

complaint

Mr A says Gain Credit LLC (trading as 'Lending Stream') gave him loans that he couldn't afford.

background

Lending Stream gave Mr A four instalment loans between September 2017 and January 2018.

Here's a table showing the loan details:

Loan	Date Taken	Date Repaid	Instalments	Amount	Combined Highest Repayment
1	12/09/2017	30/09/2017	6	£80.00	£56.92
2	05/10/2017	26/10/2017	6	£300.00	£127.20
3	29/10/2017	outstanding	6	£480.00	£203.52
4	12/01/2018	outstanding	6	£150.00	£203.60

Mr A complained that Lending Stream acted irresponsibly when it provided loans to him that it should've realised he couldn't afford to pay back and that he was using for gambling.

When Lending Stream looked at Mr A's complaint, it first of all said that it had carried out full affordability checks on all the loans and it didn't uphold Mr A's complaint.

Mr A was unhappy with this response and he brought his complaint to us.

Our adjudicator didn't feel that he'd seen enough to say it was unfair for Lending Stream to provide loans 1 -3 to Mr A. But he thought that loan 4 shouldn't have been lent to him – and he explained how he'd come to this view. Our adjudicator also gave some detailed instructions about the way he thought Lending Stream should settle the complaint.

Lending Stream said it accepted our adjudicator's view. It sent details showing it had worked out that Mr A still owed an outstanding balance to Lending Stream – and said it would work with Mr A to help him clear his debt through an affordable payment arrangement.

We passed this information on to Mr A – but he's told us he doesn't want to settle the complaint on this basis and he'd like a final decision.

So the complaint comes to me to decide.

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 Mr A 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 consumer'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 Mr A 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 relevant regulations define 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 A's complaint.

For loans 1-3, I've looked at what it appears Mr A had told Lending Stream about his financial circumstances and the repayment amounts he had to make. Taking this information into account, and bearing in mind that he was a new borrower with Lending Stream, I don't think it would've been proportionate for Lending Stream to ask Mr A for the amount of information that would be needed to show the lending was unsustainable before agreeing these loans.

Loans 1-3 looked comfortably affordable for Mr A – based on what he'd said to Lending Stream about his finances. So I agree with our adjudicator that there isn't enough information for me to be able to say that Lending Stream shouldn't have lent him loans 1-3.

Like our adjudicator, I don't agree it was reasonable for Lending Stream to provide loan 4 without doing further more detailed checks to verify what Mr A had said about his financial circumstances. And had it done proportionate checking for this loan it's likely that Lending Stream would have discovered that Mr A appeared to be using the loans to pay for gambling. So it was unlikely that Mr A was borrowing sustainably.

As Lending Stream has reconsidered its position on loan 4 and accepted our adjudicator's view and confirmed it is willing to take the steps he'd suggested to put things right for Mr A I don't think I need to say more about this.

I appreciate that Mr A has rejected the proposed settlement. But having looked carefully at all the available information, overall, I think Lending Stream was right to acknowledge that lending loan 4 to Mr A was unfair. And the way the adjudicator has suggested resolving the complaint is fair and reasonable.

Lending Stream has already confirmed it will work constructively with Mr A to come to an agreed plan for paying the outstanding balance he still owes.

If Mr A feels he needs further advice on managing his money problems, then there's more information about how to get free debt advice on our website – or we can provide contact details if he gives us a call.

putting things right – what Lending Stream needs to do

- refund any interest and charges Mr A paid on loan 4 and pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement† (*I understand Mr A didn't in fact make any payments towards Loan 4 – which means there won't be any refund owing to him*)
- I remind Lending Stream that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mr A in respect of the money he still owes Lending Stream for his outstanding loans
- remove any adverse information recorded on Mr A's credit file in relation to loan 4 when it is repaid.

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

my final decision

For the reasons given above, I'm upholding Mr A's complaint about loan 4. Gain Credit LLC (trading as Lending Stream) should take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 March 2020.

Susan Webb
ombudsman