

complaint

Mr L complains that Gain Credit LLC (trading as Lending Stream) gave him loans irresponsibly.

background

Mr L took out 5 loans with Lending Stream between February and November 2015. His representatives say that these loans trapped him in a debt spiral and were irresponsibly given to him. Mr L has repaid the first loan but was unable to fully repay the remaining four loans and a balance is outstanding.

Our adjudicator considered this complaint and thought that Lending Stream was wrong to give Mr L loans 3 to 5. He thought that Lending Stream should've done more checking of Mr L's circumstances given his borrowing pattern. He thought that if the business had done those checks it would've discovered that Mr L was gambling heavily and as a responsible lender it wouldn't have agreed to provide loans 3 to 5.

Lending Stream agreed with the adjudicator and offered to refund all the interest and charges that Mr L paid on loans 3 to 5 and remove all negative information from Mr L's credit file. It said that it would set off this refund against the outstanding balance.

Mr L's representatives responded on his behalf and said that Mr L didn't agree and would like the complaint reviewed by an ombudsman. The representatives didn't explain what Mr L disagreed with in the adjudicator's view or why he didn't want to accept the offer made by the business. So I have reviewed the complaint in full.

my findings

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 short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Lending Stream needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure that Mr L could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Lending Stream should fairly and reasonably have done more to establish that any lending was sustainable for a consumer. These factors include:

- the lower a customer's 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 higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated

refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Lending Stream was required to establish whether Mr L could sustainably repay his loans - not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC"), defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr L's complaint.

I agree with the conclusions of the adjudicator that it wasn't wrong for Lending Stream to give loans 1 and 2 to Mr L. For the first loan Mr L said he was earning £1800 and his outgoings were £467. The highest instalment on this loan was £106 which appeared easily affordable on the figures given by Mr L. At this stage in the lending relationship there wasn't any reason to doubt what Mr L was saying about his finances so I don't think it was wrong for Lending Stream to agree this loan.

Before Mr L had fully repaid loan 1 he asked for loan 2. There was nothing in Mr L's repayment history that suggested any difficulty and Mr L said his income was £2300 and his outgoings were £850. The highest instalment on this loan was £268. This amount was modest compared to Mr L's declared disposable income and loan one was almost repaid. On balance I think that Lending Stream didn't need to do any more checking before giving Mr L this loan.

By the point of loan 3 I think that the position had changed. Mr L asked to borrow before loan 2 was repaid and I think by this stage Lending Stream should have done further checking to make sure that Mr L wasn't reliant on short term credit or in difficulty managing his money. His borrowing pattern was at odds with his declared disposable income. Had Lending Stream done further checks to verify what Mr L was saying it would've discovered Mr L's gambling and as a responsible lender it wouldn't have given Mr L loan 3 or any of the later loans as his position didn't improve.

Mr L has had the benefit of the money so I think it is only fair that he pays it back but all interest and charges should be refunded together with interest. As there is a balance outstanding the refund can be used to reduce the outstanding capital balance.

my final decision

My final decision is that I uphold this complaint in part and direct Gain Credit LLC, to:

- Refund all interest and charges that Mr L paid on loans 3 to 5 inclusive;
- Write off any interest and charges not yet paid;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Apply the refund to offset any capital balance outstanding and pay the balance to Mr L;
- Remove any negative information about the refunded loans from Mr L's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 September 2019.

Emma Boothroyd
ombudsman