

complaint

Mr S complains that Gain Credit LLC (Lending Stream) lent to him irresponsibly.

background

Using the information from Lending Stream here is a summary table of the approved loans.

loan	approved	repaid	amount	six instalments	highest instalment
1	1 September 2012	19 September 2012	£450	due to end February 2013	£225
2	23 September 2012	25 September 2012	£525	due to end March 2013	£263 (rounded)

Loan 1 was repaid early and the total repaid was about £585. So, the cost of borrowing was £135. Mr S applied for £1,000 for Loan 2 and £525 was approved. Loan 2 was repaid a couple of days after obtaining it – about £534. The cost of borrowing was just over £9.

Mr S says that he paid off loan one early using *'gambling winning proceeds'* and he was borrowing from other payday lenders. He has said: *'If you had done further due diligence and checks you would have seen my finances were in a complete mess.'*

One of our adjudicators looked at this complaint and thought that Lending Stream did not need to put anything right for Mr S. He did not agree and said that if Lending Stream had looked at his financial situation at the time it would have seen that he was borrowing from different lenders – *'robbing Peter to pay Paul'*.

The complaint has been passed to me for a decision.

my findings

I have considered all the available evidence and arguments to decide what I consider to be fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Lending Stream needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr S could repay the loans in a sustainable manner.

These checks could take into account several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. So, 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: where a customer's income is particularly low; where the repayments are particularly high; and/or where the frequency of the loans and the length of time over which a customer has been borrowing need to be looked at. Repeated refinancing could signal that the borrowing had become, or was becoming, unsustainable.

I think that it is important for me to start by saying that Lending Stream was required to establish whether Mr S could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. 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 Office of Fair Trading, Irresponsible Lending Guide (relevant at the time) referred to the concept of 'sustainable' and defined it as being the ability to repay without undue difficulties. In particular the customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr S' complaint.

Lending Stream has said that at the time of loan 1 Mr S declared his net monthly income as £1,500 and that he had expenditure of £300. For Loan 2 Mr S increased his declared income to £1,700 and his expenditure was £100. Lending Stream said in its final response letter to Mr S that *'A credit worthiness check was completed and the third party credit reference agency confirmed a rating which was satisfactory for the loan obligation.'*

In 2011, it was not a requirement that lenders obtain credit history details before lending. Lending Stream has said that it referred to a credit agency and I have seen the affordability data Lending Stream says it relied on and the credit score it obtained at the time for each loan.

Mr S has sent to us a copy of an extract from his personal credit file, but I do not think that it quite covers the time I would need to see. Credit files only go back six years. We received this on March 2019 and so most of the records commence February 2013. So, it does not cover the period leading up to September 2012.

In the early stage of the lending relationship - Mr S' first loan - the proportionate approach would have been for Lending Stream to have details of Mr S' income and his expenditure. It had that information. So, on those figures, Lending Stream would have seen that Mr S was likely able to repay the instalments for Loan 1.

Mr S has sent to us some copy bank statements for the period leading up to September 2012. From those statements I can see that Mr A had some issues with money and finances and gambling but as I have explained above, the proportionate checks I would have expected Lending Stream to have done would not have included looking at his bank statements.

So, considering the circumstances at the time Mr S applied for Loan 1, and on the information I have, I think that Lending Stream carried out proportionate checks and was not wrong to lend. I do not uphold Mr S' complaint for Loan 1.

Loan 2 was applied for a few days later. It was unusual that Mr S had declared a larger income and lower outgoings within a month of the first application. But still I think that the proportionate checks I would have expected Lending Stream to have made would have been similar for Loan 2 as for Loan 1. This is because although loan 2 was for a higher amount than loan 1, it was still early in the lending relationship and Mr S repaid loan 1 without any obvious difficulties. And I think that Lending Stream had sufficient information with the proportionate checks carried out I think that it did not need to do more.

Lending Stream did not approve the full amount Mr S asked for – it did approve a loan for about half. The inconsistency in Mr S' declared information may have been the reason for offering less but that inconsistency was not likely a reason *not* to lend. And the other details about his financial situation – such as the gambling – was not something Lending Stream would have known about unless Mr S had told them. And at this stage I would not have expected it to have been asking to see copies of Mr S' bank statements from which the gambling would have become self-evident.

So I do not uphold Mr S' complaint for Loan 2.

my final decision

My final decision is that I do not uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 1 December 2019.

Rachael Williams
ombudsman