

complaint

Mr R says Gain Credit LLC irresponsibly lent to him.

background

This complaint is about 5 instalment loans, which Gain Credit provided to Mr R between 3/5/2017 and 2/11/2017:

Loan	Date Taken	Date Repaid	Instalments	Amount (£)	Highest payment (including overlapping loans)
1	03/05/2017	25/10/2017	6	600	259.20
2	06/07/2017	Outstanding	6	550	455.38
3	06/09/2017	Outstanding	6	230	439.20
4	28/10/2017	31/10/2017	6	520	431.92
5	02/11/2017	Outstanding	6	440	398.00

Our adjudicator didn't recommend that Mr R's complaint be upheld. He said that the information Gain Credit had, or should have had, at the time, did not show that the lending was irresponsible. Mr R didn't agree and so the complaint was passed to me.

When I looked at the case, I reached a different view. So I wrote a provisional decision and invited comments and further evidence. I said the following:

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.

Gain Credit 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 R 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 Gain Credit 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.

I think that it is important for me to start by saying that Gain Credit was required to establish whether Mr R 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 R's complaint.

On the information Mr R gave to Gain Credit about his income and expenditure, when making applications for each of the five loans, it would have seemed that he had enough spare income to reasonably cover the repayments. And there wasn't evidence available to Gain Credit that Mr R was struggling to meet the repayments. He only started missing payments after he'd taken loan 5.

The length of time over which he was taking loans, and the pattern in which he was taking the loans, wouldn't have reasonably raised alarm bells at least for the first few loans.

The total amount he was borrowing was though going up, in that each new loan overlapped with at least one previous loan. And there was a possibility he was borrowing to meet repayments on previous loans. So, from the point Mr R applied for loan 3, I think it would have been reasonable for Gain Credit to look much more carefully into Mr R's actual financial circumstances – for instance by carrying out more in-depth credit checks or asking to see bank statements.

I asked Mr R whether he had evidence of his spending before loan 3 was taken out. He sent me copies of bank statements. These showed regular and substantial payments to gambling websites and payments to other short term lenders. I think this showed that Mr R was having difficulties managing his spending and that being given high-cost short-term loans was very likely to make his situation worse. If Gain Credit had properly investigated Mr R's spending, it would have found this out. My view at this stage is that loans 3, 4 and 5 should not have been given.

Mr R complained that Gain Credit gave us inaccurate information about using a debt collection agency. It told us it had not employed such agents, whilst Mr R sent us

proof that it had. After our service passed this proof on to Gain Credit, it instructed the agents to stop pursuing the debt whilst the matter was with the ombudsman service.

I don't think Gain Credit deliberately misled us about whether it had used a collection agency. I think it later gave us inaccurate information probably due to an administrative mistake by Gain Credit. This caused Mr R inconvenience and probably annoyance. But I agree with the adjudicator that it isn't something for which I should require Gain Credit to pay compensation.

I also agree that there isn't good evidence that it was wrong, in the circumstances of the information it had, for Gain Credit to pass the matter to a collection agency. Mr R is unhappy with the behaviour of the collection agents and says they used aggressive language in their communications. I can understand why Mr R felt pressured when the third party contacted him, but as I said above I don't think Gain Credit did anything wrong in looking to collect his debts so I don't currently plan to award compensation for this.

In response, I didn't receive any substantive comments or evidence about my proposed decision.

my findings

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

For the reasons given above, I am partly upholding this complaint.

putting things right

In order to put things right for Mr R, Gain Credit should:

- a) refund all interest and charges he paid on loan 4; and
- b) pay interest on all these refunds at 8% simple* per year from the dates of payment to the dates of settlement; and
- c) remove any adverse information about this loan from Mr R's credit file.

I understand loans 3 and 5 were not fully repaid. In order to put Mr R back into the position he would have been, had these not been agreed for him, Gain Credit needs to ensure that Mr R only repays the principal borrowed. In other words he should not pay any interest or charges for the loans. So Gain Credit needs to:

- d) treat all payments, including interest and fees, that Mr R has made towards loans 3 and 5 as payments towards the principal amounts borrowed; and
- e) return any amounts Mr R paid above the principal amount to him, along with 8% simple per year from the dates the overpayments occurred to the date the complaint is settled; and

- f) remove any adverse information about these loans from Mr R's credit file, once the remaining principal debts have been repaid.

I understand that Mr R's debts for these two loans may have been sold on. It seems from the statement of accounts provided that Mr R has already paid more than the principal borrowed for loan 3.

If Gain Credit can buy these debts back it can use the total refund (set out in (a) to (f) above) to offset any outstanding principal balance on loan 5.

If Gain Credit doesn't or is unable to buy the debts back then it must work with the current debt owner to ensure that Mr R doesn't end up paying back more than the principal amounts borrowed for these two loans. This may mean it needs to make a payment to the current debt owner.

And if Mr R has made payments to the current debt owner above the principal amounts borrowed, then these amounts should be refunded to him by Gain Credit, along with 8% simple* per year, from the dates of the overpayment to the date this complaint is settled.

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

my final decision

I am partly upholding this complaint. I require Gain Credit LLC to carry out the redress which I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 July 2020.

Timothy Bailey
ombudsman