

The complaint

Miss B complains that Gain Credit LLC trading as Lending Stream (“Lending Stream”) gave her loans she couldn’t afford to repay, and Lending Stream would’ve realised that had it made better checks.

What happened

A summary of Miss B’s borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest repayment per loan
1	£500.00	02/12/2023	26/04/2024	6	£162.78
2	£360.00	24/12/2023	04/06/2024	6	£123.63
3	£320.00	29/03/2024	outstanding	6	£106.53
4	£290.00	29/04/2024	outstanding	6	£96.50

The largest repayment per loan column is the cost per loan, but where loans overlapped the cost will be greater. For example, when loans 1 to 3 were running concurrently Miss B’s commitment to Lending Stream was £392.94 per month.

Following Miss B’s complaint, Lending Stream explained why it wasn’t going to uphold it and it explained the checks it carried out showed Miss B could afford these loan repayments. Unhappy with this response, Miss B referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator who didn’t uphold the complaint about loans 1 and 2. But she did conclude further checks were needed when loans 3 and 4 were granted. Had Lending Stream carried out more detailed checks it wouldn’t have provided the loans because she was spending more than her income on gambling transactions and so the loans weren’t affordable.

Miss B didn’t agree saying Lending Stream should’ve reviewed her bank statements before loans 1 and 2 were approved had it done so these loans wouldn’t have been lent either.

As no agreement could be reached, the complaint was passed to me, and I issued a provisional decision outlining why I thought the complaint should be upheld about loan 4 only.

Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 31 October 2024.

Lending disagreed with the provisional decision to uphold loan 4, and in summary it said;

- The checks were proportionate and demonstrated clear disposable income.
- There were no triggers to have led Lending Stream to carry out any further checks.
- There was nothing to suggest there was a pattern of repeat borrowing or concerns about the affordability nor issues with the repayment of previous loans.

- Lending Stream couldn't have inferred or suspected what Miss B was using the funds for.
- Lending Stream is being asked to make judgment on the ethical acceptability of the spending a consumer may undertake.
- It isn't for Lending Stream to tell Miss B how to spend her income or to live her life.

Miss B didn't have any further comments or submissions.

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

What I said in the 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. And I've used that to help me decide this complaint.

Lending Stream had to assess the lending to check if Miss B could afford to pay back the amounts 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 B'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 B. These factors include:

- *Miss B 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 B 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 B 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 B. The investigator didn't consider this applied in Miss B's complaint because only four loans were granted, and I agree with this.

Lending Stream was required to establish whether Miss B could sustainably repay the loans – 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 B was able to repay her 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 Miss B's complaint.

Loan 1

Miss B declared a monthly income of £1,934. Lending Stream said "If required, we would confirm that this monthly income was right with an independent company." It isn't clear

from the information provided whether Lending Stream did or did not take steps to check Miss B's income for this loan. But even if Lending Stream had taken steps to check Miss B's income, then it would've discovered the amount used for its affordability assessment was broadly accurate.

Miss B also declared total monthly outgoings of £380. 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 related to their income. Having carried out this further check, it increased Miss B's living costs to £707.75.

It also made enquires with Miss B about her outstanding credit commitments and she declared these to be £260 per month. However, following a credit check, that I'll go into more detail below, it believed these costs came to £385 per month. To this it added the other living costs, giving monthly outgoings of £1,092.75. But even with the increased monthly outgoings, the loan would've appeared affordable to Lending Stream.

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.

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 them that would've either prompted Lending Stream to have carried out further checks or possibly have declined Miss B's application.

Having looked at the credit check results, Lending Stream was told Miss B had five active credit accounts, with total debts of just over £6,000 and it was costing Miss B around £385 per month to repay these creditors.

There was a clear indication that some years before Miss B had significant financial difficulties and I say this because Lending Stream was aware from the credit search Miss B had previously defaulted on 10 accounts. But the most recent default had been recorded 50 months before the first loan. In those circumstances it was reasonable for Lending Stream not to have been overly concerned especially because there weren't signs of any current financial difficulties.

I accept that having 10 defaults is a significant number, but I've considered that against the fact that the defaults did appear to be historic in nature as the most recent was almost over four years before the first loan. That was too long ago for Lending Stream to have concluded that she was likely having current difficulties at the time of the loan application. That doesn't mean Miss B wasn't experiencing financial difficulties at the time she applied for the loan, only that information wasn't reflected in the information Lending Stream gathered and what it could reasonably make its decision on.

I know Miss B says that Lending Stream ought to have gone further with its checks, because she was spending most of her income at the time on gambling transactions. But there weren't any flags within the checks Lending Stream carried out to make it think it needed to do more. So, I don't think it would've been fair or reasonable of it to have checked Miss B's bank statements – at this time.

Overall, given the value of the loans and what information Miss B provided, I think Lending Stream carried out proportionate checks which showed the loan was affordable. In those circumstances I think it was reasonable for Lending Stream to have advanced this loan. Taking everything into account, I am intending to not uphold Miss B's complaint.

Loan 2

Loan 1 was still running when Miss B approached Lending Stream for this second loan, and although Miss B's payments for this loan were around £123 per month, Lending Stream had to consider that as loan 1 was still outstanding her monthly commitment would be as high as £286.41.

Miss B declared a similar income as she did for loan 1 - £1,944. Miss B also declared total monthly outgoings including her credit commitments of £700. I can see Lending Stream looked at the same sort of statistics as it did for loan 1 and having looked at them, it decided Miss B's monthly outgoings and credit commitments came to £1,166.25.

Lending Stream has provided the credit results it received for this loan and the results were identical as Lending Stream had received for loan 1 and so the results alone aren't enough to have prompted either further checks or to have declined her loan application. And for this loan, Lending Stream adjusted Miss B's credit commitments in line with the results it was given, which was the right thing to have done.

For a second loan, I still think it was also reasonable for Lending Stream to have relied on what it was told without the need to have checked her outgoings more closely than it did. This means I still don't yet think it had reached the point where Lending Stream would've reasonably expected to have considered Miss B's bank statements.

Overall, I don't think there was quite enough when this loan was advanced to have prompted Lending Stream to have carried out further checks or to have declined Miss B's application. The loan looked affordable and in my view Lending Stream conducted a proportionate check which showed it that Miss B could afford the loan. I am therefore intending to not uphold Miss B's complaint about this loan.

Loan 3

Loans 1 and 2 were still running when this loan was approved, and so Lending Stream had to consider that Miss B's monthly commitment to it had increased again to £392.94 per month.

Lending Stream carried out the same sort of checks before this loan as it had done so for the previous ones. Miss B's declared income had marginally increased to £1,970 and she said she her credit commitments and monthly living costs came to £675.

Lending Stream's checks into Miss B's credit commitments and outgoings led it to believe these came to £1,643 per month. This left sufficient disposable income to be able to afford her repayments for this loan.

The credit check results that Lending Stream provided, showed no new adverse credit file data, it was now 53 months since the most recent default was reported and it knew that she had 8 active accounts. This is an increase since the first loan, but we know Miss B had taken further loans from Lending Stream to account for this.

However, Lending Stream was told that Miss B's total monthly credit commitments were now £1,020. I can see that it took this figure into account when assessing Miss B's monthly outgoings. I also have to consider that before this loan payment and her living costs that Miss B was spending more than 50% of her income meeting her existing credit commitments.

Miss B had also made all her loan payments as expected for loans 1 and 2 and so there wasn't any indication that Miss B was having difficulties repaying her previous loans or would have led Lending Stream to consider whether it needed to carry out further checks. I have also considered that the capital amount advanced for each loan had decreased, so while Miss B's monthly commitments had started to increase, due to the overlapping nature of the loans the capital amount was decreasing.

The investigator discovered for this loan that Miss B was spending significant amounts each month on gambling transactions but that wasn't reflected in the information she gave to Lending Stream nor in the results of its checks. So, Lending Stream didn't know nor would it have known about Miss B's gambling transactions. Overall, I think it was just about reasonable for Lending Stream to have granted this loan without looking at any further

information.

Loan 4

Lending Stream conducted the same checks as it did for loans 1 – 3. Miss B's income has been recorded as £2,071. Miss B declared outgoings of £800 but Lending Stream increased this to £1,306 per month. The credit check results, also showed Miss B had seven active accounts costing her at least £605 per month. But there was no new adverse credit file data.

Lending Stream may not have felt that there were any concerns when this loan was granted, as loan 1 had been repaid earlier than planned and loan 4 was the smallest capital loan, albeit Miss B was still committing to spending over £326 per month to Lending Stream.

However, I do have some concerns because I don't think Lending Stream really knew enough about Miss B at this point in time. It was now her fourth loan in as many months and was taken a matter of days after her first loan was settled and she was further committing herself to another six-month loan.

Taking account of the increasing income and the fact that Lending Stream was having to make significant adjustments to Miss B's declared credit commitment amount as well as making adjustments to her living costs and the fact that Miss B's income seemed to be marginally increasing with each loan. Then I do think by now Lending Stream needed to have undertaken further checks into Miss B's actual financial situation.

Lending Stream could've gone about doing this a number of ways, it could've asked to see evidence of her income and outgoings through pay slips, copy bills or any other documentation that it felt it needed. Or, as I've done here it could've asked to see her bank statements.

I accept that just because I've seen something in the bank statements that doesn't mean Lending Stream would've become aware of it. But the bank statements are the best indicator of Miss B's actual financial position and in the absence of Lending Stream conducting a proportionate check I think its reasonable to rely on what this shows.

Had Lending Stream conducted a proportionate check it would've discovered that the income declared by Miss B was accurate. However, it also would've seen that Miss B was spending a significant portion of her income each month of gambling transactions, in the weeks before the loan was granted, she spent £1,200 on such transactions. She had spent over £600 on repaying three other payday loans to other companies. On top of this she also had around £300 payments due to Lending Stream plus her living costs. So, had a proportionate check been conducted than Lending Stream would've likely realised Miss B couldn't afford this loan repayments.

I am therefore intending to uphold Miss B's complaint about loan 4 only.

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.

Neither party disagreed with the proposed outcome for loans 1 – 3 and so I won't revisit those loans again, except to say I am still not upholding those loans for the reasons given in the provisional decision.

I've thought about Lending Stream's comments, but I'm not persuaded that these alter my decision to uphold the complaint about loan 4.

It may help if I explained the approach I took when considering this complaint – which is in line with how irresponsibly lending complaints are considered by the Financial Ombudsman. I considered the information that Miss B provided against the results of the checks that

Lending Stream conducted. If the checks were proportionate given what Lending Stream knew and the results of its checks showed the loans to be affordable, then the loans weren't upheld – as was the case for loans 1 – 3.

However, If the checks weren't proportionate then I would go on to consider what a proportionate check may have showed Lending Stream at the time. This doesn't mean the complaint will be upheld, but merely more needed to be done before granting loan(s).

By loan 4, I explained that I did have some concerns about Miss B's use of the loans. While repeat lending at this point, wasn't sufficient to say the loan was unsustainable, for her. I did have concerns that the checks Lending Stream did before granting the loan weren't sufficient. I said this because, Miss B was returning 4 days after repaying loan 1 (earlier than planned) for a further loan, she still had loans 2 and 3 outstanding and she was committing herself to spend at least a further six months in debt. And it was for those reasons I concluded that further checks were needed.

The fact that Miss B was spending significant sums each month gambling is something I do think Lending Stream would've likely discovered had it made better checks. To be clear, if my position was that I knew that Miss B was gambling from loan 1 - then I'd have upheld all the loans. But in reality, the first three loans proportionate checks had been conducted and so Lending Stream wouldn't and couldn't have been aware of it. And I only think Lending Stream ought to have reasonably been aware of it by loan 4 by carrying out the further checks that I felt were needed before granting the loan.

And the further checks, would've highlighted that given Miss B's gambling transactions and payments to other lenders meant loan 4 wasn't affordable. And in my view, the gambling was significant enough that it does, in the circumstances of this complaint play a part in making the loan unaffordable – along with the other reasons that I gave.

I want to be clear that I am not asking Lending Stream to be an arbiter of what a consumer spends their money on – but seeing the gambling transactions would've led Lending Stream to decide that the loan wasn't affordable when also considering the other payday loans that she had.

But by loan 4, as further checks were needed, I still am of the view that those further checks would've shown Lending Stream that the payments for loan 4 weren't affordable, and so shouldn't have granted the loan.

This isn't a finding on Lending Stream's wider lending practices, merely, in the individual circumstances of this complaint, by loan 4, more checks were warranted – for the reasons I've set out above and in the provisional decision.

Finally, I've considered whether MoneyBoat acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss B in the circumstances of her complaint. I'm therefore satisfied, based on what I've seen that no additional award would be appropriate in this case.

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 stopped lending to Miss B at loan 4, 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 Miss B 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, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they 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 they 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 lender would have been able to lend to Miss B 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 Miss B 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 Miss B loan 4.

If Lending Stream has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Lending Stream can't buy the debt back then Lending Stream should liaise with the new debt owner to achieve the results outlined below.

- A. Lending Stream should remove all interest, fees and charges from the balance on loan 4, and treat any repayments made by Miss B as though they had been repayments of the principal. If this results in Miss B 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.
- B. However, if there is still an outstanding balance due for loan 3 then Lending Stream can use the above refund to offset this balance. If an outstanding balance still remains due for loan 4, then it should try to agree an affordable repayment plan with Miss B. And I would remind Lending Stream of its obligation to treat Miss B fairly and with forbearance.
- C. Lending Stream should remove any adverse information recorded on Miss B's credit file in relation to loan 4.

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

My final decision

For the reasons outlined above and in the provisional decision I am upholding Miss B's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 29 November 2024.

Robert Walker

Ombudsman