

## The complaint

Mr E complains that Gain Credit LLC trading as Lending Stream ("Lending Stream") allowed him to take out loans which he couldn't afford to repay.

## What happened

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

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£400.00	21-06-2017	15-12-2017	6	£179.20
2	£500.00	19-12-2017	15-06-2018	6	£224.00
3	£450.00	29-03-2018	05-10-2018	6	£190.80
Gap in lending					
4	£200.00	12-09-2019	16-09-2019	6	£69.10
5	£280.00	16-09-2019	Sold	6	£93.01
6	£510.00	17-09-2019	Sold	6	£170.75
7	£390.00	20-09-2019	Sold	6	£128.06

Mr E had some problems repaying his final three loans and Lending Stream has said the balances have been sold to a third party. Although, according to information provided by Lending Stream loan 7 is now back with it.

Following Mr E's complaint, Lending Stream wrote to him to explain why it wasn't going to uphold the complaint about loans 1 - 6. But Lending Stream did say about loan 7 that "*...it might not have been a good idea for us to make this loan.*" Lending Stream then set out what it would do to do to put things right for Mr E. However, this didn't result in a refund to Mr E because he hadn't repaid anything towards the loan – but what Lending Stream did do is recalculate the outstanding balance, so Mr E only had to repay the capital amount he had borrowed - £390.

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

The case was then considered by an adjudicator, she thought there was a break in lending between loans 3 and 4 and so she didn't uphold the complaint about loans 1 – 5. By loan 6 the adjudicator thought further checks needed to have been conducted and had it done so it ought to have realised that the loans were unsustainable for Mr E because loan 6 was his third loan within September 2019.

Lending Stream agreed with the adjudicator's assessment, and it made an offer to settle the complaint.

This offer was put to Mr E and he didn't accept it and instead asked for an ombudsman to review the complaint but he didn't provide any further comments. The complaint was then been passed to me and I issued a provisional decision explaining why I thought a fair outcome was a refund for loans 6 and 7.

Both parties were asked to provide any further comments as soon as possible, but in any event no later than 28 December 2023.

Lending Stream responded and confirmed it accepted the findings that were outlined in the provisional decision. Mr E was chased for a response, but to date, he hasn't provided any further submissions.

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 Mr E 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 E'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 E. These factors include:*

- *Mr E 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 E 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 E 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 E. The adjudicator didn't consider this applied in Mr E's complaint as there were two lending chains and I would agree.*

*Lending Stream was required to establish whether Mr E 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 E 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 E's complaint.*

### **Loans 1 – 3**

*As part of his application for these loans, Mr E declared the same monthly income of £1,660. Lending Stream says it didn't feel it needed to make any adjustments to this income figure based on what it knew about Mr E.*

*Mr E also declared monthly outgoings of £550 for loan 1 and £675 for loans 2 and 3. For*

each of his loans the monthly expenditure figure was broken down as either “normal expenses” or “credit commitments”.

However, Lending Stream says 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 amount for loan 1 for normal expenses of £74 and £141 per month for loan 2 for credit commitments. It didn’t make any adjustments for loan 3. Based on the amended expenditure information, the loans looked potentially 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 Mr E’s application.

Lending Stream hasn’t been able to provide details of the results for these first three loans. But I do know, from working other cases that Lending Stream usually only asked for details of the outstanding balances that Mr E had at the time, the value of any mortgage payments and the number of months since Mr E’s most recent account entered default.

I have no information from Lending Stream in relation to the results and I have no information from Mr E either about what a credit search may have shown Lending Stream at the time. Therefore, I am not able to say with any certainty what the results of Lending Stream’s credit checks showed and whether it made a difference to its decision to lend.

I can see that Mr E had some problems repaying loan 1, where he missed the October 2017 payment before making it up and bringing the loan account up to date in November 2017. There were no other repayment problems either during loan 1 or during loan 2 (before loan 3 was advanced).

Mr E did have some further payment problems in April 2018, but as this was after the loans had been approved, I can’t say that Lending Stream should’ve foreseen that. So, although there was one payment issue with loan 1, given it was rectified quickly and there were no other issues, I don’t think Lending Stream would’ve thought that was an indication that Mr E would have problems repaying loans 2 and 3.

Given it was early on in the lending relationship, I think it was reasonable for Lending Stream to have relied on the information Mr E provided to it – which showed he had sufficient disposable income to afford the repayments. There also wasn’t anything to suggest that Mr E 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 E’s complaint about loans 1 - 3.

## **Loans 4 and 5**

The adjudicator pointed out that there was a significant break in borrowing of around 11 months between Mr E repaying loan 4 and returning for loan 5. This break is large enough for Lending Stream to reasonably treat Mr E as if he was a new customer. So, loan 4 in effect becomes loan 1 of a new lending chain. I’ve kept that in mind when looking at this chain of borrowing.

The same sort of checks were carried by Lending Stream for these loans as they did for

loans 1 – 3. This time Mr E's income was recorded, as being £1,750 per month and Mr E declared monthly outgoings of £675 for loan 4 and £775 for loan 5.

*This time, Lending Stream didn't consider that it needed to have made any adjustments to Mr E's outgoings. Therefore, based on the information Mr E declared, the loans appeared affordable.*

*As before, a credit search was carried out and the same caveats apply to the results that Lending Stream has been able to provide for these loans. The results for these loans are the same, which isn't surprising given they were approved within a matter of days of each other.*

*It knew that Mr E had defaulted on 4 accounts within the last three years and had 6 active accounts at loan 4 and 7 active account when loan 5 was approved. However, Lending Stream was told, that Mr E had monthly credit commitments of at least £429 when loan 4 was approved and £329 when loan 5 was approved.*

*These credit commitments were more than what Mr E declared as part of his application where he declared £225 per month for credit commitments. Had Lending Stream substituted the figures that it was told about instead of what Mr E declared which is what I think it ought to have done and would've been a reasonable course of action for it to take. Lending Stream would've still thought that Mr E had sufficient disposable income to afford the repayments.*

*For the first loans of a new chain, it was entirely proportionate and reasonable for Lending Stream to have relied on the information Mr E declared – which showed the loans to be affordable. I therefore am intending to not uphold Mr E's complaint about these loans.*

## **Loans 6 and 7**

*Lending Stream has accepted, the proposed outcome as outlined by the adjudicator and therefore it has accepted these loans ought to not have been granted and so I don't need to make a finding on that aspect because these loans are no longer in dispute.*

*For completeness, I've set out below what Lending Stream needs to do and what it has agreed to do to put things right for Mr E. This is in line with the adjudicator's findings and in line with the well-established approach the Financial Ombudsman Service directs a lender to do in order to put things right, where it has been decided that loans ought to not have been granted.*

## **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.

As neither party has provided any new submissions for my consideration, I see no reason to depart from the findings I made in the provisional decision. I do not uphold Mr E's complaint about loans 1 – 5 for the reasons I previously gave.

Lending Stream had already accepted that loans 6 and 7 ought to not have been granted and so I see no reason to depart from those findings.

I therefore uphold Mr E's complaint about loans 6 and 7 only. For completeness, I've outlined below what Lending Stream needs to do and what it has agreed to do in order to put things right for Mr E.

## **Putting things right**

Lending Stream shouldn't have given Mr E's loans 6 and 7.

If Lending Stream have sold the outstanding debts Lending Stream should buy these back if it able to do so and then take the following steps. If Lending Stream is 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 E 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 Mr E which were considered as part of "A", calculated from the date Mr E 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 E as though they had been repayments of the principal on all outstanding loans. If this results in Mr E 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 outstanding loans. If this results in a surplus then the surplus should be paid to Mr E. However, if there is still an outstanding balance then Lending Stream should try to agree an affordable repayment plan with Mr E. Lending Stream shouldn't pursue outstanding balances made up of principal Lending Stream have already written-off.
- E. Lending Stream should remove any adverse information recorded on Mr E's credit file in relation to loans 6 and 7.

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

### **My final decision**

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 7 February 2024.

Robert Walker  
**Ombudsman**