

## **complaint**

Mr M complains Gain Credit LLC (trading as Lending Stream) lent to him irresponsibly.

## **background**

The background to this complaint, and my initial findings on it, can be found in my provisional decision, which is attached to and forms a part of this final decision.

Lending Stream replied to my provisional decision to say that it accepted my findings. Mr M said he was happy with the majority of my findings but noted that he'd now finished repaying the loans and said he wasn't sure if this affected any settlement. After a further explanation Mr M said this matter had been cleared up and he was happy for the case to proceed.

The case has now been returned to me to decide.

## **my findings**

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account the law along with any relevant regulatory guidance and good industry practice at the time.

As both parties to the complaint agree with my provisional findings I see no reason to depart from them in this final decision. My view remains that Lending Stream was wrong to give Mr M loans 3 to 5.

## **putting things right**

Lending Stream shouldn't have given Mr M loans 3 to 5, so it's not right that he should have had to pay any interest, fees or charges towards them, or have them affect his credit file in a negative way.

Lending Stream has sold some or all of the loans to a third party (who I'll call "T"). Bearing this in mind, to put things right I intend to direct Lending Stream to:

- A) Buy back loans 3 to 5 from T, assuming it has sold them.\*
- B) Calculate the total amount Mr M has already paid in interest, fees and charges on loans 3 to 5.
- C) Remove all unpaid interest, fees and charges from loans 3 to 5, so that only capital remains.
- D) Use the refund calculated in "B" to repay any outstanding capital on loans 3 to 5.
- E) If, after "D", there is still a debt left to pay on loans 3 to 5, then Lending Stream must arrange an affordable repayment plan with Mr M for the outstanding amounts on these loans. If, however, after "D", there is still some refund left over then Lending Stream must add 8% simple interest\*\* to this refund, calculated from the date the original repayments were made, to the date the complaint is settled. It must then pay the calculated total to Mr M.

F) Remove any adverse information it has recorded on Mr M's credit file in relation to loans 3 to 5.

\*If it is not possible for Lending Stream to buy back loans 3 to 5 from T, then it must only carry out steps "B", "C" and "F". Any refund calculated in "B" must be paid directly to Mr M, with the addition of 8% simple interest\*\* calculated from the date Mr M original made the payments, to the date the complaint is settled. The unpaid interest and charges referred to in "C" should be paid directly to T so Mr M's debt with T is reduced by an appropriate amount.

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

### **my final decision**

For the reasons explained above and in my attached provisional decision, I uphold Mr M's complaint in part and direct Gain Credit LLC to take the actions outlined in the "putting things right" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 July 2018.

Will Culley  
**ombudsman**

## COPY OF PROVISIONAL DECISION

### complaint

Mr M complains Gain Credit LLC (trading as Lending Stream) lent to him irresponsibly.

### background

Mr M took out five loans with Lending Stream between January and April 2013. Although Mr M made some repayments towards the first four loans, he made no repayments towards the last loan and all five loans have an outstanding balance. Some, or all, of the loans have now been sold to a third party.

I've set out some of the information we've received about Mr M's loans in the table below.

Loan	Date	Date Repaid	Capital	Highest Repayment
1	16/01/2013	Outstanding	£150.00	£79.50
2	02/02/2013	Outstanding	£115.00	£187.75
3	10/02/2013	Outstanding	£65.00	£214.56
4	15/02/2013	Outstanding	£75.00	£209.18
5	11/04/2013	Outstanding	£95.00	£206.92

Mr M's loans overlapped, meaning he would need to make repayments towards all of them in a month. The "highest repayment" is the total amount Mr M would need to pay towards his loans in a single month, if the latest loan was agreed.

Mr M told Lending Stream in May 2013 that he was having financial problems and was dealing with a debt management company. Lending Stream acknowledged this but it doesn't seem it received any repayments via the debt management company, or a subsequent company Mr M engaged to assist him with his debts.

In June 2017 Mr M contacted Lending Stream to say he wanted to make a complaint about irresponsible lending, and to request some information about his loans. Lending Stream replied the same month to say some of his loans had been sold to a third party and he would need to contact them to discuss any queries. It followed this response up with an email in August 2017 in which it said it disagreed that it had lent to Mr M irresponsibly, but due to a "procedural error" in granting his third loan, it was willing to waive all the interest and charges which had accrued on it.

Mr M then brought his complaint to this service for an independent assessment. One of our adjudicators investigated the complaint. She concluded that in addition to loan 3, Lending Stream shouldn't have given Mr M loans 4 or 5 either. Lending Stream didn't agree with this and the case has now been passed to me to decide.

### my provisional findings

I've considered all the available evidence and arguments to decide provisionally what's fair and reasonable in the circumstances of this complaint. I've taken into account the law along with any relevant regulatory guidance and good industry practice at the time.

Lending Stream had to assess Mr M's applications for borrowing to check if he could afford to pay back the amounts he would owe without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. It then needed to assess whether – based on the information it had gathered from its proportionate checks – Mr M could afford to make his expected repayments in a sustainable way. Lending Stream's regulator had, by the time Mr M applied for his loans, explained

that repayments are sustainable if they're made from income or savings, and while meeting existing financial commitments.

As Lending Stream has accepted it shouldn't have given Mr M loan 3, I don't intend to comment on the affordability of this loan further, other than to say that I agree with Lending Stream that it shouldn't have given it to Mr M.

#### *Lending Stream's checks*

The information supplied by Lending Stream indicates that before it agreed to lend to Mr M it carried out a credit search with a credit reference agency, and asked Mr M to declare his monthly income and expenditure. It followed this process for all loans except for loan 3, where it appears it didn't carry out a credit search. I suspect this is the "procedural error" Lending Stream has referred to.

Lending Stream's credit searches generated a score, which I understand was used as part of its assessment of whether to lend to Mr M. As Lending Stream has not otherwise explained the context of the scores or how they were calculated, it's difficult for me to assign much significance to them in deciding this case.

Mr M consistently declared his monthly income as an amount between £990 and £1,035 throughout his applications. In terms of expenditure, he reported this as being £350 monthly for loan 1, £400 monthly for loan 2, £450 for loans 3 and 4, and £500 for loan 5.

#### *were Lending Stream's checks proportionate?*

Like our adjudicator, I think Lending Stream's checks were proportionate for loans 1 and 2. Mr M's highest repayments at this point were relatively small in comparison to his declared income, and based on the expenditure he'd reported having, would have been comfortably met by his available income. It was also too early in Mr M's borrowing relationship with Lending Stream for any concerning patterns of borrowing to have appeared. I can't conclude that Lending Stream should have gone any further to establish Mr M's ability to repay his loans at this point, and the information it *did have* suggested he could. It follows that I don't think Lending Stream was wrong to give loans 1 or 2 to Mr M.

I'll comment here briefly on loan 3, for the purpose of putting Lending Stream's lending decisions on loans 4 and 5 in their proper context. Mr M applied for loan 3 eight days after he received loan 2. He then applied for loan 4 just five days after receiving loan 3. Loan 4 ran alongside all of the previous loans, and Mr M had now received four loans in less than a month. His highest repayment had grown to about £209, representing just over 20% of his declared income, and he was expected to maintain repayments of varying amounts over a period of 4 months.

I think a responsible lender would have seen Mr M's pattern of borrowing as a cause for concern. It would be unusual for someone with the amount of disposable income Mr M had declared, to need to take out four loans in a single month. Indeed, such a high borrowing frequency suggested Mr M was running out of money on a regular basis throughout the month. In light of this I think a responsible lender would have considered it proportionate to carry out some robust and detailed checks into Mr M's financial situation, in order to verify the information he'd given and understand whether he could afford to repay his loans in a sustainable way. One way in which a responsible lender could have done this would've been by requesting and examining bank statements from Mr M.

Although Mr M applied for loan 5 almost two months after receiving loan 4, his previous loans were all still in repayment so I think the same level of robust checks should have been maintained.

#### *what would proportionate checks have shown?*

My analysis of Mr M's bank statements in the lead-up to his application for loan 4 shows that he was earning around £990 per month. Mr M has told us he had various regular financial commitments at

the time, such as rent. The majority of these don't appear on his bank statements, and he's explained that these commitments were paid in cash.

I think it's likely Mr M did have some commitments he paid in cash, but it's difficult for me to put a figure on these due to the lack of documentary evidence. I appreciate Mr M has mentioned some more specific figures, however I feel unable to rely on these not least due to the fact Mr M is recalling commitments from several years ago. In any case I don't think this matters, for reasons I'll go on to explain.

I've been able to identify two regular commitments from Mr M's statements, prior to his application for loan 4. These were £105 monthly repayments to another lender, and a mobile phone bill of about £35. It's also apparent that Mr M had begun a debt management plan, as he attempted to make a payment of about £350 to a debt management company. This payment was returned because Mr M didn't have enough money in his bank account.

So it would appear then, that Mr M had definite regular commitments of £140 per month, plus some other commitments of an unknown amount. By far the most numerous transactions on Mr M's account however, were to bookmakers and online casinos. In the 30 days leading up to his application for loan 4, Mr M spent around £665 in this way – more than two thirds of his salary and enough to mean he wouldn't have enough funds left over to make his repayments to Lending Stream. I don't think a responsible lender would have agreed to given Mr M loan 4 had it known about this – which I think it would have done had it carried out proportionate checks.

It appears Mr M gambled less in the 30 days leading up to his application for loan 5. I've been able to see around £140 in such transactions (a few days are missing from the statements). However, by this time Mr M had been making regular payments to his debt management company – most recently a payment of £352. His mobile phone bill had increased to about £50 per month and he still owed £105 per month to another lender, albeit he was now paying this irregularly. Mr M's income remained £990 per month.

So at around the time he applied for loan 5, Mr M's regular expenditure was at least £505 per month, and his gambling spend came to around £140. In addition to this, Mr M had two outstanding loans with other short term lenders, to whom he owed around £150 in repayments which had to be made in the near future. Overall then, I think Lending Stream, had it carried out proportionate checks, would have considered Mr M likely had at least £795 in other financial commitments at the time he applied for loan 5. This left him with around £195 in a month to meet any repayments towards his Lending Stream loans.

Because Mr M would be expected to repay £206.92 in a month across all his Lending Stream loans once loan 5 was agreed, I don't think he could afford to take on this loan and therefore it was irresponsible of Lending Stream to grant it to him.

### **putting things right**

Lending Stream shouldn't have given Mr M loans 3 to 5, so it's not right that he should have had to pay any interest, fees or charges towards them, or have them affect his credit file in a negative way.

Matters are slightly complicated here by the fact that Lending Stream has sold some or all of the loans to a third party (who I'll call "T"). Bearing this in mind, to put things right I intend to direct Lending Stream to:

- A) Buy back loans 3 to 5 from T.\*
- B) Calculate the total amount Mr M has already paid in interest, fees and charges on loans 3 to 5.
- C) Remove all unpaid interest, fees and charges from loans 3 to 5, so that only capital remains.

- D) Use the refund calculated in “B” to repay any outstanding capital on loans 3 to 5.
- E) If, after “D”, there is still a debt left to pay on loans 3 to 5, then Lending Stream must arrange an affordable repayment plan with Mr M for the outstanding amounts on these loans. If, however, after “D”, there is still some refund left over then Lending Stream must add 8% simple interest\*\* to this refund, calculated from the date the original repayments were made, to the date the complaint is settled. It must then pay the calculated total to Mr M.
- F) Remove any adverse information it has recorded on Mr M’s credit file in relation to loans 3 to 5.

\*If it is not possible for Lending Stream to buy back loans 3 to 5 from T, then it must only carry out steps “B”, “C” and “F”. Any refund calculated in “B” must be paid directly to Mr M, with the addition of 8% simple interest\*\* calculated from the date Mr M original made the payments, to the date the complaint is settled. The unpaid interest and charges referred to in “C” should be paid directly to T so Mr M's debt with T is reduced by an appropriate amount.

\*\*HM Revenue & Customs requires Lending Stream to take tax of this interest. Lending Stream must give Mr M a certificate showing how much tax it’s taken off, if Mr M asks for one.

### **my provisional decision**

For the reasons I’ve explained above, I intend to uphold Mr M’s complaint in part and direct Gain Credit LLC to take the actions outlined in the “putting things right” section of this provisional decision.

I now invite both parties to the complaint to comment on my provisional decision, by 22 May 2018.

Will Culley  
**ombudsman**