complaint

Miss B has complained that Gain Credit LLC, trading as Lending Stream ("Lending Stream"), provided several short term loans which were unaffordable for her.

background

Lending Stream says it agreed 42 loans for Miss B between October 2010 and December 2016. These loans were "instalment loans" which means the amounts borrowed were due to be repaid over a number of months, in this case usually six. The table in the appendix includes some of the information Lending Stream has provided about the loans.

Miss B has withdrawn her complaint about the first loan she took out. So this decision looks at the affordability of loans 2 to 42 only.

One of our adjudicators reviewed this complaint. She thought that Lending Stream had carried out proportionate affordability checks before agreeing to loans 2 and 3. But she thought it should've carried out more detailed checks for each of the remaining loans. And if it had, she thought Lending Stream would've discovered that loans 4 to 42 weren't sustainably affordable for Miss B. So she thought it should refund the interest and charges Miss B paid towards those loans, to put things right.

Lending Stream didn't agree with our adjudicator's assessment. But in response it offered to refund the interest and charges Miss B paid towards loans 15, 18, 19, 21 and 23. Miss B didn't want to accept the offer. So because no agreement has been reached the complaint has been passed to me for a decision.

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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Based on everything I've seen I broadly agree with our adjudicator. I think the checks Lending Stream completed on loans 2 and 3 were proportionate. But I think it should've completed more detailed checks on loans 4 to 42. And if it had I think it's likely it would've discovered that Miss B wasn't able to repay those loans in a sustainable way. I'll explain why in more detail.

Lending Stream was required to lend responsibly. It needed to check that Miss B could afford to repay her loans sustainably. There was no set list of checks it needed to do, but the checks should have been proportionate to the circumstances of each loan. This might include considerations about the amount borrowed, the associated cost and risk to Miss B, her borrowing history including any indications that she might be experiencing (or had experienced) financial difficulty, and so on.

Lending Stream says it carried out proportionate affordability checks by asking Miss B about her regular income and expenditure, and by checking her credit score before it approved each loan. It hasn't provided the results of the credit checks it completed, but it has provided a record of the figures it took from Miss B at the time of each loan.

Miss B took out loan 2 in January 2011. She borrowed £135 which she agreed to repay in five instalments. This meant her highest monthly instalment was around £144, because some of the scheduled repayments for loan 2 overlapped with repayments for loan 1.

At this stage Lending Stream had Miss B's income recorded as £900. This was only Miss B's second loan, and the amount she was requesting was relatively modest when compared to her declared income. I also don't think the figure Miss B provided for her income would've seemed implausible. So in the circumstances I think it was reasonable for Lending Stream to rely on the information Miss B provided without needing to verify it.

Taking into account the amount Miss B was borrowing and needed to repay each month, I think the affordability checks Lending Stream completed for loan 2 were proportionate. I don't think it needed to do anything more before it approved this loan. And based on the information Miss B provided, the loan would've appeared affordable. So I don't think Lending Stream was wrong to have approved loan 2.

Miss B took out loan 3 in April 2011. She borrowed £215 which was due to be repaid over six instalments. This meant that several instalments on loans 2 and 3 would be due together. So Lending Stream again needed to check that Miss B could afford to repay each of the instalments and combined instalments sustainably.

The highest combined monthly repayment Miss B would need to repay was around £108. For this loan Lending Stream says took figures for Miss B's income (£900) and her regular monthly expenditure (£500). And as this was only Miss B's third loan, I still think Lending Stream was entitled to rely on the information Miss B provided, without needing to verify it.

Lending Stream was required to carry out affordability checks that were proportionate to Miss B's circumstances. And looking at the amounts Miss B needed to repay, her repayment history on her earlier loans, and her declared income and expenditure figures, I think the checks Lending Stream carried out were proportionate. So I don't think it was wrong to approve loan 3 either.

Miss B took out loan 4 in July 2011. She borrowed £155 which she agreed to repay over six instalments. So again this loan overlapped with the previous loan, and meant the highest repayment due would be around £155. Miss B was now requesting her fourth loan in relatively quick succession. And she was consistently taking out new loans before repaying earlier ones. So I think at this stage Lending Stream should've been alerted to the fact that Miss B might be becoming dependent on the loans it was providing.

Based on this, I think it would've been proportionate for Lending Stream to complete more detailed checks than it did, before it approved loan 4. I think it should've asked Miss B specifically about any other short term credit she had outstanding, in addition to asking about her income and expenses. This would've allowed it to get a better picture of her disposable income and better understand whether the loan was sustainably affordable for her.

Lending Stream says that when it asked for Miss B's expenditure, she would've needed to tick a box to say that she'd included payments towards other loans while filling the information in. But it hasn't given us anything to show this. And in any event, I would've expected Lending Stream to *specifically* ask about short term credit and not just about any other loan payments. This is so that it would've got an up to date picture of Miss B's outstanding credit commitments.

I've had a look at Miss B's bank statements to get an understanding of what her other short term credit commitments were when she took out this loan, and what I think she would've likely declared if Lending Stream had asked about them. From what I've seen, in the month she applied for this loan Miss B had around £230 outstanding from several other short term lenders.

At this stage Lending Stream had Miss B's income and expenditure recorded as £900 and £600 respectively. As with the earlier loans, I don't think these figures would've seemed implausible. And I haven't seen anything in Miss B's repayment history, up to that point, that I think would've made Lending Stream question whether the figures were accurate. So I still think it was reasonable for Lending Stream to rely on the information Miss B provided without needing to verify it.

So, taking Miss B's declared income and expenditure into account, and including her other short term credit commitments she would've been left with a disposable income of around £70. If Lending Stream had carried out proportionate checks, I think it's likely it would've discovered this. And having done so, I think it would've concluded that Miss B wasn't able to repay the combined loan repayments of around £155 in a sustainable way. So I don't think it would've approved this loan.

Miss B took out loan 5 in September 2011. She borrowed £165 over five months which meant that her repayment schedule still overlapped with one of her previous loans. This meant her highest repayment would be around £141.

This was now Miss B's fifth loan in quick succession, and she was still taking new loans before repaying previous ones. So at this stage I think Lending Stream should've taken its affordability checks even further. I think it would've been proportionate for it to build a full picture of Miss B's finances before it agreed to lend again. There are many ways it could've done this, such as asking for payslips and/or bank statements to verify the information Miss B was providing.

Lending Stream says it doesn't request bank statements when checking affordability, due to the Data Protection Act. But to my knowledge, there's nothing in the Data Protection Act which says a business can't request information from one of its customers. The regulations in place from the Office of Fair Trading (OFT) do suggest that it might be appropriate for lenders to request evidence of income and/or expenditure when assessing affordability. And based on the circumstances here, I think it would've been proportionate for Lending Stream to request some form of evidence from Miss B, at this stage.

From what I've seen of Miss B's bank statements at the time of loan 5, her income was around £990. There was also several regular expenses visible, such as insurance policies (£30), catalogues (£185), a credit card (£20), an overdraft fee (£5) and council tax (£95). But most of Miss B's outgoings, such as mortgage, food and utilities aren't easily identifiable.

Miss B has told our service her mortgage was around £120 paid using a paying in book. She also says she paid for food and utilities in cash each week, and in total they came to around £555 per month. I don't think these figures seem implausible, and looking at Miss B's statements I can see that her cash withdrawals are significant enough to cover these expenses. So I've accepted the amounts Miss B has declared here.

In addition to Miss B's regular expenses, she was also borrowing from other short term lenders. In the month before she took out loan 5 she borrowed around £230, and had around £640 outstanding in the month her first repayment was due. So if Lending Stream had carried out proportionate checks and built a full picture of Miss B's finances, I think it's likely it would've discovered this. And as a responsible lender, I think it would've concluded that Miss B couldn't afford to repay loan 5 in a sustainable way.

My finding is the same for each of the remaining loans. I say this because the largest gap between repaying one loan and taking out another was around three months. And in the circumstances I don't think that gap is long enough to mean that Lending Stream could revert to relying on the information Miss B gave about her income and expenses, without needing to verify it. So I think it would've been proportionate for Lending Stream to continue building a full picture of Miss B's financial situation before it approved each loan.

From what I've seen, Miss B's financial situation remained broadly the same throughout the remainder of her borrowing. She continued to borrow from a number of other short term lenders, in addition to Lending Stream. And she regularly spent significant amounts, when compared to her income, on online gambling each month. I've included several examples of these expenses throughout Miss B's borrowing in the table below:

month	gambling	short term credit (not including Lending Stream)
October 2012	£240	£922
March 2013	£105	£578
September 2013	£180	£1,013
January 2014	£70	£1,014
July 2014	£380	£764
December 2014	£360	£684
May 2015	£640	£368
October 2015	£420	£780
April 2016	£695	£613

Taking all of this into account, Miss B wouldn't have been able to repay any of the loans she borrowed from Lending Stream in a sustainable way. And I think it's likely Lending Stream would've discovered this, had it completed proportionate affordability checks before approving each loan.

In summary I think the checks Lending Stream completed on loans 2 and 3 were proportionate. But I think it should've completed more detailed checks for the remaining loans. I think proportionate checks are likely to have identified that Miss B was dependent on short term credit, as she was frequently borrowing from several lenders each month. And that she was regularly spending a significant amount on online gambling. So I don't think Lending Stream should've approved loans 4 to 42 for Miss B.

what Lending Stream should do to put things right

Lending Stream should:

- refund all interest and charges Miss B has paid towards loans 4 to 42 (including any late fees and default interest).
- pay interest on this refund at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Miss B's credit file.

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

I understand Miss B has balance outstanding in relation to her last two loans. So, Lending Stream may deduct this from the compensation that's due to her. To be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Miss B has made on those loans as though they were applied against the principal sum borrowed. If Lending Stream no longer owns this debt, and wants to make a deduction from the amount it needs to pay Miss B, it needs to buy it back. If it doesn't then it isn't entitled to do so.

my final decision

For the reasons I've explained above I uphold Miss B's complaint in part.

Gain Credit LLC should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss B to accept or reject my decision before 16 March 2018.

Adam Golding
ombudsman

appendix

loan number	date borrowed	amount borrowed	date repaid
2	10/01/2011	£135	23/05/2011
3	11/04/2011	£215	13/09/2011
4	28/07/2011	£155	17/02/2012
5	27/09/2011	£165	17/02/2012
6	28/11/2011	£115	13/04/2012
7	25/02/2012	£215	03/08/2012
8	26/10/2012	£315	12/04/2013
9	21/11/2012	£90	15/03/2013
10	04/03/2013	£215	02/08/2013
11	14/05/2013	£215	25/10/2013
12	10/09/2013	£250	14/02/2014
13	16/11/2013	£200	14/03/2014
14	02/01/2014	£100	17/01/2014
15	18/01/2014	£200	09/05/2014
16	14/02/2014	£50	14/03/2014
17	15/03/2014	£250	09/05/2014
18	13/05/2014	£300	24/10/2014
19	02/06/2014	£60	24/09/2014
20	27/06/2014	£50	29/08/2014
21	01/09/2014	£290	13/02/2015
22	29/09/2014	£60	15/10/2014
23	04/11/2014	£200	12/03/2015
24	24/03/2015	£300	05/06/2015
25	15/07/2015	£350	06/01/2016
26	23/08/2015	£80	08/10/2015
27	16/09/2015	£70	28/09/2015
28	04/10/2015	£130	29/11/2015
29	13/10/2015	£90	04/11/2015
30	10/11/2015	£240	04/05/2016
31	04/12/2015	£120	07/04/2016
32	07/01/2016	£70	08/04/2016
33	23/01/2016	£50	17/02/2016
34	19/02/2016	£120	05/06/2016
35	25/03/2016	£80	08/04/2016
36	13/04/2016	£330	23/09/2016
37	15/06/2016	£210	23/09/2016
38	30/07/2016	£180	13/01/2017
39	30/08/2016	£80	16/12/2016
40	26/09/2016	£240	10/03/2017
41	19/11/2016	£150	not repaid
42	18/12/2016	£150	not repaid