

The complaint

Mr F complains that Gain Credit LLC trading as Lending Stream (“Lending Stream”) irresponsibly gave him loans which he couldn’t afford to repay.

What happened

A summary of Mr F’s borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£250.00	20/11/2021	30/11/2021	6	£89.17
2	£700.00	03/12/2021	07/02/2022	6	£230.26
3	£300.00	18/12/2021	24/12/2021	6	£108.30
4	£500.00	01/01/2022	07/02/2022	6	£165.63
5	£350.00	22/02/2022	26/02/2022	6	£112.13
gap in lending					
6	£400.00	04/12/2022	22/12/2022	6	£121.84
7	£350.00	03/01/2023	09/01/2023	6	£106.90
8	£200.00	09/01/2023	09/01/2023	6	£71.35
9	£450.00	01/02/2023	outstanding	6	£138.56
10	£300.00	08/02/2023	outstanding	6	£106.92

The “*highest repayment*” column above is the largest payment per loan, but of course where loans overlapped the total cost to Mr F would be greater. For example, when loans 2 and 3 were running at the same time, Mr F would need to pay Lending Stream £338.56 per month.

Mr F had some problems repaying his final two loans and Lending Stream says an outstanding balance remains due.

Following Mr F’s complaint Lending Stream wrote to him to explain why it was only going to uphold the complaint about loans 5 and 10. It explained;

“Although these loans were affordable, we have thought 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 these loans.”

Mr F, unhappy with this outcome, referred the complaint to the Financial Ombudsman. Although it does appear, based on emails between Mr F and Lending Stream that it *may* have already paid the settlement that was outlined in its response.

The case was then considered by an investigator, and in her most recent assessment she explained why she wouldn’t be reviewing loans 5 and 10 because the offer Lending Stream had made was in line with what the Financial Ombudsman would’ve awarded had it upheld those loans.

She also didn't think Lending Stream had done anything wrong when it provided loans 1 – 3 and loans 6 – 9 considering the information Lending Stream obtained and the gap in lending between loans 5 and 6.

For loan 4 the investigator thought further checks ought to have been conducted given the amount of disposable income that Lending Stream was aware of as well as the results of the credit search. Had further checks been carried out the investigator didn't think this loan ought to have been approved.

Lending Stream agreed with the investigator's recommendation and made an offer to settle the complaint in line with her assessment.

Mr F didn't agree with the assessment, saying, in summary;

- he was using a number of payday lenders at the time
- he had an outstanding County Court Judgement (CCJ) of just over £7,000
- additional defaulted loans with balances of just over £5,500
- Mr F has another complaint at this service, where he took loans at the same time and the other complaint has been upheld in his favour.

The investigator explained why these comments didn't change her mind about the outcome she had reached. Mr F responded to say given his other complaint, what can be seen in his bank statements and credit file ought to lead to most, or all, of the loans being upheld. As no agreement could be reached the case has been passed to me to decide.

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 Mr F 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 F'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 F. These factors include:

- Mr F 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 F 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 F 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 F. The investigator didn't believe this applied to Mr F's complaint. I agree, considering the amounts lent and the gap in lending.

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

Loans 1 – 3

As part of his application for these loans, Lending Stream has recorded, that he had a monthly income of £3,290. Lending Stream says it didn't feel it needed to make any adjustments to the income figures based on what it knew about Mr F and I consider this a reasonable approach to take given the capital advanced.

Mr F also declared monthly outgoings of between £875 and £1,280 per month for loans 1 – 3. For each of his loans the total monthly expenditure figure was broken as either "*normal expenses*" or "*credit-specific commitments*".

Lending Stream says it looked at other information such as available 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 only made one adjustment, it added a further £132 per month of normal expenses on loan 3, which took the total expenses to £1,007 per month. Even with this adjustment Mr F had more than enough disposable income to afford the largest repayment of £338.56 per month when loans 2 and 3 were running concurrently.

Mr F says that Lending Stream ought to have asked why he was borrowing these loans when it looked more than affordable. I can quite understand why he says this but there was no requirement for Lending Stream to ask why the loan was being requested – some lender's do ask for this information but that wouldn't be a reason I could say ought to have led Lending Stream to have conducted either further checks or to have declined his applications. The requirements for Lending Stream have been set out earlier on this decision and that was for it to conduct proportionate affordability checks.

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'd also add that there is no regulatory requirement for a credit search to be carried out, 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 F's application.

When these loans were approved, Lending Stream was on notice that in the not too distance past Mr F had defaulted on a number of accounts. However, at the point loan 1 was granted, these defaults had been recorded nearly two years before. Given everything else, I don't think Lending Stream needed to have looked more closely at the defaults for these loans.

There also wasn't anything from the results to suggest Lending Stream was made aware of any CCJS that Mr F may have had.

For these loans Lending Stream was told that Mr F had 11 active credit accounts owing just over £6,500 to other creditors. From the results it doesn't seem to have been aware of the type of accounts these were. So, whether they were current account, store cards, credit cards or other high cost credit. But for these early loans I don't think Lending Stream needed to have investigated these active accounts any further.

Equally, when these loans were approved, at most Lending Stream was told that Mr F's monthly credit commitments were £177 – which was consistent with what he declared to it as part of his application. Therefore, given what Mr F had declared and the results of the credit search there wasn't anything that would've prompted further checks.

I've also thought the fact that when loan 3 was granted Mr F now had monthly commitments to Lending Stream of around £339 – which was a sizable increase from the start of this lending chain. I've also considered that these loans were approved fairly close together and all three loans were advanced within around a month of each other.

In some situations, these factors may have been sufficient to have prompted further checks. But in the individual circumstances of this complaint, given this was the first chain of lending, the amounts Mr F borrowed and what Lending Stream discovered from its checks then I'm satisfied that proportionate checks were conducted. This has led me to conclude that Lending Stream didn't make an error when it approved these loans. As such I think it would've been disproportionate of it to have looked at Mr F's bank statements.

Taking everything into account, I am not upholding Mr F's complaint about these loans.

Loans 4, 5 and 10

In Lending Stream's final response letter and then in response to the investigator's assessment, Lending Stream agreed that these loans ought to not have been upheld and it agreed to pay compensation to Mr F as outlined by the investigator.

Therefore, as Lending Stream has accepted these loans ought to not have been granted, I'll say no more about them. But for completeness I've outlined at the end of the decision what Lending Stream has accepted that it needs to do in order to put things right for Mr F.

Loans 6 - 9

There was then a significant break in borrowing between when Mr F settled loan 5 and when he returned for loan 6 of just over nine months. This gap was large enough for Lending Stream to have treated Mr F's application afresh. So even though Mr F was approaching Lending Stream for his sixth loan, it could be treated as the first loan in a new lending chain and that will have implications for what a proportionate check may have been for loan 6 and the loans in the rest of this chain.

It's also worth saying that in this loan chain, none of the loans overlapped, all the loans had been repaid before any new lending was advanced.

Lending Stream carried out the same sort of checks for these loans as it had done so for the previous loans. Mr F's income was recorded as being £3,750 for all of these loans. For new loans in a lending chain, it was fair and proportionate for Lending Stream to have relied on what it was told.

Mr F's outgoings were recorded as being between £1,050 and £1,350 per month. As before, Lending Stream reviewed the self-declared information, and it didn't make any adjustments to the figures. Based on the information declared to Lending Stream it would've been reasonably confident Mr F would be able to afford these loans.

Credit searches were also carried out and the same caveats apply to the results of these loans as they had done so for previous loans. Having reviewed the results, I don't think there was anything contained within them that would've prompted Lending Stream to have undertaken further checks.

There were no new defaults and by loan 9 – Lending Stream knew the most recent one had been recorded three years before. So, I don't think that would've been of concern to it. It also doesn't appear to have been told that Mr F had an active CCJ and so couldn't factor that into the lending decision.

The credit checks showed that Mr F's credit commitments were greater than he had declared to Lending Stream as part of his application for loan 7. For his other loans I've considered in this chain, the sums Mr F declared were broadly correct. But for loan 7 his commitments were around £500 per month but he declared these were only £275. So, this amount was clearly incorrect, given what Lending Stream was told.

But, even if Lending Stream had substituted the figure it was given from the credit checks and added it to the rest of his monthly expenditure, Lending Stream would've still thought the loan was just about affordable. Overall, the credit search results weren't enough to have prompted further checks or to have declined the credit applications.

But as before, had Lending Stream used the credit commitment given to it by the credit reference agency it still would've thought the loans were affordable.

Taking everything into account, I am also not upholding Mr F's complaint about these loans because Lending Stream conducted proportionate checks which showed it that Mr F would likely to be able to afford his repayments. There also wasn't anything else to suggest that the loans were unsustainable for him.

Finally, I've considered what Mr F has told us about the other complaint the Financial Ombudsman has considered which has been upheld in his favour and therefore this complaint also ought to be upheld.

My role is to consider the individual circumstances of this complaint based on proportionate checks against the loan value, term and what else Lending Stream knew and discovered about Mr F's financial situation. That does mean, complaints that appear to be similar and which occurred at around the same time can have different outcomes.

Putting things right

For completeness I've set out below what Lending Stream needs to do in order to put things right for Mr F. If Lending Stream has already paid compensation in relation to loans 5 and 10 it doesn't need refund Mr F again, instead it will need to pay compensation for loan 4 only.

Lending Stream also said, that even after carrying out the redress Mr F will still owe it some money for both loans 9 and 10. I would remind it that should Mr F need a repayment plan that it treats him fairly and with forbearance.

Lending Stream shouldn't have given Mr F loans 4, 5 and 10.

If Lending Stream has sold the outstanding debts, it should buy these back if it is able to do so and then take the following steps. If Lending Stream are 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 F 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 F which were considered as part of "A", calculated from the date Mr F 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 F as though they had been repayments of the principal on all outstanding loans. If this results in Mr F 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" can be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Mr F. However, if there is still an outstanding balance then you should try to agree an affordable repayment plan with Mr F. I'd remind Lending Stream of its obligation to treat Mr F fairly and with forbearance.
- E. Lending Stream should remove any adverse information recorded on Mr F's credit file for loans 4, 5 and 10.

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

My final decision

For the reasons given above, I am upholding Mr F's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 24 May 2024.

Robert Walker
Ombudsman