Financial Ombudsman Service

complaint

Mr A says Gain Credit LLC (trading as Lending Stream) irresponsibly lent to him.

background

This complaint is about six instalment loans Lending Stream provided to Mr A between April 2016 and May 2017. Mr A borrowed amounts ranging between £50 and £250 to be repaid in six monthly instalments. There was a gap of over six months between the repayment of loan two and Mr A borrowing loan three. So the loans from loan three onwards form a new chain of borrowing. Loans three to six overlapped and repayments are outstanding.

Our adjudicator upheld Mr A's complaint in part and thought loan six shouldn't have been given. Lending Stream accepted this view but Mr A disagreed. He wanted all his debt wiped off and records of the lending removed. And so the complaint was passed to me for a final 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. 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 that Mr A 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.

I think that it is important for me to start by saying that Lending Stream was required to establish whether Mr A could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") 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 A's complaint.

Lending Stream asked Mr A for information about his income and expenditure and it carried out credit checks. Mr A said he earned £1,800 a month for loan one and £1,500 for the rest of his loans. He said his monthly outgoings ranged between about £1,300 and £800 a month.

I think these checks were proportionate and sufficient for loans one and two. From these checks, it looked like Mr A could sustainably repay these loans. So I can't say it was wrong for Lending Stream to provide them. There was then a six month gap in Mr A's borrowing. So I think Lending Stream could reasonably treat loan three as the start of a new chain of borrowing and carry out the checks that were appropriate.

I think Lending Stream's affordability checks for loans three to five were proportionate and sufficient. It looked like Mr A had sufficient disposable income to repay his loans comfortably, even with the overlapping repayments.

Given the loan amounts, what was apparent about Mr A's circumstances at the time and his 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 A provided or the information Lending Stream should've been aware of, which meant it would've been proportionate to start verifying what Mr A was saying. So I can't say it was wrong for Lending Stream to provide loans three to five.

As our adjudicator explained, a proportionate check for loan six would most likely have shown that Mr A was having problems managing his money:

- He had three outstanding loans when he applied for loan six.

- He'd borrowed four times in four months.

So I think Lending Stream should have realised that Mr A wouldn't be able to sustainably repay loan six or any subsequent loans. So I think it was wrong for Lending Stream to provide loan six and I think it should put things right.

Mr A thought Lending Stream should wipe off all his outstanding debt. But we think consumers should repay the principal they have borrowed as they have had benefit of it. So I don't require Lending Stream to write off the outstanding balance.

I also don't require Lending Stream to provide redress for loans that haven't been upheld. I note that Lending Stream has agreed to set up an affordable repayment plan for the outstanding balance Mr A owes. I think that's fair and reasonable as it's the positive and sympathetic response I'd expect to his financial difficulties.

putting things right – what Lending Stream needs to do

- buy back the debt for loan six;
- refund all interest and charges Mr A paid on loan six and offset this against the principal still outstanding;
- 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 negative information about loan six from Mr A's credit file;

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

my final decision

For the reasons given above, my final decision is that I partially uphold Mr A's complaint. I require Gain Credit LLC (trading as Lending Stream) should pay Mr A compensation as set out above, as it's already agreed to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 November 2019.

Phillip Berechree
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