Financial Ombudsman Service

complaint

Mr B says complains that Gain Credit LLC, trading as Lending Stream ("Lending Stream") lent to him irresponsibly.

background

I attach my provisional decision dated 20 February 2019, which forms part of this final decision and should be read in conjunction with it. In my provisional decision I explained why I intended to uphold Mr B's complaint in part. I invited both parties to provide any further comments they may have by 6 March 2019 before I reached a further decision.

Mr B has agreed with my provisional decision and has nothing further to add. Lending Stream said on 6 March 2019 it would respond by 13th March. I have received two acknowledgments to say the same thing. I have received nothing further.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

I am content that Mr B has accepted my provisional decision. And as Lending Stream has not provided any further arguments, I see no reason to alter the conclusions I reached in my provisional decision on 20 February 2019.

I particularly draw Lending Stream's attention to page 8 of this final determination which related to the events surrounding some outstanding loans in August 2018. As Lending Stream has not come back to explain further then I assume that it does not disagree. So for clarity I have incorporated specific points in relation to Loans 26, 27 and 28 into the 'putting things right' section of this final determination as my provisional findings said I would do unless additional explanation was received.

putting things right

I think it would be fair and reasonable in all the circumstances of Mr B's complaint for Lending Stream to put things right in the following way:

- refund all the interest, fees and charges for Loan 4 and Loans 9 to 28; and

- add interest at 8% per year* simple on the above interest and charges from the date they were paid by Mr B to the date of final resolution of this complaint;

- write off the principal balance for Loans 26, 27 and 28 if not already done;

- remove from Mr B's credit file adverse payment information for Loans 4 and 9;

- remove from Mr B's credit file all reference to loans 10 to 28.

*HM Revenue & Customs requires Lending Stream to take off tax from this interest. Lending Stream must give Mr B a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons set out above and in my provisional decision dated 20 February 2019, I uphold Mr B's complaint in part.

Gain Credit LLC, trading as Lending Stream should put things right for Mr B in the way I have set out in that provisional decision which is attached and forms part of this final determination.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision on or before 15 April 2019.

Rachael Williams
ombudsman

the provisional decision dated 20 February 2019

background

This complaint is about 28 instalment loans provided to Mr B between July 2011 and December 2017. All of them were structured as six consecutive monthly payments. A table setting out brief details appears in the annexe to this provisional decision. I will refer to the loans according to the numberings on that table.

Mr B first complained to Lending Stream by telephone on 7 February 2018. Lending Stream gave consent for this service to consider Loans 1 and 2 along with the rest.

A repayment plan was set up late January 2018 for the last three loans. Mr B made payments in line with that plan up to the end March 2018 and then he requested that the account be suspended while his complaint was being considered at this Service.

Mr B has sent us a lot of detail and I summarise his complaint here:

- Lending Stream was irresponsible because of the "*volume, frequency and amount borrowed*";
- it ought to have identified that he was reliant on the loans and ceased lending;
- Mr B says that "*neither the employment, income or credit score factors mitigate the fact that 28 loans is excessive*"
- Mr B says he became trapped in a "debt spiral".

Lending Stream has explained to Mr B that it carried out "*rigorous affordability assessments"* and the nature of its product – instalment loans repayable over six months – meant that the monthly sums were lower. It explained that its loan applications process captured Mr B's self-declared income, expenditure, employment/place of work details.

It said to Mr B that "*It was imperative that details furnished by you were correct, so we could ensure that we satisfy our standard affordability checks to measure if your loan applications met our lending criteria or not*." It considered that the loans had been '*paid out correctly'*.

One of our adjudicators has looked at this complaint in detail several times. Her first opinion in August 2018 was that lending Stream should put things right for Mr B in relation to Loans 3, 4 and 9 to 28.

At first Lending Stream accepted this and said that it would do as our adjudicator asked. It changed its mind. I say more about this in the body of my provisional decision. As Lending Stream changed its mind and then chose to dispute our adjudicator's findings then our adjudicator reviewed some details and in her third opinion in mid-September 2018 made a slight alteration: she no longer recommended that the part of the complaint relating to Loan 3 be upheld.

Mr B accepted this third opinion and that the redress being recommended by our adjudicator related to Loans 4 and Loans 9 to 28. From this I do not consider that Loans 1 to 3 and 5 to 8 are in dispute. So I do not plan to review them here.

Lending Stream's main points relate to Loans 9 to 28. Lending Stream has asked our adjudicator for more detailed reasons for upholding the complaint specifically in relation to Loans 12 to 28. It has asked for 'affordability assessments' in detail for each loan. It says that Mr B's early repayment of almost all of the loans was an indication that Mr B was not dependant on a continuous line of loan borrowings.

Lending Stream also reminded our adjudicator that these were six month instalment loans and from that the individual repayments were more likely affordable. And it says that it verified Mr B's credit obligations with a third party as part of its affordability assessments.

Our adjudicator explained further in her fourth opinion and explained that the pattern of borrowing was such that it was not sustainable for Mr B. And that it was clear that Mr B was not using these high-cost short term instalment loans in the manner they were intended to be used. It ought to have raised concerns with Lending Stream and it ought to have looked to see if these series of loans over an extended period of time were sustainable.

Our adjudicator considered that the complaint remained unresolved and that it ought to be passed to an ombudsman for a decision.

Following which Lending Stream added that it wanted an ombudsman's decision on this case in order for this service to '*articulate the rationale on certain arguments*' so that it may '*accurately and effectively learn from… decisions*'. Lending Stream is asking for this decision in order to understand '*how the FOS perceives responsible and proper use of lending products offered in the HCSTC space*.' 'HCSTC' refers to 'high-cost short term credit'.

In future I refer Lending Stream to the regulations governing it and to this Service's website and its technical pages on which are further details on the regulations, guidance, and our approach to these types of complaints.

The result is that this complaint has been passed to me for a decision.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Before lending money to a consumer a lender should take proportionate steps to understand whether the consumer will be able to repay what they are borrowing in a sustainable manner without it adversely impacting on their financial situation.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves did not set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key element was that any checks needed to be proportionate and had to take into account a number of different things, including how much was being lent and when the sum being borrowed was due to be repaid.

original acceptance of our adjudicator's opinion

I have asked Lending Stream to give details about the fact that its representative emailed this service to accept our adjudicator's first opinion. But it has not provided me with all the information I have requested about this.

What I do know from both parties is that on or about 28 August 2018 Lending Stream altered Mr B's account status to show that the last three loans were closed and that nothing further was due to be paid. And Mr B has told me that his credit file has been amended and I think that the amendments have been done to reflect the original adjudicator's recommendations as to what Lending Stream should do to put things right.

So it looks as if Lending Stream has accepted that it got things wrong in relation to these loans and has started to comply with the recommendations to put things right.

Without further information I cannot say more. And as the actions are to the benefit of Mr B then there seems little point in delaying this provisional decision further in order to wait for information which may be academic. But I do think that the implications of these actions do need to be reflected in the redress section of this provisional decision which is outlined below.

Loan 4 – first loan chain

This was the fourth loan in the first lending chain. Mr B applied for it on 7 July 2012 several months after repaying Loan 3. This loan was for a much larger amount – £615 and was due to be repaid over six months. The highest scheduled repayment figure was £307 and it is that amount I have used in order to review Lending Stream's assessment prior to lending.

At this stage I would have expected Lending Stream to have used the information it had from Mr B about his income and his expenditure and also made additional enquiries to see if he had any outstanding STL debt. I have checked this position from the information we have received from and about Mr B. He had too much outstanding STL debt to make this instalment loan affordable. I am planning to uphold Mr B's complaint in relation to loan 4.

second loan chain post 1 April 2014

From April 2014 lenders were regulated by the Financial Conduct Authority (FCA) and had to carry out an assessment of the creditworthiness of an applicant/customer in accordance with the FCA's Consumer Credit Sourcebook (CONC): CONC 5.2.1R (1).

Some of the CONC provisions altered from 1 November 2018 and so the ones I refer to here are as they were at the time Mr B was applying for these loans during the second loan chain from September 2014.

CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

A firm *"…must consider (a) the potential for the commitments…to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the…agreement is to be made; and (b) the ability of the customer to make the repayments as they fall due..."* CONC 5.2.1R (2).

The firm should "*take into account more than assessing the customer's ability to repay the credit."* CONC 5.3.1G. It ought to take reasonable steps to "*assess the customer's ability to meet repayments … in a sustainable manner."*

'*Sustainable*' means that the applicant is able to repay on time, out of income and savings, without undue difficulties, and without having to borrow to meet those repayments: CONC 5.3.1G (6).

Examples in CONC 5.2.3G are: the type and the amount of credit; the financial position of the applicant; the potential customer's credit history; existing and future financial commitments and "*any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;"* And the FCA's rules and guidance made it clear that the information gathered needed to be enough to be able to reasonably assess the sustainability of the arrangement **for the consumer.**

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation

So I think the regulator's requirements are clear – that an assessment needed to be consumer-focussed. It is not designed to be solely an assessment on the risk to the lender of not recovering the loan money to its satisfaction, but of the risk to the consumer of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.

Loan 9

As I have outlined in the background section of my decision, there does not seem to be a dispute in relation to Loans 5 to 8 and so here I deal with Loan 9. This was applied for in February 2015 for £200 repayable over six months and the highest scheduled repayment was £90.

Lending Stream would have known that its own earlier loan (Loan 8) was outstanding and so I have taken into account the repayment schedule for that loan and Mr B would have been contractually bound to repay these as well.

By this point in the lending relationship in the second loan chain I would have expected Lending Stream to be carrying out proportionate checks which would have verified his income, obtained detailed information on Mr B's regular outgoings and expenditure, regular financial commitments, other STL debt and gain a comprehensive picture of Mr B's financial situation.

I say this because this would have been the fifth loan since September 2014, overlapped with Loan 8, would have extended his general indebtedness with Lending Stream and also was only two weeks after he had applied for Loan 8 which was a large principal amount of £700. So it may have seemed unusual that a customer with an apparent good level of disposable income was returning for additional loans so soon.

I do not think that Lending Stream did this comprehensive review.

I have spoken to Mr B and I have obtained fresh sets of bank statements as well as the ones which were made available to our adjudicator.

Mr B thinks that if Lending Stream had done more in-depth checks it would have realised his position and not lent to him. He has explained that sometimes the loan applications were granted on-line in about a minute and he thinks that the early repayment pattern he had built up with Lending Stream may have contributed to an internal 'good standing' record. He thinks that this had an influence over the lending decisions.

I do not have any evidence about Lending Stream's internal processes to be able to make any finding on this last point raised by Mr B. But I have taken it into account as part of the application procedure experience from Mr B's perspective.

And I am aware that CONC does envisage that a lender considering an application can look at the applicant's borrowing history. But there is also a provision where the lender '*should not allow a customer to enter into consecutive agreements'* for HCSTC where the cumulative effect would be that the '*total amount payable… is unsustainable'*: CONC 6.7.22G.

I think that this did become the situation with Mr B – that the total amount payable in these consecutive (often overlapping) loans led to the total amount payable being unsustainable.

What I have seen from Mr B's bank account transactions is that he was permanently in an overdraft state on one account, spent money on betting and gaming regularly (usually on a daily basis) and has told me that he had a gambling issue at the time. I can see that some transactions were for £600 in a day. I can also see that Mr B took loans to repay other loans. An example is that in January 2015 Mr B received a loan which he used to repay another large loan and several smaller debts including other payday lenders and credit cards.

Some aspects of Mr B's finances have been explained to me and I am satisfied that some additional income he received was forwarded to a family member and so I discount that as having any income element for Mr B.

I can see on the statements, and Mr B has explained to me, that often he borrowed from family members and where I can see regular repayments back to those family members, I have taken them into account.

His arrangement with his partner at the time was to pay to a joint 'House Account' an agreed sum out of which the joint mortgage and household bills were paid. I can see that £1,000 was paid out to that other account regularly immediately after he received his salary around 23rd in each month. The months of January and February 2015 were no different.

On top of this I can see that Mr B was servicing a long term loan costing him about £320 a month and the new loan (referred to above and used to pay down his debt) started to cost him about £222 each month from February 2015. He had other bills such as a mobile phone contract, credit file fee, account and overdraft charges, some food, insurance and transport costs. Mr B has told me that he had a young family at the time.

Added to which Mr B had many other payday and instalment loan lender liability and seemed to be juggling payments in and out as well as many gambling transactions.

I think that if Mr B had been asked more questions, had been asked for details of some transactions, and possibly asked to show some bank statements then it's likely that all of these points would have come to light. And additional checks were warranted and in my view not carried out by Lending Stream.

<u>gambling</u>

I make no findings on whether Mr B's expenditure on betting and gaming was a leisure activity or a serious habit forming activity. But Mr B has told me that he considered it was a problem at the time and has described it as such. And I can see from Mr B's statements that the sums involved were not insubstantial.

The checks were to be proportionate to a number of factors, including Mr B's current financial situation and indications of present or past financial difficulties, as well as future financial commitments.

My view is that it would not be unreasonable to consider that many hundreds of pounds – sometimes thousands of pounds - being spent on gambling each month would be a *current financial situation* to be taken into account. And it's likely that this could be a fairly strong indication of present financial difficulty.

In addition, it is likely to mean that Mr B may have had an issue with repaying in a '*sustainable*' fashion within the meaning of CONC. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed to by, gambling, then a properly carried out affordability assessment was likely to lead a responsible lender to conclude that a loan was not affordable for an applicant in that situation.

At the stage where I think that Lending Stream ought to have carried out a comprehensive review of Mr B's financial situation – certainly from Loan 9 if not before - then I think it was likely that Lending Stream would have become aware of the gambling.

So referring back to Loan 9 in particular, by the time that Mr B was credited with Loan 9 on 27 February 2015, Mr B had spent about £4,085 on betting and gaming and had received from those websites about £2,180 which I take to be his winnings. This meant that his net loss was about £1,900 which was a large proportion of his net salary figure – about £2,347.

I have considered whether, if asked, Mr B would have produced these second set of statements in which most (not all) of these gambling transactions appeared and were obvious. I am not sure whether he would or not. But the fact remains that the responsibility was on the lender to carry out a proper borrower focussed affordability assessment and it seems clear to me that the level of detail I would have expected at this point in the lending relationship was not asked for. And if it had been asked for and not produced by Mr B then Lending Stream would have been on notice that maybe there was more to investigate.

So, taking all aspects and circumstances in the round, then I do not think that the proper assessment was carried out by Lending Stream. And that if it, had I think that Lending Stream's decision in relation to Mr B's application for Loan 9 would likely be different.

I am planning to uphold Mr B's complaint for Loan 9.

Loan 10 onwards.

I repeat my provisional findings in relation to Loan 9. And I refer to the CONC provisions set out above which are some of those applicable to a lender like Lending Stream. Many other equally applicable provisions are not reproduced here.

In addition to assessing the affordability of each *individual* loan provided to Mr B by Lending Stream, I also think it's fair and reasonable to look at the *overall pattern* of lending. Bearing in mind the short-term purpose of this type of credit and the relevant rules, guidance and good industry practice at the time, there likely comes a point at which a responsible lender would question whether continuing to offer further HCSTC to a customer who appears to be persistently reliant upon the loans was unsustainable or otherwise harmful.

The Lending Stream submissions include the fact that instalment loans reduce the repayment costs in principle by structuring them as repayments across six months.

I can see with Mr B that the instalment loans overlapped which means that Lending Stream was receiving applications for loans from Mr B when others were open still.

So this does demonstrate to me that
a) Lending Stream would have been very aware of Mr B's existing indebtedness to it from its own records and aware of the future repayments due from Mr B; and
b) the combined repayment sums due going forward would inevitably increase with the approval of additional loans when earlier loans remained outstanding; and
c) there was a high likelihood that the principal sums lent to Mr B would have been redirected back to Lending Stream to repay instalments coming up on the other loans.

An example is where in January 2016 when Mr B was applying for Loan 16 Mr B had five other loans still outstanding – Loans 10, 11, 13, 14 and 15. He applied for £300 and was approved for £350. He would have had six loans outstanding to Lending Stream just after this Loan 16 was approved.

Mr B repaid several of these on 20 January 2016 and then took another loan from Lending Stream on 4 February 2016, then repaid several other loans on 10 February 2016. On 19 February 2016 Mr B applied for Loan 18 which was approved. Loan 18 remained open for almost the full six month loan agreement period and closed in August 2016, but during that time Mr B took three other loans (Loans 19-21) in May and July 2016.

From the table set out at the end of this decision then that pattern is demonstrated and can be seen to have been prevalent for most of the years Mr B was indebted to Lending Stream.

The greater the number and frequency of loans and where these are over a longer period of time, then I think it more thorough checks ought to be carried out. There is a risk that repeated financing of loans may signal that the borrowing has become (or was becoming) unsustainable for that particular customer. Here, I mean Mr B.

From mid-September 2016 Mr B's situation had altered in that he had sold an asset (house), used that capital to repay Loans 19-21, and the funding for his family from his salary altered. I have checked both sets of statements beyond that date and the gambling continued. And I refer back to the detailed points I have made in relation to his gambling issues. I have seen that these transactions continued at similar levels (often several hundred pounds each month, sometimes more) for most of the months during these years.

Repaying Lending Stream's loans out of Mr B's net salary was not going to be sustainable for him. In other words it's likely he would have difficulty meeting these combined repayments without having to borrow further or cut back on his other spending.

Lending Stream continued to agree loans for Mr B throughout 2016 and 2017, some of which were overlapping. It did not do any more when assessing the risk to Mr B in agreeing these loans than it had done when he had applied for the preceding ones. Given the frequent and continuous pattern of the lending, I think Lending Stream should have continued to look further than it did into Mr B's circumstances when he continued to apply for loans.

I do not think Lending Stream gathered enough information to reasonably assess Mr B's ability to make his loan repayments in a sustainable way from loan 10. As a responsible lender, Lending Stream would not have agreed to any further credit for Mr B, given that this would increase his indebtedness and potentially impact negatively on his creditworthiness.

Therefore, I think Lending Stream was irresponsible to have agreed loan 10 and all further loans following Loan 10.

I am planning to uphold Mr B's complaint in relation to Loans 10 to 28 because I think that the overall pattern of lending increased Mr B's indebtedness in an unsustainable fashion. And the number of these loans appearing on Mr B's credit file will itself likely have had an adverse effect on his ability to obtain and access mainstream credit. So I think it is fair and reasonable for Lending Stream to remove all reference to Loans 10 to 28, if it has not already done so.

August 2018 effect on the redress calculations

I remain unclear exactly as to why various accounts and credit file entries changed in late August 2018 for Mr B. But one thing which has not altered is that Mr B has not received any refund and interest money. When carrying out the calculations I think it will be fair and reasonable for the interest of 8% (simple) to be calculated on each loan from the date he paid money over to Lending Stream to the date of final settlement. And by that I do not mean 28 August 2018, but the date of final resolution of this complaint.

And I say this because I think it was the case that Lending Stream did agree to our adjudicator's first opinion in August 2018 and then demonstrated by its actions that it meant to carry those recommendations out. Its change of position and insistence on a final determination, which this provisional decision demonstrates is broadly in line with our adjudicator's opinion, has led to a delay. And it would not be right that Lending Stream were to argue that the accounts closed on 28 August 2018 and so the 8% only needs be calculated to that date.

If Lending Stream has closed and written off any outstanding balances in relation to Loans 26, 27 and 28 because of its actions in August 2018 then I do not think it will be fair or reasonable for Lending Stream to resurrect those loans and I consider that any principal balance write-offs (if they were carried out) ought to remain.

Lending Stream has its two week window of opportunity (on top of the week I have given to it recently) to come back to me to explain more about this.

putting things right

I think it would be fair and reasonable in all the circumstances of Mr B's complaint for Lending Stream to put things right in the following way:

- refund all the interest, fees and charges for Loan 4 and Loans 9 to 28; and
- add interest at 8% per year* simple on the above interest and charges from the date they were paid by Mr B to the date of final resolution of this complaint;
- remove from Mr B's credit file adverse payment information for Loans 4 and 9;
- remove from Mr B's credit file all reference to loans 10 to 28.

*HM Revenue & Customs requires Lending Stream to take off tax from this interest. Lending Stream must give Mr B a certificate showing how much tax it's taken off if he asks for one.

The extract ends here
The table appears on the nest page

table of approved loans

Loan number	**Date loan Opened**	**Loan agreement number (last three figures)**	**Loan Amount amount applied for (£X)**	**Highest instalment amount - rounded**	**Closed date. All closed early except where marked C # = slightly early**
1	28/7/2011	*841	£215 (£200)	£107	23/8/2011
2	1/10/2011	*815	£315 (£300)	£157	20/3/2012 #
3	27/2/2012	*515	£365 (£350)	£182	20/3/2012
4	7/7/2012	*499	£615 (£600)	£307	16/8/2012
Gap of over two years					
5	15/9/2014	*004	£700 (£600)	£378	14/11/14
6	11/10/2014	*117	£300 (£450)	£162	14/11/14
7	07/01/2015	*382	£600	£228	17/1/2015
8	12/02/2015	*372	£700	£314	20/3/2015
9	27/02/2015	*572	£200	£90	20/3/2015
10	18/07/2015	*863	£300	£139	20/1/2016 #
11	17/08/2015	*780	£150	£66	20/1/2016
12	26/08/2015	*113	£300	£132	19/11/2015
13	16/10/2015	*413	£300	£132	20/1/2016
14	06/11/2015	*897	£180 (£200)	£79	10/2/2016
15	19/12/2015	*598	£250 (£200)	£114	10/2/2016
16	15/01/2016	*673	£350 (£300)	£151	10/2/2016
17	04/02/2016	*463	£290 (£250)	£125	10/2/2016
18	19/02/2016	*318	£300	£132	17/8/2016 #
19	09/05/2016	*191	£300	£130	10/9/2016
20	25/07/2016	*355	£500	£224	10/9/2016
21	30/07/2016	*483	£300 (£200)	£134	10/9/2016
22	18/11/2016	*269	£250 (£300)	£112	24/5/2017 C
23	16/01/2017	*966	£400	£170	28/6/2017
24	30/03/2017	*642	£800	£365	28/6/2017
25	02/06/2017	*806	£400 (£200)	£170	28/6/2017
26	20/9/2017	*556	£600	£278	28 August 2018
27	17/10/2017	*577	£700	£302	28 August 2018
28	30/12/2017	*590	£420 (£500)	£188	28 August 2018