

## complaint

Mr C complains about 14 instalment loans that he took out with Gain Credit, trading as Lending Stream, ("LS"). He said that LS shouldn't have given him the loans as they were unaffordable.

## background

Mr C took out 14 instalment loans with LS and these are shown below. The loans were all repayable by six monthly instalments and have all been repaid. Most of the loans were repaid early.

Loan number	Date of Loan	Loan amount
1.	10/8/2016	£700
2.	31/10/2016	£400
3.	2/11/2016	£200
4	7/11/2016	£250
5.	13/11/2016	£80
6	30/11/2016	£400
7	3/1/2017	£120
8	6/2/2017	£400
9	3/3/2017	£350
10	30/3/2017	£170
11	4/5/2017	£140
12	10/5/2017	£90
13	28/5/2017	£350
14	30/6/2017	£420

Mr C said that he had received 14 loans from LS in around ten months and that he was dependent on LS's loans. He believes that LS should have done more checks and that its lending wasn't responsible. He said that his credit rating was very poor so he cannot see how he would have passed a credit check.

LS said that prior to giving the loans, it had asked Mr C for details of his income and expenditure. It said that Mr C's income well exceeded his monthly expenditure and his disposable income indicated that the loan repayments could be made without any financial difficulties. It also said that Mr C's credit scores of between 683 and 720 were acceptable.

The adjudicator said that the checks LS had made before Loans 1 to 3 were sufficient. But he thought better checks should have been done by LS on Loans 4 to 14. And he thought that better checks would have shown LS that Loans 4 to 14 weren't affordable for Mr C. So he recommended that LS should:-

- Refund all interest and charges that Mr C paid on Loans 4 to 14;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement\*;
- Remove any negative information about these loans from Mr C's credit file.

\*HM Revenue & Customs requires LS to take off tax from this interest. LS must give

Mr C a certificate showing how much tax it has taken off if he asks for one. If LS intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

LS disagreed and responded to say that it considered the loans were affordable relative to the amount of Mr C's declared disposable income which it said was sufficient to cover the loan repayments. It had relied on the income and expenditure details Mr C had provided to it. LS also said that it set a minimum amount for each variable of a consumer's expenditure to ensure a reasonable assessment of a consumer's expenses. So it had used these where Mr C's expenditure was less than the values it set. LS also said that Mr C's credit scores of between 683 and 720 indicated that Mr C had good credit standing, although it didn't have access to all the information on Mr C's credit file. LS also said that it doesn't ask consumers for bank statements for data protection reasons. And it asked that we evaluate the situation from a business perspective. However LS believed that certain loans might have caused Mr C's circumstances to be difficult. So it offered to refund the interest and charges on Loans 4, 5, 7, 10, 11 and 12, and pay 8% statutory interest on the refunds. LS also offered to close Loans 13 and 14 without further payments due. It also said it would remove adverse entries from Mr C's credit file in relation to these loans.

Mr C rejected LS's offer. He also said that he had already repaid Loan 13 on 30 November 2017 and Loan 14 on 29 December 2017.

### **my findings**

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

As LS has agreed to provide a refund of interest and charges for Loans 4, 5, 7, 10, 11 and 12, I won't be investigating LS's checks and the affordability of these loans in my decision below.

I note that LS has asked that I evaluate the situation from a business perspective. But my role is to make an independent decision in all the circumstances of the complaint. This means that I need to assess the complaint by looking at both sides.

LS was required to lend responsibly. It should have made checks to make sure Mr C could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr C was borrowing, the length of the agreement and his lending history. But there was no set list of checks LS had to do.

The Financial Conduct Authority was the regulator at the time Mr C borrowed from LS. Its regulations require lenders to take *"reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."* The regulations define 'sustainable' as being able to make repayments without undue difficulty, and say that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the interest paid might have been low when compared to Mr C's declared income, or that he was able to repay the loans, doesn't necessarily mean the loans were affordable and that he was able to repay them in a

sustainable manner. So, I can't assume that because Mr C was able to repay the loans he was able to do so out of his normal income without having to borrow further.

LS told us that before lending to Mr C, it had asked about his normal income, and expenditure. And it had checked his credit score which it said showed good credit standing. I've not seen any information about LS's credit searches other than its credit scores.

I've thought carefully about whether LS's checks were proportionate for the loans. I note that for Loan 1, Mr C borrowed £700 and needed to make six monthly repayments of varying amounts up to £302.40 to repay it. I can see that the repayments were relatively modest compared to the income of £2,853 and the expenditure of £1,510 Mr C declared to LS. I think this information was enough for LS to rely on at the time of Mr C's first loan application. He hadn't borrowed from LS before, and the repayment amounts weren't large in comparison to the amount of disposable income (£1,510) that he'd provided. So I think it was reasonable for LS to give Mr C Loan 1.

Mr C applied for Loan 2 almost three months after Loan 1 was taken out. The loan amount had reduced to £400, but he hadn't yet repaid Loan 1. The highest combined loan repayments amounted to £372.32. Mr C's monthly disposable income remained the same. Overall, I think the repayments were still relatively modest compared to Mr C's declared disposable income of £1,510. So, I think that LS's checks were proportionate here. And I don't think LS did anything wrong in giving Loan 2 to Mr C.

Mr C applied for Loan 3 two days after he borrowed Loan 2. The loan amount had reduced to £200, and Mr C's declared disposable income had increased to £1,560. But as Loans 1 and 2 hadn't yet been repaid, the highest combined loan repayments amounted to £457.12. As the repayment amount was still relatively modest compared to Mr C's declared disposable income, overall I think that LS's checks were sufficient here. And I don't think LS did anything wrong in giving Loan 3 to Mr C.

Loan 6 was Mr C's sixth loan in just under four months. By the time of Loan 6, I think Mr C's loans were being taken sufficiently regularly to show that Mr C was reliant on them. The amount he borrowed had increased to £400, and I note that Mr C would be repaying Loans 2, 3, and 6 at the same time in some months (with a combined highest monthly amount payable of £432.32 in January 2017). By this time, I also think it should have been clear to LS that it could no longer rely on the information Mr C had provided about his financial situation. And in view of Mr C's regular loan applications, I think there was an onus on LS to look in much more depth at Mr C's true financial situation to assess the affordability of its lending. It could've done this in a number of ways. It could've asked for evidence of Mr C's income and expenditure such as payslips and bills, or it could've looked at things like his bank statements.

Loan 8 was taken out around a month after Loan 7 and Mr C would be making repayments on Loans 6 and 7 at the same time as Loan 8. And Loan 9 was taken out around a month after Loan 8 and Mr C would be making repayments on Loans 6 and 8 at the same time as Loan 9. As the loans were being borrowed regularly, I think it would have been proportionate for LS to have again looked to independently verify Mr C's income and expenditure for Loans 8 and 9 so it could fairly assess the affordability of these loans.

Loan 13 was borrowed 18 days after Loan 12, and Loan 14 was borrowed around a month after Loan 13. As the loans were still being taken very regularly, I think it would have been proportionate for LS to have again looked to independently verify Mr C's income and expenditure for these loans so it could fairly assess their affordability.

Although I don't think the checks LS did for Loans 6, 8, 9, 13 and 14 were sufficient, that in itself doesn't mean that Mr C's complaint about these should succeed. I also need to see whether what I consider to be proportionate checks would have shown LS that Mr C couldn't sustainably afford the loans. So I've looked at the bank statements we've received from Mr C, and what he's told us about his financial situation, to see what better checks would have shown LS. The bank statements might not have shown LS everything it would've seen by carrying out proportionate checks. But I think they are the best indication of Mr C's ability to afford the loans at the time they were approved. So I don't think it's unreasonable to rely on these. I appreciate that LS said it didn't ask for bank statements for data protection reasons. But requiring bank statements is only one of a number of methods it could've used in order to have a full understanding of Mr C's financial situation.

For Loans 6, 8, 9, 13 and 14, if LS had done what I consider to be proportionate checks, I think it would have seen that Mr C's monthly income of £2,853 was broadly the same as he'd been declaring to LS. But it would also have become aware that a large proportion of Mr C's monthly income was taken up by regular financial commitments (including his monthly mortgage repayment of over £541). Mr C's credit report showed that he had nine active credit and store card accounts and three shopping credit accounts at the time of the loans. And I can see regular payments to these accounts in Mr C's bank statements. In the month before Loan 6, the total of Mr C's normal living costs, regular financial commitments of £2,120 and short term lending show that Mr C would have been left with no income to repay Loan 6. In addition Mr C was gambling heavily, and this continued throughout the rest of his loans with LS.

In the month before Loan 8, Mr C's regular financial commitments alone were £2,700. And to support his gambling expenditure, he was also borrowing from a number of other short term lenders. In the months before Loans 8 and 9, his short term lending, which would have been repayable around the same time as LS's loan repayments, was around £7,750 and £1,450 respectively.

In the month before Loan 13, I can see that Mr C's regular financial commitments alone were more than his monthly income. And I note that the total of Mr C's normal living costs, regular financial commitments and short term lending in the month before Loan 14 show that Mr C would have been left with insufficient income to repay Loan 14. So if LS had done what I consider to be proportionate checks, I think that it would have seen that the repayments for Loans 6, 8, 9, 13 and 14 weren't sustainable.

In summary I think the checks LS did for Loans 1 to 3 were proportionate. But I don't think LS did enough checks for any of the remaining loans. I think proportionate checks would have shown LS the state of Mr C's finances and that Mr C couldn't afford to sustainably repay Loans 6, 8, 9, 13 and 14. So I don't think LS should have given Mr C these loans and I think it needs to pay Mr C some compensation relating to these loans, along with what it has already offered in relation to Loans 4, 5, 7, 10, 11 and 12.

To settle the complaint, I think LS should refund all the interest and charges applied to

Mr C's accounts for Loans 4 to 14, and pay 8% simple interest\* a year on those refunds from the date of payment to the date of settlement. Any adverse information recorded on Mr C's credit file with regard to these loans should also be removed.

Mr C has told us that he has repaid Loans 13 and 14. If this isn't the case, LS should refund all interest and charges paid on these loans, and write off any unpaid interest and charges from Loans 13 and 14. It should use the compensation to reduce any capital outstanding on Loans 13 and 14 and then pay any balance to Mr C.

\*HM Revenue & Customs requires LS to take off tax from this interest. LS must give Mr C a certificate showing how much tax it has taken off if he asks for one. If LS intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

### **my final decision**

My decision is 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 the interest and charges applied to Mr C's accounts for Loans 4 to 12;
2. If Mr C has repaid Loans 13 and 14, refund all the interest and charges applied to Mr C's accounts for Loans 13 and 14;
3. Pay 8% simple interest\* a year on those refunds from the date of payment to the date of settlement;
4. If Mr C hasn't repaid Loans 13 and 14:
  - a) refund all the interest and charges that Mr C has paid on Loans 13 and 14, and pay 8% simple interest\* a year on the refunds from the date of payment to the date of settlement;
  - b) write off any unpaid interest and charges from Loans 13 and 14;
  - c) apply the refunds referred to above to reduce any capital outstanding on Loans 13 and 14 and pay any balance to Mr C; and
5. Remove any adverse information recorded on Mr C's credit file with regard to Loans 4 to 14.

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 March 2018.

Roslyn Rawson  
**ombudsman**