

complaint

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

background

Mr D took out eight instalment loans with LS and these are shown below. The loans were all repayable by six monthly instalments. Loans 1 to 4 and Loan 6 were repaid early, but the other loans remain outstanding and Loans 7 and 8 have been transferred to a third party, ("T").

Loan number	Date of Loan	Loan amount
1	18/9/2016	£480
2	25/7/2017	£750
3	16/9/2017	£350
4	27/9/2017	£350
5	29/9/2017	£340
6	2/10/2017	£110
7	31/10/2017	£110
8	8/11/2017	£250

Mr D complained that the loans trapped him in a debt spiral with repayments taking so much of his wages that he had to borrow again to cover the following month's expenses. Mr D also said that he was forced to borrow from multiple lenders to make ends meet. He suffered from compulsive gambling and he said that a responsible lender should have realised this from the number of loans borrowed. Mr D also said that his credit reports would have shown other debt and repeated borrowing.

LS said that prior to giving the loans, it had asked Mr D for details of his income and expenditure. It reviewed the details held by credit reference agencies, and it said his credit scores were deemed acceptable. It said that Mr D's disposable income was ample for him to complete his loan repayments easily. But as there were loan balances outstanding, it offered Mr D a repayment arrangement.

our adjudicator's view

The adjudicator said that the checks LS had made on Loans 1 to 3 were sufficient. But he thought better checks should have been done by LS on Loans 4 to 8. And he thought that better checks would have shown LS that Loans 6 to 8 weren't affordable for Mr D. So he recommended that LS should:-

- Refund all interest and charges that Mr D paid on Loans 6 to 8;
- 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 Loans 6 to 8 from Mr D's credit file.

*HM Revenue & Customs requires LS to take off tax from this interest. LS must give Mr D a certificate showing how much tax it's 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 responded to say that it accepted the adjudicator's recommendations. It also said that the refund could be deducted from the outstanding balance. LS also offered Mr D an affordable payment arrangement and said that if Mr D wished to set this up, he should contact it.

Mr D disagreed and said that the complaint should be reconsidered taking into account that he had multiple loans with other lenders and was using them to pay off each other which trapped him in a debt spiral. Mr D said that LS would have seen this if it had checked his credit file. He also had other complaints with this service which he said should be taken into consideration when coming to a decision.

The adjudicator responded to say that it wasn't proportionate for LS to have asked Mr D about his other payday loans until Loan 4. But he had taken these into account from Loan 4. He also said that this service considers complaints on a case by case basis.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr D and to LS on 10 May 2019. I summarise my findings:

I'd noted that LS had accepted the adjudicator's recommendations regarding Loans 6 to 8. But as Loans 7 and 8 hadn't yet been repaid and had been sold to a third party, I would also have expected LS to refund unpaid interest and charges included in the outstanding balances. I noted that such a refund wasn't included in the adjudicator's recommendations and LS hadn't offered to make such a refund. So I said I would consider Loans 7 and 8 together with Loans 1 to 5.

I also noted that Mr D had asked for his other complaints with this service to be taken into account. But I said that we look at each complaint on a case by case basis. So I wouldn't be taking the other complaints into account.

I explained that LS was required to lend responsibly. It should have made checks to make sure Mr D 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 D was borrowing, the length of the agreement and his lending history. But there was no set list of checks LS had to do.

I noted that the Financial Conduct Authority was the regulator at the time Mr D 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 D's declared income, or that he was able to repay some of the loans, didn't necessarily mean the loans were affordable and that he was able to repay them in a sustainable manner. So, I couldn't assume that because Mr D was able to repay some of the loans, that he was able to do so out of his normal income without having to borrow further.

LS told us that before lending to Mr D, it had asked about his normal income and

expenditure. And it had carried out a credit check. We'd not received any details about LS's credit check other than its credit scores which it said were acceptable.

But I'd seen Mr D's credit report. I could see that Mr D had a mortgage with monthly repayments of £477. The report also showed several payday and longer term loans which Mr D had at the same time as some of his LS loans. The repayments for these totalled between £236 and £641. I could see that if Mr D's other borrowing had been revealed by LS's credit check, this might have suggested to LS that Mr D's finances were under pressure. But I was also aware that when a lender carried out a credit check, the information it saw didn't usually provide the same level of detail that a consumer's credit report would and it wasn't necessarily up to date. A lender might only have seen 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, it was possible that Mr D's other loans might not have been identified by LS's credit check. And this might have explained any differences between the information seen by LS in its credit check and Mr D's actual situation.

I'd also noted that LS had asked Mr D about his expenditure. It had asked for information about his rent/mortgage, utilities, food, other credit commitments and other outgoings. I'd noted that the expenditure amounts declared by Mr D before each loan were increased by LS in its assessment. LS used statistical national averages for expenditure categories and revised Mr D's stated outgoings upwards to take account of these. But LS said that the adjusted outgoings amounts still resulted in a viable disposable income for the loans. I'd referred to the adjusted outgoings amounts in my assessment.

I'd thought about whether LS's checks were proportionate for the loans. I noted that for Loan 1, Mr D needed to make six monthly repayments of varying amounts up to £211.20 to repay it. I could see that the repayments were relatively modest compared to the income of £1,600 and the expenditure of £998 Mr D had declared to LS. I thought this information was enough for LS to rely on at the time of Mr D's first loan application. He hadn't borrowed from LS before, and the repayment amounts appeared sustainable in comparison to the amount of disposable income that he'd provided to LS. So I thought it was reasonable for LS to give Mr D, Loan 1 without carrying out further checks.

I noted that Mr D had repaid Loan 1 early and took out Loan 2 around eight months after he repaid Loan 1. I thought it was reasonable for LS to have seen this gap as an indication that Mr D's finances had moved on from whatever situation had required his previous loan. Loan 2 was for the substantially higher amount of £750 repayable by six monthly repayments of varying amounts. The highest repayment was £342. Mr D told LS that his monthly income had reduced to £1,500 and his regular expenditure had reduced to £648. So he had a disposable income of £852. I thought that the information LS gathered before Loan 2 suggested that the loan repayments were affordable, and I thought it was reasonable for LS to have relied on the information it had before this loan. So, I didn't uphold Mr D's complaint about Loan 2.

Mr D repaid Loan 2 early and he borrowed Loan 3 less than three weeks after repaying Loan 2. The loan amount had reduced to £350, and the highest repayment was £154. As the repayments were again relatively modest compared to Mr D's declared disposable income of £952, I thought that LS's checks were sufficient. And I didn't think LS had done anything wrong in giving Loan 3 to Mr D.

Mr D borrowed Loan 4 eleven days after he'd taken out Loan 3. Loan 4 was again for £350.

The combined highest repayments for Loans 3 and 4 were £308 and the loan was to be repaid over six months. Mr D's declared disposable income had increased to £1,002. I thought LS ought to have been concerned as to why a person with an apparently relatively high level of disposable income was coming back to it for a third loan in just over two months. I thought that behaviour might have caused some concerns to LS. It might have suggested to LS that Mr D was using short term loans as a supplement to his normal income, rather than using them to meet a temporary one-off problem, and that his finances were likely to be under some pressure. So, although I thought it was still reasonable for LS to have relied on the information Mr D had declared to it, I thought LS should have additionally asked him some very specific questions about any other short term lending he already had outstanding.

Loan 5 was borrowed just two days after Loan 4 was taken out. I considered this to be a sign of potential financial difficulties. Mr D had repaid Loan 3 on the day he took out Loan 5. The highest total repayments on Loans 4 and 5 totalled around £303.60. I thought Mr D's loans were by this time being taken sufficiently regularly to show that Mr D was reliant on them. I also thought it should have been clear to LS that it could no longer rely on the information Mr D had provided. It was already adjusting Mr D's declared outgoings to be consistent with statistical national averages. And I thought the amount and regularity of Mr D's loan applications might have suggested to LS by the time of Loan 5 that it should look in much more depth at Mr D's true financial situation to assess the affordability of its lending.

And as LS then received three further loan applications from Mr D within the next six weeks, I thought a similar level of checks would have been appropriate for the rest of the loans that Mr D took from LS. It could've done this in a number of ways. It could've asked for evidence of Mr D's income and expenditure such as payslips and bills, or it could've looked at things like his bank statements.

Although I didn't think the checks LS did for Loans 4 to 8 were sufficient, that in itself didn't mean that Mr D's complaint about these should succeed. I also needed to see whether what I considered to be proportionate checks would have shown LS that Mr D couldn't sustainably afford the loans.

Loan 4

As I'd said above, I would have expected LS to ask about Mr D's short term credit commitments whilst taking into account Mr D's declared disposable income of £1,002. I'd reviewed his credit report and bank statements for the month before Loan 4 to see what better checks would have shown LS. I could see that Mr D had taken out one other short term loan which would have required repayment at the same time as Loan 4. The repayment on the other short term loan appeared to be around £236. Taking account of this, it still appeared that Mr D would have been able to sustainably repay the repayments on Loan 4. So I didn't think that carrying out better checks would've uncovered anything that would've stopped LS from giving the loan to Mr D. So, I didn't intend to uphold Mr D's complaint about Loan 4.

With regard to Loans 5, 7 and 8, as I'd said above, I thought LS should have been independently checking what Mr D was earning and spending each month. So I'd tried to do this by looking at Mr D's bank statements at the time of these loans, and what he'd 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 thought they were the best indication of Mr D's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to have relied on these.

Loan 5

Mr D had sent us statements for three of his bank accounts. One of the accounts was a joint account with his wife, but it appeared that most of the funding of the joint account came from Mr D. Most of Mr D's normal living costs were paid from the joint account. I noted from the statements that Mr D's income was higher than he'd declared to LS, around £1,919. His living costs and regular financial commitments appeared to total around £1,290. Mr D also had one short term loan. The monthly repayments to be made at the same time as Loan 5 were £236. And I could see that Mr D was also gambling heavily. His gambling expenditure was around £990 in the month before Loan 5. I thought that Mr D's living costs, his regular financial commitments and his spending on gambling made it clear that any new borrowing was unlikely to be repaid sustainably. So, if LS had carried out what I'd considered to be proportionate checks before Loan 5, I thought they would have suggested that Loan 5 wasn't sustainable.

Loan 7

If LS had checked Mr D's financial information before Loan 7, it would have seen that his income was slightly higher than he'd declared to LS, around £1,672. But his normal living costs and regular financial commitments appeared to total around £1,260. And Mr D's short term loan repayments to be made around the same time as Loan 7 were £594. I could also see that Mr D continued to gamble heavily, spending around £1,038 in the month before Loan 7. So overall, if LS had carried out what I considered to be proportionate checks before Loan 7, I thought it was likely that it would have concluded that Loan 7 wasn't sustainable.

Loan 8

If LS had checked Mr D's financial information before Loan 8, it would have seen that his income was slightly higher than he'd declared to LS, around £1,672. But his normal living costs and regular financial commitments appeared to be around £1,380. And Mr D's short term loan repayments to be made around the same time as Loan 8 were £641. I could also see that Mr D continued to gamble heavily, spending around £977 in the month before Loan 8. So overall, if LS had carried out what I considered to be proportionate checks before Loan 8, I thought it was likely that it would have concluded that Loan 8 wasn't sustainable.

Subject to any further representations by Mr D or LS my provisional decision was that I intended to uphold this complaint in part. I intended to order LS to:-

1. Refund all the interest and charges applied to Mr D's account for Loan 6 and pay 8% simple interest* a year on those refunds from the date of payment to the date of settlement;
2. Refund all the interest and charges that Mr D has paid on Loan 5 and pay 8% simple interest* a year on those refunds from the date of payment to the date of settlement;
3. Write off any unpaid interest and charges from Loan 5;
4. Apply the refunds referred to above to reduce any capital outstanding on Loan 5 and

pay any balance to Mr D;

5. Refund all the interest and charges that Mr D has paid on Loans 7 and 8, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement. As the balances on Loans 7 and 8 have been transferred to T, LS should also refund any unpaid interest and charges that are included in the outstanding balances on Loans 7 and 8 (since T will expect to collect this money from Mr D).
6. As Loans 7 and 8 have been transferred to T, pay the refunds referred to in 5. above to Mr D in full and no deductions should be made by LS. But, if LS buys Loans 7 and 8 back from T within 21 days of Mr D's acceptance of my decision, it might apply the refunds referred to in 5. above to reduce any capital outstanding on Loans 7 and 8, and pay any balance to Mr D; and
7. Remove any adverse information recorded on Mr D's credit file with regard to Loans 5 and 6 (and Loans 7 and 8 if LS buys them back). If Loans 7 and 8 have to remain with T, then LS is to assist Mr D, so far as it is able, to correct his credit file record.

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

Mr D responded to say that he had no more information to add and he was happy to accept my provisional decision.

LS responded to say, in summary, that it accepted my provisional decision. It also said that it would offer Mr D a repayment arrangement if he was suffering financial difficulties.

my findings

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

Given that Mr D and LS have accepted my provisional decision, 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 Mr D 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 the interest and charges applied to Mr D's account for Loan 6 and pay 8% simple interest* a year on those refunds from the date of payment to the date of settlement;
2. Refund all the interest and charges that Mr D has paid on Loan 5 and pay 8% simple interest* a year on those refunds from the date of payment to the date of settlement;
3. Write off any unpaid interest and charges from Loan 5;

4. Apply the refunds referred to above to reduce any capital outstanding on Loan 5 and pay any balance to Mr D;
5. Refund all the interest and charges that Mr D has paid on Loans 7 and 8, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement. As the balances on Loans 7 and 8 have been transferred to T, LS should also refund any unpaid interest and charges that are included in the outstanding balances on Loans 7 and 8 (since T will expect to collect this money from Mr D).
6. As Loans 7 and 8 have been transferred to T, pay the refunds referred to in 5. above to Mr D in full and no deductions should be made by LS. But, if LS buys Loans 7 and 8 back from T within 21 days of Mr D's acceptance of my decision, it might apply the refunds referred to in 5. above to reduce any capital outstanding on Loans 7 and 8, and pay any balance to Mr D; and
7. Remove any adverse information recorded on Mr D's credit file with regard to Loans 5 and 6 (and Loans 7 and 8 if LS buys them back). If Loans 7 and 8 have to remain with T, then LS is to assist Mr D, so far as it is able, to correct his credit file record.

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 May 2019.

Roslyn Rawson
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