

complaint

Miss W complains about four instalment loans that she took out with Gain Credit LLC, trading as Lending Stream, ("LS"). She said, in summary, that LS shouldn't have given her the loans as they were unaffordable.

background

This complaint is about four short term loans LS provided to Miss W between August 2018 and November 2018. All the loans have been repaid. The loans were repayable by six monthly instalments. Miss W's lending history is as follows:

Loan number	Date of loan	Repayment date	Loan amount
1.	26/8/18	23/10/18	£250
2.	12/10/18	23/10/18	£150
3.	9/11/18	22/12/18	£450
4.	21/11/18	30/11/18	£50

Miss W said that LS should have realised from the number of times she borrowed that her debt problems were getting worse and she was becoming dependent on her next loan. Miss W also said that LS should have noticed many other loans on her credit file. She also had gambling problems at the time.

LS said that it had carried out proper and proportionate affordability checks at the time that each loan was approved. It had asked Miss W for her income and expenditure. It had used national average amounts for expenses and revised Miss W's stated expenditure upwards and this still resulted in a viable disposable income. LS had also made checks with the credit reference agency ("CRA") and the CRA confirmed a rating which was satisfactory for all the loan obligations.

our adjudicator's view

Our adjudicator recommended that Miss W's complaint should be upheld in part. He concluded that Loan 4 shouldn't have been given to Miss W. He said that proportionate checks would have shown that Miss W was having problems managing her money. He thought that LS would have become aware that Miss W was using a significant amount of money on gambling and that she had at least three outstanding other loans. So it was unlikely that she would have been unable to sustainably repay Loan 4.

LS agreed with the adjudicator's assessment.

Miss W disagreed. She said that it was also unfair for LS to lend the first three loans because of the increasing amounts over a short period of time. She hadn't repaid Loan 1 when she took out Loan 2. Then just after repaying Loan 2, she borrowed Loan 3 which was for the higher amount of £450. Miss W said that a red flag should have been shown for someone with her income and probably low credit score.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss W and to LS on 4 February 2020. I summarise my findings:

As LS had agreed to settle Loan 4, I said that I wouldn't investigate the affordability of this loan, but would include LS's proposed redress for this loan in my award.

I noted that when LS lent to Miss W the regulator was the Financial Conduct Authority (FCA) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

I said that LS needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Miss W 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 thought less thorough checks might be reasonable and proportionate.

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

- 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 had been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

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

I thought it was important to say that LS was required to establish whether Miss W could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

I explained that the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it didn't automatically follow this was the case. This was because the CONC defined sustainable as being without undue difficulties and in particular the consumer should be able to make repayments, while meeting other reasonable commitments, as well as without having to borrow to meet the repayments. And it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Miss W's complaint.

LS had made a number of checks before it lent to Miss W. It had asked her for details of her income and expenditure. Miss W's declared monthly income was between £950 and £1,000

for all the loans. Miss W had declared her monthly expenditure as between £400 and £475 for the loans but LS had increased the expenditure amounts to between £564 and £614.

LS said that it had also checked Miss W's credit file before agreeing to the loans but it hadn't provided this service with the results of its checks. So I wasn't aware of any information on LS's credit checks that I thought should have caused additional concerns to LS.

I'd seen Miss W's credit report and noted that this showed a number of payday loans. But I was aware that when a lender carried out a credit search, the information it saw didn't usually provide the same level of detail that a consumer's credit search would and it wasn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I was also aware that not all payday and short term lenders reported to the same credit reference agencies. So, not all of Miss W's accounts might have been identified by LS's credit check. So, this might have explained any differences between the information provided by LS's credit check and Miss W's actual situation.

Regarding Loans 1 and 2, I could see that the repayments that Miss W needed to make were relatively modest compared to the income that she'd declared to LS. The highest repayment amount payable for Loan 1 was £67.69. And when Miss W took out Loan 2, Loan 1 was still payable for another five months. This meant that she'd need to make for both loans a total of £113.09 for the highest repayments. I didn't think the repayment amounts for Loans 1 and 2 were so large that it's obvious they would've caused Miss W financial difficulty.

So given Miss W's repayment amounts for Loans 1 and 2, that these were her first loans with LS and what was apparent about her circumstances at the time, I didn't think it would've been proportionate for LS to have asked her for the amount of information that would have been needed to show the lending was unsustainable.

And at that stage there wasn't anything in the information Miss W had provided or the information LS should've been aware of, which meant it would've been proportionate to start verifying what she was saying. So I didn't think LS was wrong to give Loans 1 and 2 to Miss W.

Miss W had repaid both Loans 1 and 2 early. Loan 2, which was due to be repaid over six months, was repaid after just 11 days. I thought this behaviour might have caused LS some concerns. And I thought it might have been more concerned when Miss W applied for a loan of £1,500 just 17 days later. LS appeared to have been concerned about this as it provided Miss W with the significantly smaller loan amount of £450. The highest monthly loan repayment was £139.12 which was more than the total repayment amounts she'd needed to make on Loans 1 and 2 combined. And Miss W was committing to making the repayments over six months. I could also see that LS had increased the amount of Miss W's declared expenditure so it was aware that it couldn't rely on the amount she'd declared. And as Miss W was borrowing her third loan from LS in around ten weeks (with only a 17 day break from borrowing in that period), I thought the lender might have been concerned that Miss W was becoming reliant on its loans. I thought all this might have been seen as an indication of potential financial difficulties and should have prompted LS to do some additional checks such as asking Miss W for more information about her short term borrowing. As far as I could see it didn't do this.

So I needed to think about what LS would've seen if it had carried out proportionate checks. Had it done so, it's likely that LS would've learnt that Miss W had at least six other outstanding short term loans with repayments of around £900 repayable at the same time as Loan 3. I'd seen these on Miss W's bank statements and credit report. I thought if LS had made proportionate checks, it would have been clear to it that Miss W was facing significant problems managing her money and unlikely to be able to repay Loan 3 in a sustainable manner. So I didn't think LS should have given Miss W loan 3.

Subject to any further representations by Miss W or LS my provisional decision was that I intended to uphold this complaint in part. I intended to order LS to put things right as follows:

putting things right – what LS needs to do

- refund all interest and charges Miss W paid on Loans 3 and 4;
- pay interest of 8% simple a year on the refunds from the date they were paid to the date of settlement*;
- remove all adverse entries about Loans 3 and 4 from Miss W's credit file.

*HM Revenue & Customs requires LS to take off tax from this interest. LS must give Miss W a certificate showing how much tax it's taken off if she asks for one.

Miss W responded to my provisional decision to say she agreed with what I'd said and had nothing more to add.

LS responded to my provisional decision to say that it agreed to provide the redress set out in that decision.

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.

Given that Miss W and LS have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require LS to pay Miss W some compensation as set out below.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order Gain Credit LLC, trading as Lending Stream, to:

1. Refund all interest and charges Miss W paid on Loans 3 and 4;
2. Pay interest of 8% simple a year on the refunds from the date they were paid to the date of settlement*; and
3. Remove all adverse entries about Loans 3 and 4 from Miss W's credit file.

*HM Revenue & Customs requires LS to take off tax from this interest. LS must give Miss W a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 10 April 2020.

Roslyn Rawson
ombudsman