

complaint

Mr O complains that Gain Credit LLC (trading as Lending Stream) irresponsibly lent to him.

background

The background to this complaint was set out in the provisional decision I issued on 16th March 2020. An extract from this is attached and forms part of this final decision, so I won't repeat that information here.

In my provisional decision I set out why I thought the complaint should be partially upheld and what Lending Stream needed to do to put things right. I invited both parties to let me have any further comments and evidence.

Mr O responded on 18th March 2020 and accepts the findings in my provisional decision. He had no further comments to make relating to his complaint.

Lending Stream responded on 17th March 2020 to say it had received my decision and would respond no later than 16th April 2020 but then didn't send anything further.

my findings

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

Both parties have nothing further to add and I have no new evidence to consider.

So having considered everything I've received in relation to this complaint, both before and after issuing my provisional decision, I am not persuaded to change those initial conclusions. Lending Stream now needs to put things right with regards to loans 6-11.

putting things right

I concluded in my provisional decision that Lending Stream should not off-set any amount from the compensation that Mr O is due and I gave reasons for this that can be found in the extract at the end of this decision.

So with that in mind, Lending Stream should put things right by doing the following:

- refund all interest and charges Mr O paid to either it or the third party on loans 6-11;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- remove any information about loans 6-11 from Mr O's credit file and ask the third party to remove any information it has put on Mr O's file also.

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

my final decision

My final decision is that I uphold Mr O's complaint and direct Gain Credit LLC to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 22 May 2020.

Mark Richardson
ombudsman

EXTRACT FROM PROVISIONAL DECISION**Complaint**

Mr O says Gain Credit LLC (Lending Stream) lent to him irresponsibly.

background

This complaint is about eleven payday loans Lending Stream provided to Mr O between May 2012 and September 2013. Details are given below:

loan number	date started	amount borrowed	date ended
1	07/05/2012	£80	29/08/2012
2	30/08/2012	£165	21/12/2012
3	31/12/2012	£165	24/05/2013
4	12/01/2013	£80	29/04/2013
5	14/04/2013	£65	01/07/2013
6	29/04/2013	£115	03/08/2013
7	01/07/2013	£100	07/09/2013
8	07/07/2013	£115	debt sold on to a third party
9	08/08/2013	£60	17/08/2013
10	17/08/2013	£80	debt sold on to a third party
11	08/09/2013	£200	debt sold on to a third party

Our adjudicator partially upheld Mr O's complaint in a letter sent out by her on 14th June 2019. She thought that Lending Stream shouldn't have approved any loans from 6 onwards. She concluded that by loan 6 a pattern of lending had been established where it should have been seen that Mr O would more likely not be able to repay them in a sustainable way.

Lending Stream contacted our service on 17th July 2019 and offered to pay compensation by refunding the interest and charges for loans 6-11 and remove entries on Mr O's credit file. It also added that it would be off-setting the amount that Mr O had outstanding to repay with a third party debt collection company.

On 8th August 2019 Mr O informed our service that he would be rejecting Lending Stream's offer as he didn't think it should off-set anything as the debt with a third party had been struck off.

So as the parties still do not agree and haven't agreed a settlement, the complaint has been passed to me, an ombudsman, to make a decision. I will review Mr O's complaint again and make findings about whether the loans were lent to him irresponsibly. If I find that Lending Stream have lent irresponsibly I will then make a decision on how Lending Stream should put things right, including whether it can off-set any amounts that it thinks are outstanding.

My provisional 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.

Lending Stream 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 O 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 Lending Stream should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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 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.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator defines 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 O's complaint. I've decided to uphold Mr O's complaint in part and have explained why below.

Lending Stream asked Mr O for information about his income and it carried out credit checks. It says it used this information to assess whether the loans were affordable for him.

For loans 1-3, given the amounts lent, what was apparent about Mr O's circumstances at the time and his relatively short borrowing history with Lending Stream, I don't think it would've been proportionate to ask him for the amount of information needed to show the lending was unsustainable. There wasn't anything in the information Mr O provided or the information Lending Stream should've been aware of (including the credit search results), which meant it would've been proportionate to start verifying what Mr O was saying.

I think by the time Mr O asked for loans 4 and 5, Lending Stream should have been carrying out further checks and finding out more about Mr O's wider financial circumstances. But Mr O also hasn't been able to provide any bank statements from this time, and so I haven't been able to look into whether he had any other wider financial issues that further checks may have uncovered. So I can't say based on what I have in front of me, that further checks would have shown that the repayments for loans 4 and 5 would have been unsustainable.

I've then looked at the overall pattern of Lending Stream's lending history with Mr O for the lending chain, with a view to seeing if there was a point at which Lending Stream should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Lending Stream should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr O's case, I think that this point was reached at loan 6 for the lending chain. I say this because:

- At this point Lending Stream should have realised Mr O was not managing to repay his loans sustainably. Mr O had taken out and repaid 5 loans within around 14 months and was now asking for his sixth loan. At this point, it was more likely than not Mr O was having to borrow further to cover the hole repaying his previous loans were leaving in his finances and Mr O's indebtedness was increasing unsustainably.
- Mr O wasn't making any real inroads to the amount he owed Lending Stream. Lending Stream ought to have known that Mr O was not likely borrowing to meet a temporary shortfall in his income but to meet an ongoing need. Mr O had paid large amounts of interest to, in effect; service a debt to Lending Stream over an extended period.

I think that Mr O lost out because Lending Stream continued to provide borrowing from loan 6 because:

- These loans had the effect of unfairly prolonging Mr O's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- The number of loans was likely to have had negative implications on Mr O's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I'm upholding the complaint about loans 6-11 for the reasons given above.

putting things right – what Lending Stream needs to do

As I have already mentioned in the 'background' section of this decision, Lending Stream says it is going to 'off-set' the amount it says Mr O still owes for loans 8, 10 and 11. These loans had balances left outstanding by Mr O and Lending Stream sold the debt to a third party. It says it will 'buy back' the debt from the third party and subtract this from the amount of compensation it is due to pay to Mr O.

In certain circumstances, buying back debt owed from a third party and subtracting it from the compensation due can be a fair and reasonable approach to take, if all interest and charges are taken off first, leaving the principle amount owed. On 3rd October 2019, Lending Stream contacted our service and reaffirmed that this is what it was going to do. It said it would buy back the loans that it had sold to a third party and would off-set the outstanding amount as the account was not closed with the third party. Mr O however says the debt does not exist and the amount should not be off-set.

Our service has contacted the third party to gain some clarity about this. On 17th December 2019 it contacted us to say the debt had been dismissed by the courts and that there is no debt owed by Mr O. It added that its account is closed and it will no longer collect on it. It also sent to our service court papers that showed its claim had been dismissed.

So in light of this, I am currently minded to conclude that Lending Stream should pay compensation to Mr O for loans 6-11 and not off-set any amount from it. I have reached this conclusion as the current owner of the debt (the third party) has confirmed that there is no debt owed and that it has closed the account.