

complaint

Ms F complains that Gain Credit LLC, previously Lending Stream, lent to her in an irresponsible manner.

background

The background to this complaint was set out in my provisional decision of 28 November 2019, an extract of which is attached and forms part of this final decision, so I won't repeat that information here.

my provisional decision

In my provisional decision, I explained why I thought that Lending Stream shouldn't have given Ms F the three loans it gave to her. I set out what I proposed to direct it to do to put matters right.

responses to my provisional decision

Ms F agreed with my provisional decision. Lending Stream acknowledged the provisional decision but didn't provide a substantive response

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Given that neither party has provided me with anything further on the complaint, I see no reason to depart from the conclusions I reached in my provisional decision. So, for the reasons I've explained, I don't think that Lending Stream should have given Ms F loans one to three. I think it should put matters right in the way I indicated in my provisional decision.

my final decision

For the reasons set out above and in my provisional decision, my final decision is that I uphold Ms F's complaint. I now require Gain Credit LLC to:

- Refund any interest and charges paid by Ms F in relation to loans one, two and three.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Ms F's credit file in relation to loans one, two and three.

*HM Revenue & Customs requires Gain Credit to take off tax from this interest. Gain Credit must give Ms F a certificate showing how much tax it's taken off, if she asks for one.

Ms F didn't fully repay these loans and the outstanding debts have now been sold to third party debt collection companies. I don't know whether Ms F has repaid any of those debts to the debt collection companies.

It seems reasonable that if Ms F still owes some of the capital she borrowed, the refund due to her should be used first to repay that debt. But to do so, Gain Credit must first take the debts back into its own books and reduce them to reflect just the capital that Ms F borrowed. Once it has recovered the capital Ms F borrowed, any remaining compensation should be paid directly to Ms F.

If Gain Credit is unable, or unwilling, to repurchase the debts within four weeks of Ms F accepting my final decision, it must ensure that all its interest and charges added to these loans and any other interest and charges added by the debt collection companies, are refunded to Ms F, so she can choose whether to use the compensation to settle her debts directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 14 February 2020.

Louise Povey
ombudsman

extract of provisional decision

complaint

Ms F complains that Gain Credit LLC, previously Lending Stream, lent to her in an irresponsible manner.

background

Ms F took out three loans with Lending Stream in January 2014 and February 2014. The loans were repayable in six, monthly repayments. Ms F made initial repayments in relation to loans one and two but didn't repay any of the loans in their entirety. A summary of Ms F's loans with Lending Stream is as follows:

Ms F says that Lending Stream didn't carry out reasonable and proportionate checks. She says that, had it done so, it would have realised that she couldn't afford to repay the loans. Ms F wants a refund of interest and charges, with interest.

One of our adjudicators assessed Ms F's complaint. He didn't think that Lending Stream was wrong to lend to Ms F. Ms F didn't agree with the adjudicator and asked that an ombudsman consider her complaint, so it was passed to me.

my provisional 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 Ms F 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 the 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.

Lending Stream was required to establish whether Ms F could sustainably repay her 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 Office of Fair Trading Irresponsible Lending guidance 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 Ms F's complaint.

Before each loan, Lending Stream carried out credit checks. The information a prospective lender can obtain from a credit check isn't in the same detail as Ms F can see from her own credit report. Nevertheless, Lending Stream has shown us that the credit checks it carried out revealed that Ms F had a number of defaults and delinquent accounts at the time. The dates of the defaults and delinquencies aren't clear from the information provided. But I think the number of defaults and delinquencies should have prompted Lending Stream to carry out further checks on Ms F's finances. In the particular circumstances here, I think that proportionate checks would have included establishing a fuller picture of Ms F's financial position before deciding to lend to her.

Based on what I've seen, if Lending Stream had carried out fuller checks before lending to Ms F I think it would likely have seen that at the time Ms F applied for loan one, she had four other short-term loans with two other lenders. I think that proportionate checks would've shown that Ms F was having difficulty repaying previous loans. I think that there was significant risk that Ms F would've been unable to meet her repayments for any further borrowing in a sustainable way. So, I don't think that Lending Stream should have given Ms F loans one to three.

putting things right – what I intend to require Lending Stream to do

I intend to uphold this complaint. To put things right, I intend to require Gain Credit LLC, previously Lending Stream, to:

- Refund any interest and charges paid by Ms F in relation to loans one, two and three.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Ms F's credit file in relation to loans one, two and three.

*HM Revenue & Customs requires Gain Credit to take off tax from this interest. Gain Credit must give Ms F a certificate showing how much tax it's taken off, if she asks for one.

Ms F didn't fully repay these loans and the outstanding debts have now been sold to third party debt collection companies. I don't know whether Ms F has repaid any of those debts to the debt collection companies.

It seems reasonable that if Ms F still owes some of the capital she borrowed, the refund due to her should be used first to repay that debt. But to do so, Gain Credit must first take the debts back into its own books and reduce them to reflect just the capital that Ms F borrowed. Once it has recovered the capital Ms F borrowed, any remaining compensation should be paid directly to Ms F.

If Gain Credit is unable, or unwilling, to repurchase the debts within four weeks of Ms F accepting my final decision it must ensure that all its interest and charges added to these loans, and any other interest and charges added by the debt collection companies, are refunded to Ms F so she can choose whether to use the compensation to settle her debts directly.

my provisional decision

My provisional decision is that I intend to uphold Ms F's complaint. I intend to require Gain Credit LLC, previously Lending Stream, to put matters right as indicated above.