

complaint

Mr N complains about the information recorded on his credit file in relation to two loans that he took out with Gain Credit LLC (trading as Lending Stream) in 2013.

background

The background to this complaint was set out in my provisional decision I sent to both parties in January 2018. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to partly uphold the complaint. I invited both parties to let me have any further comments and evidence. Both Lending Stream and Mr N had further comments and evidence that they would like me to consider.

Lending Stream has told us that it has started the process to update Mr N's credit file and it also has agreed to process the original offer it made in June 2017 – should Mr N wish to accept it.

I've carefully considered everything Mr N has told us. In summary he said;

- Lending Stream hadn't told him that the debt had been sold to a third party and he doesn't know how Lending Stream is able to reduce the amount that it owed to the third party - yet it can't update his credit file.
- Mr N's credit score was made worse by the actions of Lending Stream,
- Mr N provided some further information around why he had difficulties repaying his loans and
- the adverse information reported by Lending Stream has led to a declined mortgage application.

my findings

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

I can understand Mr N's frustration by the actions of Lending Stream in selling the debt – even if it was within its rights to do so. But it may help if I explain the consequences of doing so. Once the debts are sold to a third party – Lending Stream is no longer the legal owner of the debt and the responsibility for updating Mr N's credit file falls to new owners. However, Lending Stream has said in response to the provisional decision that it was taking steps to arrange for his credit file to be updated.

I'd like to reassure Mr N that I'm not asking Lending Stream to record a debt management plan on his credit file for three years – because I don't think that would be an accurate reflection of the running of the account. Instead, I think that its fair a debt management plan is recorded from the point Lending Stream became aware of it (November 2013) until the point I think it would've been reasonable for Lending Stream to have defaulted the account due to no payments being made under the plan so - March 2014.

I'll consider the consequential loss (declined mortgage applications and more expensive credit).

It's clear from the credit file that I've been given that Mr N's score has been adversely affected by the information Lending Stream has been reporting on his credit file. However, for me to be able to make an award against Lending Stream – I'd have to be satisfied that the *sole reason* for the declined application is down to the adverse information from Lending Stream.

And it's clear from the email that I've seen from Mr N's mortgage broker that the information from Lending Stream played a part as to why the broker wasn't able to find a lender. But I also have to be mindful of the fact that as my decision isn't to remove the adverse information that Lending Stream has recorded. Instead it is to record two defaults – and this adverse information could've still denied Mr N the opportunity to apply for a mortgage.

If Lending Stream had reported Mr N's account correctly to the credit reference agencies he would have had at least two defaults on his credit file at the time he applied for his mortgage – and this is something which mortgage lenders do not look on favourably. It's quite probable therefore that Mr N would be in the same or a similar position regarding his mortgage if Lending Stream had recorded *correct* information. So I don't think I can say that Lending Stream's failure to record accurate information damaged Mr N's chances of getting a mortgage, or a mortgage at a favourable rate of interest.

So having considered the additional information Mr N has given us, and everything I saw before making my provisional decision, I still think Lending Stream hasn't recorded accurate information on Mr N's credit file.

To put things right for Mr N, Lending Stream must:

In addition to what Lending Stream has already agreed to do;

- record a debt management plan on Mr N's credit file from November 2013 until March 2014 for both loans and
- update Mr N's credit file to show that both loans were defaulted in March 2014.

In addition, Mr N may wish to accept the offer Lending Stream has proposed, meaning

- close loan 1 and amended the outstanding balance on loan 2 in line with its previous offer and
- update loan 1 to show that the account has been partly satisfied as per the date of Lending Stream's offer in June 2017.

my final decision

For the reasons given above and in my provisional decision, I partly uphold Mr N's complaint.

Gain Credit LLC should put things right for Mr N as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 23 April 2018.

Robert Walker
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

Mr N complains about the information recorded on his credit file in relation to two loans that he took out with Lending Stream in 2013.

background

Mr N had two loans with Lending Stream and his borrowing history is as follows;

- Loan one – taken on 5 June 2013 for £495 and
- Loan two – taken on 13 September 2013 for £340.

And each loan of the above loans was due to repaid with six monthly payments.

Mr N has told us that he hasn't made any repayments towards these loans since September 2013, and he also says he entered into a debt management plan at the end of 2013. However, no payments were made to Lending Stream under the plan. But, Lending Stream didn't take any further action until November 2016 when Mr N says it marked the account as delinquent. Mr N was unhappy with this and so complained to Lending Stream.

In Lending Stream's most recent response dated June 2017, it confirmed had applied a default on Mr N's credit file. It says that it was notified Mr N was entering into a debt management plan by a Debt Management Company (DMC), which said it was acting on behalf of Mr N in November 2013 – at which point Mr N's credit file was updated. But it didn't receive any payments received from the DMC. Lending Stream says that it was then contacted by a different DMC in December 2013 and so further changes to Mr N's credit file were made at that stage.

In order to resolve the complaint, Lending Stream offered to update Mr N's credit file to show that he was with a DMC between December 2013 and October 2016. After this date, Lending Stream says the account will show as delinquent.

Lending Stream also says that it would extend its offer to close the first loan without any further payments and would be willing to accept a reduced outstanding balance on the second loan – waiving the interest and charges incurred on the account. This would leave Mr N to repay £223.40 – if he wasn't able to do this, then Lending Stream would offer him an affordable payment arrangement. Mr N didn't accept this offer and brought the complaint to our service.

Our adjudicator reviewed Mr N's complaint and thought the offer made by Lending Stream to close loan 1 and accept a reduced balance on loan 2 was fair. But he still thought that Lending Stream needed to do more.

The adjudicator wasn't sure why Lending Stream had recorded that Mr N had been with a DMC between April 2016 and October 2016 because as far as he was aware, no plan had been entered into at this time.

The adjudicator looked at the guidance from the Information Commissioner's Office (ICO) concerning when a default may be recorded on a credit file when the relationship between a customer and lender has broken down and the account is normally at least six months in arrears. And the guidance says that should an arrangement be reached to repay the loan – and it not be stuck to, a lender may default an account at this time. So the adjudicator felt Mr N's complaint should succeed as Lending Stream should've applied a default when Mr N missed the first payment on his arrangement to pay.

In order to put things right for Mr N he recommended that Lending Stream carried out its offer in the final response letter in relation to closing loan 1 and accepting a reduced balance on loan 2. He also recommended that Lending Stream entered defaults on Mr N's credit file in line with the ICO guidance and back date the debt management plan to November 2013.

Mr N agreed with the adjudicator's recommendation, but Lending Stream didn't. In its response, Lending Stream told us that it was happy to revise the dates of the debt management plan and maintain the offer it had put forward in the final response letter. But it would have to come back to us as to whether it agreed to apply defaults to Mr N's credit file.

Lending Stream then provided further information to tell us that when a customer is on a debt management plan it wouldn't default a customer's account. It also told us that both loans had been transferred to a third party collection agency due to prolonged non-payment.

my provisional findings

I've considered all of the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've carefully thought about everything I've been given and having done so, I'm intending to partly uphold Mr N's complaint and I'll explain why below.

offer

Mr N's complaint isn't about unaffordable lender, rather it's about the information Lending Stream has recorded on his credit file. But, Lending Stream's made an offer in the final response letter and I'll leave it up to Mr N to decide whether he wishes to accept or reject this offer.

credit file

I can understand why Lending Stream hasn't recorded a default on Mr N's credit file – because it didn't want to worsen his financial situation. But I don't think that what Lending Stream did here was fair and reasonable in all the circumstances of the case.

Firstly, Lending Stream has recorded that Mr N entered a debt management plan in April 2016. Lending Stream has offered no explanation as to why it has recorded this and Mr N disputes this. In its final response Lending Stream also says it was contacted by a second DMC, but Mr N is adamant that he has only ever asked one DMC to act on his behalf. In any event, Lending Stream has accepted, at the very least, that the details of the DMC should be backdated to November 2013. So it's clear that the information recorded is incorrect.

By the time Lending Stream was aware of the DMC in November 2013 Mr N's accounts were already two months in arrears. So when it found out about the DMC acting on behalf of Mr N – it would've been reasonable for this to be updated on Mr N's credit file at the time.

Lending Stream accepts that no payments were received from either the DMC or Mr N. And it's this that I have to consider. And whether it was correct to report an account as being dealt with by a DMC from November 2013 – October 2016 (Lending Stream's offer) when no payments have been made.

I also think that the ICO guidance applicable at the time is relevant to my consideration of the information recorded on Mr N's credit file. I say this because the ICO is responsible for regulation of data reporting under the Data Protection Act (DPA). And because lenders, in this case Lending Stream report and hold information about consumers they are covered by the ICO guidance and rules.

When the arrangement was agreed, with Lending Stream the guidance issued by the ICO was contained in a technical note. But while Lending Stream reached an arrangement to pay with Mr N in November 2013, as I've not been provided with the details of what was agreed between the DMC and Lending Stream, I don't know whether the agreement was due to start in December 2013 or January 2014.

The ICO replaced its technical note with a document called '*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*' ("the principles"). In January 2014 as the arrangement to pay was in force at the time the principles were published, I've considered what Lending Stream did against these principles.

The principles say;

Principle 4 If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down'.

I think that this principle covers the circumstances of this case. Mr N had fallen into arrears on both of his loans and had entered into a revised arrangement which he then failed to keep to.

Principle 4 then goes on to say "*As a general guide, this [default] may occur when you are 3 months in arrears and normally by the time you are 6 months in arrears*".

In Mr N's case, I can see the last repayments were made in September 2013 – so by the time Lending Stream was notified by the DMC, the two loans were already two months in arrears and the account became six months in arrears by March 2014.

I don't know what terms the DMC proposed to Lending Stream in November 2013, or what Lending Stream was expecting Mr N to repay. But what is agreed by both sides is that Mr N didn't make any repayments either directly to Lending Stream or via the DMC. So while, Lending Stream may not have wanted to apply a default, considering the conduct of the account and the principles issued by the ICO, I don't think it was reasonable for it hold off applying one and instead report the accounts as being dealt with by the DMC for three years.

I think it's clear that the relationship between Mr N and Lending Stream had broken down as it had received no payments on the arrangement to pay. So I think the fair thing for Lending Stream to have done in these circumstances would've been to default the accounts, in March 2014, rather than continue to reporting an active arrangement to pay.

However, in response to the adjudicator's assessment, Lending Stream let us know that both loans had been sold to a third party collection agent. And this now has implications for what I'm going to be asking Lending Stream to do. Lending Stream is no longer the legal owners of the debt and the job of updating Mr N's credit file has now passed to the third party.

So Lending Stream either needs to buy the debts back from the third party and then proceed to carry out the redress I've suggested below. Or, it needs to liaise with the third party collection agency to carry out the following acts.

In response to my provisional decision, Lending Stream should let me know which redress option it intends to carry out.