

## The complaint

Miss M complains that Gain Credit LLC trading as Lending Stream (“Lending Stream”) gave her a loan without carrying out sufficient affordability checks. Miss M is also unhappy with the conduct of a third party who is working on behalf of Lending Stream.

## What happened

Miss M was advanced one loan of £150 on 12 January 2018. Miss M was due to make six variable monthly payments with the largest one being £63.60. Miss M has had some problems repaying the loan and the account defaulted in June 2018.

The account was then passed to a third party in March 2020 because Lending Stream was aware Miss M had enrolled on to a debt management plan (DMP). Miss M through her DMP provider was paying £5 per month towards the debt with the last payment made on 6 July 2021. An outstanding balance still remains due.

Following Miss M’s complaint, Lending Stream wrote to her to explain why it wasn’t going to uphold it. Unhappy with this response, Miss M referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator and he didn’t think Miss M’s complaint should be upheld because in his view, Lending Stream carried out proportionate checks which showed it that Miss M would be able to afford the loan.

He also said Lending Stream wasn’t aware of Miss M’s mental health problems when she applied for the loan. He also thought, that while Lending Stream could’ve informed the third party that Miss M was due to have surgery in November 2021, he didn’t make any award for it.

In response to the assessment, at the start of July 2023, Miss M asked for details of the information Lending Stream had provided and which were used by the investigator when deciding the complaint. She also let us know of an impending operation and so she may need longer to provide her full response. The evidence was sent to Miss M at the end of July 2023.

After the complaint was passed to me to review, I asked the investigator to contact Lending Stream for some further information about what happened with the third party when it found out about Miss M’s health problems. Lending Stream responded, provided more information and it also made an offer to resolve the complaint. Lending Stream concluded:

*“...we could have assisted her more effectively in managing her outstanding balance. Therefore, we are happy to write off the outstanding balance of £133.82 and mark the account as partially settled.”*

Around the same time a response was received from Lending Stream, Miss M emailed as

she had some questions about the assessment, as well as the credit checks Lending Stream conducted.

Lending Stream's offer was put to Miss M and she responded saying that her "...*main priority is getting the default removed as it effects my credit file.*" The complaint was then passed to me for a decision.

I then proceeded to issue a provisional decision even though Miss M said a full response would be received to the investigator's findings. Extra time was given a full response wasn't received and although I understand why there may have been a delay I was satisfied that I had sufficient information to hand to be able to progress the complaint and issue a provisional decision.

I explained in the provisional decision why I thought Lending Stream's offer to resolve the complaint was broadly fair and reasonable. Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 5 December 2023.

Lending Stream accepted the findings I set out in the provisional decision.

Miss M asked for further time to respond, and a number of new deadlines have been provided. However, to date no further response has been received. Given the provisional decision deadline date as well as the further extension that have been given and no new information has been received. I am now in order to bring this matter to a close issuing the final decision.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

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

*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 M could afford to pay back the amount 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 M'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 M. These factors include:*

- Miss M 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 M 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 M 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 M. The adjudicator didn't consider this applied in Miss M's complaint and I agree, as only one loan was granted.*

*Lending Stream was required to establish whether Miss M could sustainably repay the loan – 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 M was able to repay her loan 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 M's complaint.*

*I'm sorry to hear about Miss M's mental health and the impact it has had on her in the year before she applied for the loan. I do hope that things have improved for her. I've considered what she told Lending Stream in her complaint about her health and having done so, in this case, and solely in relation to the lending decision, I don't think Lending Stream did anything wrong.*

*The I say this because, it doesn't look like, based on the information I have to hand that it was aware of Miss M's health until October 2021. This means, it couldn't take this into account when deciding whether to lend. This approach, is also consistent with the relevant regulations in the Consumer Credit Sourcebook 2.10.4, it says:*

*“A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.”*

*So, while I have no doubt that the period of time leading up to this loan was challenging for Miss M, I'm unable to say that Lending Stream needed to do anything differently. This is because it wasn't aware of what was and had happened in Miss M's life.*

*As part of her application, Miss M declared a monthly income of £1,800. Lending Stream says it didn't feel it needed to make any adjustments to this income figure, based on what it knew about Miss M. I think this is reasonable, given this was a first loan and of a modest value.*

*I appreciate Miss M has said she was signed off sick at the time the loan was approved and therefore, wasn't receiving her regular salary. But that information wasn't reflected in what she told Lending Stream, and at the time, Lending Stream was, in my view, entitled to rely on what it was told and believe that information to be reasonably accurate.*

*Miss M also declared monthly outgoings of £800. This was broken down as £550 for normal expenses with £250 being attributed to credit commitments. Lending Stream says it looks at other information, such as statistics that relate to the population and it considered how much people typically spend with their income. Having carried out this further check, Lending Stream didn't make any adjustments to the expenditure figures Miss M declared. Based on the income and expenditure the loan looked affordable.*

*Before the 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 M's application.*

*Having looked at the credit results, in my view there wasn't anything that would've led Lending Stream to have carried out further checks. It knew Miss M had eight active*

accounts owing these creditors £7,000.

Lending Stream could also see that Miss M 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 M was in financial difficulties, or to have prompted Lending Stream to carry out further checks.

However, Lending Stream's credit check results didn't show how Miss M's total debt was made up. For example was it built through store cards, loans or credit cards. Lending Stream also didn't know, for example, when the other eight accounts were opened. I also wouldn't be able to uphold the complaint purely due to the credit check results because there wasn't a requirement for it to do one, let alone one to a specific standard.

Miss M was only granted one loan, I think it was reasonable for Lending Stream to have relied on the information Miss M provided to it – which showed she had sufficient disposable income to afford the repayments. There also wasn't anything to suggest that Miss M 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 M's complaint about Lending Stream's decision to provide the loan.

### **Other consideration**

I've used this section of the decision to comment on the notes and what happened after the loan account was defaulted and the contact between Miss M and Lending Stream, as well as the third party.

Lending Stream has provided evidence that in March 2020, once it was aware of the DMP, it passed the administration of the account to a third party. It was not sold and therefore Lending Stream remained the legal owners of the debt. I don't consider this to be an unreasonable course of action to have taken.

I can see Miss M contacted Lending Stream on 2 October 2021 to query the fact that she has asked the third party for copies of all the personal information it held about her – she raised a Data Subject Access Request (DSAR) – this request she says was made in July 2021.

Lending Stream responded to the request for information on 4 October 2021. It then confirmed on 22 November 2021 to Miss M, that all the information had about her had been provided.

If Miss M is unhappy about the way the DSAR was actioned in July 2021 she can of course take this up with the Information Commissioner's Office and it does seem from the notes that have been provided that Miss M has taken that complaint forward against the third party.

Lending Stream received a letter from Miss M on 6 October 2021, outlining that firstly she was a vulnerable person and secondly, that she let Lending Stream know that she had previously asked the third party for a DSAR and hadn't heard from it. The DSAR as I've said above, had by this point already been actioned by Lending Stream.

From the 6 October 2021, Lending Stream was aware that Miss M was vulnerable. So, it needed to do something, it couldn't just ignore what it was told. Lending Stream has now accepted that, when it was told about Miss M's vulnerability, it could've done more to assist her.

Even though Miss M had told Lending Stream about a planned operation, she received emails and text messages from the third party – the first one being sent the day after her operation.

But Miss M had indicated she wouldn't be able to deal with matters to do with her loan

*because of an operation. So, I think Lending Stream ought to have told the third party about this, in order to suppress or suspend from communications being sent at this time.*

*Although, I would add that the notes do suggest that Miss M responded to the third party at the start of December 2021. And Lending Stream by this time had made further enquires with Miss M to find out some more information to help it decide the best way forward.*

*In total, Lending Stream has now offered to write off the balance that Miss M legitimately owes it and what would've needed to have been repaid. In my view, Lending Stream's offer is fair and reasonable, taking account of all of the circumstances of the complaint. The offer would mean Miss M wouldn't need to make any further payments because it recognises that it could've and should've done more when it was notified of her health in 2021. So, I think writing off the balance – which is still owed - is a fair course of action.*

*I've also thought about what Miss M has said about removing the default from her credit file. However, I don't think that would be a fair and accurate reflection of how she repaid the account.*

*I've outlined above why I think Lending Stream made a proportionate check and that check reasonably led Lending Stream to think that the loan was affordable. Given this, I don't think I can rightfully ask Lending Stream to remove the default, because that is an accurate reflection of Miss M's repayment history. I recognise that Miss M will be unhappy with this. But the default will 'drop' off her credit file after six years from the date it was recorded, so it will be removed after June 2024.*

*Lending Stream has offered to mark the default as partially satisfied. Again, I do think that accurately reflects the conduct of the account and is a reasonable step to take – and so Lending Stream should also take this action.*

*I've therefore outlined below what Lending Stream needs to do in order to put things right for Miss M.*

### **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 has accepted the findings I made in the provisional decision and no new submissions have been made by Miss M. I therefore see no reason to depart from the findings I made in the provisional decision – which is that the offer Lending Stream made to resolve the complaint is fair and reasonable.

I've set out below what Lending Stream has agreed to do to put things right for Miss M.

### **Putting things right**

- In order to put things right for Miss M, and as Lending Stream has agreed to do, it will write off the remaining balance of the loan and not expect Miss M to make any further payments.
- Lending Stream will also update Miss M's credit file to show the default has been partly settled.

**My final decision**

For the reasons I've explained above and in the provisional decision, I'm upholding Miss M's complaint in part.

Gain Credit LLC trading as Lending Stream should put things right for Miss M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 14 February 2024.

Robert Walker  
**Ombudsman**