complaint

Mr M says Gain Credit LLC, trading as Lending Stream, lent to him irresponsibly. He says the loans trapped him into a “debt spiral” and he had to borrow more to repay them. Mr M also says the number of times he borrowed should’ve caused Lending Stream to realise he was in difficulty.

background

Mr M had 11 loans with Lending Stream. The loans were repayable in up to six instalments. I’ve summarised some of the information Lending Stream provided about these loans in the table below.

Loan no.	Date Borrowed	Amount Borrowed	Date Closed
1	11 September 2012	£300	28 January 2013
2	3 October 2012	£380	18 March 2013
3	17 January 2013	£250	18 March 2013
4	28 January 2013	£135	18 March 2013
5	9 February 2013	£75	18 March 2013
6	4 March 2013	£185	18 March 2013
7	23 March 2013	£100	27 March 2013
8	13 April 2013	£200	27 December 2013
9	27 June 2013	£440	26 April 2015
10	18 August 2013	£160	27 November 2014
11	2 September 2013	£120	27 October 2014

One of our team managers considered the complaint and thought it should be upheld in part. He thought Lending Stream’s affordability checks weren’t always proportionate and that better checks would’ve likely shown it loans 3-11 weren’t affordable.

Lending Stream didn’t agree, so the complaint’s been passed to me to decide.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. I’ve taken into account the law, good industry practice and any relevant regulations at the time.

At the time Mr M took out the loans, the regulator was the Office of Fair Trading (OFT). The OFT had published guidance on irresponsible lending (the ILG).

On 1 April 2014 regulation transferred to the Financial Conduct Authority (FCA) and relevant regulations included its Consumer Credit sourcebook (CONC). Mr M didn't take out any new loans after 1 April 2014, but I've noted loans 9-11 were repaid after this date.

The ILG and CONC contain similar guidance for lenders about responsible lending. Among other things, the guidance and regulations say lenders should carry out affordability checks which are proportionate in the circumstances of the loan. They also say repayments should be sustainable (*i.e.* repayable from the borrower's income or savings) and that lenders shouldn't allow a borrower to enter into consecutive credit agreements where it would be unsustainable to do so.

did Lending Stream carry out proportionate checks?

From what I've seen, I understand Lending Stream asked Mr M various questions about his employment, income and outgoings. I haven't seen a detailed breakdown of all of these figures, but broadly I've seen that Mr M told Lending Stream he was in full-time employment, earning £1,500 a month and had monthly expenses of £500-£950. Lending Stream therefore calculated Mr M's disposable income was £550-£1,000, depending on the expenses recorded at the time of application. Lending Stream also carried out checks with credit reference agencies (CRAs) – although it's only been able to show us the score generated, rather than any of the underlying detail.

I think the checks Lending Stream carried out were proportionate in the circumstances of loans 1 and 2. It asked Mr M some questions about his income and outgoings, which suggested his disposable income was £750-£900. The largest instalment for loan 1 was scheduled to be £150 and while loan 2 overlapped with loan 1, the largest overlapping instalments were together a little over £300. I think both of these loans would've appeared affordable on the information Lending Stream had – and at this point in its relationship with Mr M, I think it was reasonable for Lending Stream to rely on what Mr M told it.

From loan 3 onwards, I don't think Lending Stream's checks were proportionate. Loans 1 and 2 were still outstanding when Mr M applied for loans 3 and 4 – meaning all the overlapping payments committed Mr M to repaying up to £400 a month. While this does appear affordable on the basis of the information Lending Stream had (which was that Mr M's disposable income was £550-£800), I think Lending Stream had reason to ask Mr M further questions at this point. Mr M had taken out four loans in four months, suggesting his need for finance was potentially not just a short-term problem. I note that Lending Stream's website says, *"Taking out regular short term loans is an expensive way to borrow money, and isn't appropriate if you're already having financial problems."* This statement reflects language in the ILG and I think means that proportionate checks should, among other things, have been enough to check that Mr M wasn't in financial difficulty.

So I think for loans 3 and 4 it would've been proportionate for Lending Stream to build up a better picture of Mr M's outgoings – particularly his regular and short-term financial commitments. I haven't seen a breakdown of figures showing Lending Stream asked questions like these.

For loan 5 onwards, I think Lending Stream needed to do more to check Mr M wasn't in financial difficulty. This was Mr M's fifth loan in five months, so while it was a small loan, I think Lending Stream should've still had some concerns. Loan 6 started a month after loan 5, continuing the pattern of repeat borrowing in a relatively short space of time. Loans 7-11 continued much in the same vein.

Given all the circumstances of these loans, I think Lending Stream ought to have asked Mr M to substantiate his income and expenditure from loan 5 onwards. One way it could've done this is by looking at his bank statements and/or payslips. Again, I haven't seen that Lending Stream did checks like these – it seems to have relied on Mr M's reported income and expenditure throughout the period of lending. I think that was no longer proportionate by the time of loan 5, particularly given the risk that Mr M was using a financial product which was no longer appropriate for his circumstances was increasing with each loan.

what would proportionate checks have shown?

I've considered what else I think Lending Stream would've seen if it had asked Mr M more specific questions about his expenditure, including what it would've likely found out about his regular and short-term financial commitments at the time of loans 3 and 4.

Looking at Mr M's short-term commitments alone, I think Lending Stream would've seen loans 3 and 4 were unaffordable. This is because I think it's likely Lending Stream would've learned that Mr M's short-term credit commitments at the time he applied for both loans was very close to or exceeded his stated income. So I think proportionate checks would likely have shown Lending Stream that Mr M couldn't sustainably repay loans 3 and 4.

I've next considered what I think Lending Stream would've seen for loans 5-11, if it had undertaken the proportionate checks like those I described above.

For loans 5 and 6, I think Lending Stream would've likely seen Mr M's income was closer to £1,300 a month, rather than £1,500. I also think it would've found out that Mr M still had substantial other short-term commitments with other lenders of at least £1,000. Taking into account even just Mr M's basic living costs, I think Lending Stream would've seen these loans were not affordable and wouldn't have lent to Mr M.

I also think it's likely Lending Stream would've seen Mr M was spending £350-£450 a month on gambling during this period. Taken together with Mr M's short-term loan repayments, it appears Mr M's expenditure was often exceeding his income, suggesting repayments for new loans would likely be unsustainable.

Loan 7 was taken out just a few weeks after loan 6, so it's unlikely proportionate checks would've shown Lending Stream anything substantially different than it saw for loan 6. It's possible Lending Stream might have seen Mr M had repaid a short-term loan from another lender in between loans 6 and 7. But it's also likely it would've seen Mr M's other short-term payments were still around £900. And as I think Lending Stream would've likely been aware Mr M was spending £350-£450 a month on gambling, I don't think Lending Stream could've reasonably decided this loan was sustainably affordable.

For loans 8-11, had Lending Stream carried out proportionate checks I think it's likely it would've seen Mr M's income fluctuated a bit but was generally £1,050-£1,550. I also think the picture it would've seen of Mr M's finances, in terms of his expenditure, would've looked much like it did at the time of loans 5 and 6.

Throughout the period, I think proportionate checks would've shown Lending Stream that Mr M's expenditure was exceeding his income. This was due to a mixture of factors; the amount Mr M was spending on repaying other short-term lenders, regular creditors and on gambling each played a part. The dominant factor changed at times but the overall picture remains quite consistent.

The amount Mr M was spending on gambling during this period varied but was sometimes a little less than £600 and sometimes over £1,000 per month. Mr M's short-term loan repayments also varied, but were not less than £500 and sometimes more than £1,800 in total.

So I think proportionate checks would've likely shown Lending Stream that Mr M couldn't afford to repay these loans out of his income and/or savings and that the loans were therefore not sustainably affordable.

I also note again that Lending Stream's website says regularly accessing this type of credit isn't suitable for consumers in financial difficulty, which reflects the language of the regulations. Although Lending Stream's loans are nominally longer term instalment loans with terms of up to six months, Mr M borrowed 11 times in the space of a year. I think the number of loans Mr M had in such a short space of time ought to have alerted Lending Stream to the possibility Mr M was in financial difficulty – and it should've at some point considered whether it was appropriate to lend to Mr M at all. I haven't seen that it considered this.

But I won't make a further finding on this point, as I think proportionate affordability checks would've in any event shown Lending Stream that loans 3-11 were not affordable, for the reasons I've given above.

what Lending Stream must do to put things right

Lending Stream must:

- refund all interest and charges Mr M paid on loans 3-11
- add to the above interest at 8% simple per year, from when Mr M paid them until he gets the refund†
- remove any adverse information about loans 3-11 from Mr M's credit history

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

my final decision

I uphold this complaint in part. Gain Credit LLC must put things right by taking the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 August 2018.

Matthew Bradford
ombudsman