212.00
5	£180.00	11/08/2017	Sold	£76.32

The largest repayment column is the largest payment due for a particular loan. However, where loans overlapped the cost will be more. For example, the largest repayment due when loans 1 and 2 were running at the same time was £281.28.

Mr H had some difficulties repaying his final three loans and Lending Stream has explained these were sold to a third-party debt purchaser.

Following Mr H's complaint, Lending Stream wrote to him to explain why it wasn't going to uphold the complaint about loans 1 to 4. But Lending Stream did accept for loan 5:

*"although this loan was 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 this loan."*

So, it agreed to:

- Refund the interest Mr H had paid towards loan 5 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 loan 5 is to be removed from Mr H's credit file.

Unhappy with this response, Mr H referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator and she firstly said the offer Lending Stream had made was in line with what would've been recommended had we upheld the complaint about loan 5. So, she didn't consider the loan further.

Secondly, she didn't uphold the complaint about loans 1 - 4 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 loans were unsustainable for him.

Mr H didn't agree with the assessment because loans 3 – 5 were sold and he now has a County Court Judgement (CCJ) recorded against him and he has incurred additional court fees. The complaint has then been passed to me to resolve.

Later, further enquires were made with both Mr H and Lending Stream about the CCJs and both parties confirmed it was the third-party debt purchaser who applied for and was granted a CCJ.

### **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 had to assess the lending to check if Mr H 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 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 Mr H'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 H. These factors include:

- Mr H 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 H 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 H 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 H. The investigator didn't consider this applied in Mr H's complaint and I would agree, given the number of loans and the sums lent.

Lending Stream was required to establish whether Mr H 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 H was able to repay his loans sustainably. But it doesn't automatically follow that this was the case.

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

### **Loans 1 - 4**

As part of his application for these loans, Mr H declared a monthly income of £1,560 for loans 1 and 2 and then £1,760 for loans 3 and 4. Lending Stream says it didn't feel it needed to make any adjustments to this income figure based on what it knew about Mr H.

Mr H also declared monthly outgoings of £1,100 for loan 1 and £1,200 for loan 2, £1,025 for loan 3 and finally £875 per month for loan 4. For each of these loans these figures were

broken down as either “*normal expenses*” or “*credit specific expenses*”. So, for example, loan 1 Mr H declared £825 as his “normal” living costs with £275 being attributed to his credit commitments.

Lending Stream also said it looked 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 £74 per month to Mr H’s declared expenditure for loans 3 and 4 only.

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 Mr H’s application.

Lending Stream hasn’t been able to provide the credit check results for loans 3 or 4, but given the proximity of these loans to loans 1 and 2, I think it’s likely, given the absences of other information that the results were similar.

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.

For these loans it knew Mr H had an active mortgage with a balance of £97,000. Lending also knew that no credit accounts were in delinquency it’s fair to conclude that these repayments were being made without any difficulty.

Lending Stream knew for loan 1 that Mr H had 7 active credit accounts with total outstanding balances of £1,300 and by loan 2, there were 8 active accounts with a total balance of £2,200.

For these Lending Stream was told that Mr H had 6 defaults but the most recent one was recorded 23 months before the first loan was approved. So clearly, around two years before these loans Mr H had some difficulties to the extent that credit accounts defaulted. But as there wasn’t any recent adverse payment information it would’ve been reasonable for Lending Stream to have concluded that whatever difficulties Mr H previously had, had now passed.

Overall, there wasn’t any signs, from the credit check to indicate Mr H was in financial difficulties, or to have prompted Lending Stream to carry out further checks at the time of loans 1-4 being approved.

Given it was early on in the lending relationship, I think it was reasonable for Lending Stream to have relied on the information Mr H provided to it – which showed he had sufficient disposable income to afford the repayments. There also wasn’t anything to suggest that Mr H was having either current financial difficulties or to indicate the loan repayments would be unsustainable for him.

Taking everything into account, I do not uphold Mr H’s complaint about these loans.

## **Loan 5**

Lending Stream has also accepted, in the final response letter that this loan ought to not have been provided – I therefore don't need to make a finding on whether Lending Stream did anything wrong when it advanced the and so this loan is 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 the loan 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.

### **Other consideration**

I understand from Mr H that he has an agreement in place with the debt purchaser and is currently repaying these loans at the rate of £5 per month.

Lending Stream sold loans 3 – 5 to a third-party debt purchaser, and this was something the credit agreements, that Mr H signed allowed Lending Stream to do, and so I can't say an error was made when the debts were sold. It is therefore also correct to say that the decision to seek a CCJ wasn't something Lending Stream was involved with.

I know Mr M is unhappy because he has incurred additional fees and charges as a result of the CCJ. But, as Lending Stream had no part in the decision to seek the CCJ then I can't fairly hold it liable for the any charges that may have been added. In addition, certain fees are allowed to be charged on top of the debt but this is part of the CCJ process and not something for me to become involved with.

So, as Lending Stream didn't seek the CCJ I can't ask it to refund any charges especially because I don't think an error was made in relation to loans 3 and 4. I have no power to get the judgement set aside as we are an informal alternative to the courts.

This also mean Lending Stream can't request for the CCJ to be set aside or make any adjustments to the credit report about the CCJ. This is because firstly, it wasn't party to the CCJ being awarded and secondly, because a court has decided the CCJ was an appropriate course of action the Financial Ombudsman wouldn't look to interfere in the judgement.

### **Putting things right**

Lending Stream needs to do the following which it has already agreed to do for loan 5 only If the redress has already been paid, Lending Stream won't need to carry it out. I've taken the below redress as outlined in the final response letter.

Lending Stream has said it has sold the outstanding debts then if it can, it should buy these back (for upheld loans) if it is able to do so and then take the following steps. If Lending Stream isn't able to buy loan 5 back then it should liaise with the new debt owner to achieve the results outlined below. And I've explained above, why above the limitations I have with relations to the CCJ.

- A. Refund the interest and fees Mr H has paid Lending Stream for loan 5.
- B. Pay 8% simple interest on this account and then withhold 20% tax.\*
- C. Apply this total towards the outstanding balance that Mr H has with Lending Stream.
- D. Remove any adverse credit file data in relation to loan 5.

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

### **My final decision**

Gain Credit LLC has already made an offer for loan 5 as outline in the final response letter to settle the complaint and I think this offer is fair in all the circumstances of the complaint.

So, my decision is that Gain Credit LLC should pay the offer it has already agreed to pay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 February 2024.

Robert Walker  
**Ombudsman**