

The complaint

Mr D complains that Gain Credit LLC trading as Lending Stream ("Lending Stream") provided him loans without carrying out sufficient affordability checks.

What happened

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

loan number	loan amount	agreement date	repayment date	number of monthly instalments	Largest monthly repayment
1	£80.00	18/12/2019	28/12/2019	6	£25.12
2	£200.00	24/01/2020	24/04/2020	6	£70.42
3	£300.00	06/03/2020	20/05/2020	6	£93.26
Gap in lending					
4	£500.00	14/03/2021	19/04/2021	6	£183.44
5	£600.00	12/09/2021	07/06/2022	12	£95.96
6	£280.00	02/11/2021	01/12/2021	6	£92.49
7	£500.00	09/12/2021	31/01/2022	6	£158.06

The largest repayment column is the largest cost per loan per month, but where loans overlapped the cost was greater. For example, when loans 2 and 3 were running concurrently, Mr D's monthly contractual repayment was £163.68.

Following Mr D's complaint, Lending Stream explained why it wasn't going to uphold it. This was because the checks it carried out showed it that Mr D could afford the loan repayments. Unhappy with this response, Mr D referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator, and she explained why the checks were proportionate, which showed Lending Stream that loans 1, 2, 4, 5 and 6 were affordable - bearing in mind the investigator considered there was at least two chains of lending.

However, she did uphold Mr D's complaint about loans 3 and 7. For these loans, the investigator said further checks were needed given the increase in Mr D's monthly repayments and the fairly quick uptake in borrowing. Had Lending Stream carried out further checks, it would've likely discovered that Mr D was already repaying four other payday loans with two other providers.

Mr D agreed with the outcome the investigator had reached.

Lending Stream didn't fully agree with the outcome, it did agree with the investigator's assessment about loan 7. However, it disagreed with the outcome for loan 3 saying in summary:

- Just because Mr D had other active loans that doesn't mean by the time of loan 3 it was unaffordable.

- For loan 3, it revised down Mr D's declared income and revised upwards his declared expenditure and proportionate checks were carried out to show the loan was affordable.
- The credit file data showed no defaults or delinquencies.
- There was nothing in Mr D's repayment history which suggested he was having financial difficulties and he didn't notify Lending Stream of any problems that he was having at the time.

These points didn't change the investigator's mind and because no agreement could be reached the case has been passed to me for a decision.

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. And I've used that to help me decide this complaint.

Lending Stream had to assess the lending to check if Mr D 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 D'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 D. These factors include:

- Mr D 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 D 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 D 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 D. The investigator didn't consider this applied in Mr D's complaint and I agree, given the number of loans, values of the loans and the gaps between them.

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

Loans 1, 2, 4, 5 and 6

The investigator didn't uphold these loans as part of her assessment and both Mr D and Lending Stream agreed with her findings that no error had been made when these loans were advanced. To me, it seems these loans are no longer in dispute and therefore I will not be making a finding about them. But I have kept them in mind when thinking about Mr D's overall lending relationship.

Loan 3

The same checks were conducted before this loan was advanced as Lending Stream had previously carried out. Mr D declared a monthly income of £1,250. Lending Stream, in response to the investigator's assessment, said that this figure was downgraded, but that isn't reflected in the information contained within the final response letter – indeed, it looks like it didn't make any adjustments at all and so for the affordability assessment it used the income Mr D declared.

Mr D also declared monthly outgoings of £325. This 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. Having carried out this further check, Lending Stream increased Mr D's outgoings by £440 per month.

For the affordability assessment it considered Mr D's outgoings amounted to £765 per month. Although it's worth saying, that for each loan application up to this point, Mr D's declared monthly living costs had decreased even though there were no obvious signs of any change in circumstances.

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.

The credit check results, showed that in total Mr D didn't have any defaulted or delinquent accounts within the previous 12 months. He had nine active accounts costing him at least £440 per month – which was the amount that Lending Stream increased his monthly outgoing figure by – as part of the affordability assessment.

However, Loan 1 had been repaid much more quickly than Lending Stream expected, before Mr D returned for loan 2 and then around six weeks later he was advanced loan 3. And for each loan Mr D's capital borrowing had increased.

Not only had each of the last capital loans increased in value but so had Mr D's monthly credit commitments to Lending Stream. Due to the overlapping nature of these loans, Mr D's monthly commitment to Lending Stream was £163.68 which is a significant increase from Mr D's first loan where he was expected to pay Lending Stream around £25 month.

So, I do think that perhaps further checks ought to have been conducted before this loan was approved – which is what the investigator recommended. A full copy of Mr D's credit report has been provided so I think it's entirely fair and reasonable to view that to see what else Lending Stream may have discovered by carrying out further checks.

Had further checks been conducted its likely Lending Stream would've seen a high-cost flexible credit product, two high interest loans and then four other payday loans that were outstanding at the time. But, with loan 2 being outstanding as well as being granted loan 3. I

do think that Lending Stream, by carrying out better checks, would've likely thought that Mr D was already having some financial difficulties – due to the number of outstanding payday loans – and concluded that it was unable to sustainably lend to Mr D.

I am therefore upholding Mr D's complaint about this loan and I've set out below what Lending Stream needs to do in order to put things right for him.

By this point in the lending relationship there hadn't been any signs such as missed payments – there were some repayment problems for both loans 2 and 3 but these occurred after loan 3 had been advanced. Although, I would add that was likely as a result of the third loan being unaffordable for him.

Loan 7

Lending Stream has agreed with the investigator's assessment that it shouldn't have provided this loan, so I don't need to make a finding about it. But I have included what Lending Stream has already agreed to do in order to put things right for Mr D below.

Other conditions

I'm sorry to hear about Mr D's health problems at the time these loans were advanced and the impact that these loans had on him. But, having looked at the information provided, like the investigator, I can't see that Mr D let Lending Stream know about his difficulties. As a result, I can't fairly say that Lending Stream ought to have been aware of this and therefore factored Mr D's health into its lending decisions.

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 not lent loans 3 and 7 to Mr D, 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 D 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, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he 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 he 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 responsible lender would have been able to lend to Mr D 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 D 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.

Lending Stream shouldn't have given Mr D loans 3 and 7. So, to put things right:

- A. Lending Stream should add together the total of the repayments made by Mr D towards interest, fees and charges on these loans, including payments made to a

third party where applicable, but not including anything Lending Stream have already refunded.

- B. It should calculate 8% simple annual interest* on the individual payments made by Mr D which were considered as part of "A", calculated from the date Mr D originally made the payments, to the date the complaint is settled.
- C. Lending Stream should pay Mr D the total of "A" plus "B".
- D. It should remove any adverse information recorded on Mr D's credit file in relation to loans 3 and 7.

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

My final decision

For the reasons I've outlined above, I am upholding Mr D's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 March 2024.

Robert Walker
Ombudsman