

## The complaint

Mr M complains through a representative that Gain Credit LLC trading as Lending Stream (“Lending Stream”) allowed him to take out loans which he couldn’t afford to repay.

## What happened

A summary of Mr M’s borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of instalments	highest repayment per loan
1	£400.00	26/07/2022	19/01/2023	6 months	£118.75
2	£460.00	03/09/2022	27/01/2023	24 weekly	£37.18*
3	£410.00	12/11/2022	28/04/2023	24 weekly	£33.13*

\*weekly cost per loan.

The “*highest repayment*” column above is the largest payment per loan, but of course where loans overlapped the total cost to Mr M would be greater. For example, in December 2022, as there were five weekly payments due for loans 2 and 3 the total cost to service the three loans came to £470.30.

Following Mr M’s complaint Lending Stream wrote to his representative to explain why it wasn’t going to uphold it because the checks showed Mr M could afford his repayments. Unhappy with this response, Mr M’s representative referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator, and she didn’t uphold the complaint about loans 1 and 2. But by loan 3 she thought Lending Stream ought to have asked further questions into Mr M’s use of other payday lenders, but having looked at his bank statements, she wasn’t able to uphold the complaint.

Mr M’s representative didn’t agree, saying that there is evidence of gambling within his bank statements. The complaint has then been passed to me for a decision. I then issued a provisional decision where I explained the reasons why I thought loan 3 only ought to be upheld.

Both parties were asked for any further submissions. Mr M’s representative let us know it accepted the findings of the provisional decision.

Lending Stream provided further submissions and a summary of what it has provided can be found below:

- The credit file data Lending Stream showed no defaults or delinquent accounts showing financial commitments were being fulfilled. There is no reason to suggest the credit results it received were inaccurate.
- Mr M had been a customer for less than four months by the time loan 3 was approved.

- Expenditure on gambling of £800 in October 2022 may have been a one-off occurrence as it wasn't as high earlier on in the relationship – and so this level of expenditure may not have been a regular pattern.
- There is also a degree of uncertainty given it was a joint account and so it's maybe fair to not solely rely on "transactional data" but also take into account the broader financial position of the account.
- In Lending Stream's view the position of the account remained stable – an overdraft wasn't being used and a significant account balance remained at the end of the month.
- There was no observed increased in borrowing – which shows Mr M was able to sustain the debt without the need to borrow further.
- There was sufficient disposable income to be able to afford the repayments.
- Lending Stream has recently received a decision outlining that having a few defaults and engaging with high-cost lenders (initially) is acceptable.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

### **What I said in my provisional decision:**

*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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.*

*Lending Stream had to assess the lending to check if Mr M could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances of the applications. Lending Stream's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr M's income and expenditure.*

*With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Lending Stream should have done more to establish that any lending was sustainable for Mr M. These factors include:*

- *Mr M having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- *Mr M having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);*
- *Mr M coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).*

*There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr M. The adjudicator didn't consider this applied in Mr M's complaint as there were two chains in the lending and I would agree.*

*Lending Stream was required to establish whether Mr M could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr M was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.*

*I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr M's complaint.*

## **Loans 1 and 2**

*As part of his application for these loans, Mr M declared a monthly income of £1,600 for loan 1 and £1,800 per month for loan 2. Lending Stream says it didn't feel it needed to make any adjustments to the income figures based on what it knew about Mr M.*

*Mr M also declared monthly outgoings of £1,130 for loan 1 and £1,000 for loan 2. For each of his loans the monthly expenditure figure was broken as either "normal expenses" or "credit commitments".*

*However, Lending Stream says it looks at other information such as statistics that relate to the general population and it considered how much people typically spend with their income. Having carried out this further check, Lending Stream didn't consider that it needed to adjust the figures Mr M had declared. Therefore, Lending Stream believed that Mr M had more than sufficient disposable income to be able afford the largest combined monthly repayment of £304.65.*

*Before each loan was approved Lending Stream also carried out a credit search and it has provided the Financial Ombudsman with a summary spreadsheet of the results it received from the credit reference agency. I want to add that, although Lending Stream carried out a credit search, there isn't a regulatory requirement to do one, let alone one to a specific standard.*

*Lending Stream was also entitled to rely on the information it was given by the credit reference agency. So, I've looked at the results to see whether there was anything contained within it that would've either prompted Lending Stream to have carried out further checks or possibly have declined Mr M's application.*

*Lending Stream hasn't been able to provide the comprehensive set of results that it usually provides for complaints about unaffordable lending and it isn't clear why this is the case. But I do know, from working other cases that Lending Stream usually only asked for details of the outstanding balances that Mr M had at the time, the value of any mortgage payments and the number of months since Mr M's most recent account entered default.*

*What I can say is that for both loans Mr M had 12 active accounts and at loan 2, perhaps an indication in the month before it was agreed that there may have been a repayment problem on one of Mr M's active accounts. But given the number of accounts and the fact there was a lack of any other adverse payment information, I am intending to conclude that the credit search results wouldn't have been enough to have prompted further checks or to have declined the loan.*

*Given it was early on in the lending relationship, I think it was reasonable for Lending Stream to have relied on the information Mr M provided to it – which showed he had sufficient disposable income to afford the repayments. There also wasn't anything to suggest that Mr M was having either current financial difficulties or to indicate the loan repayments would be unsustainable for him.*

*Taking everything into account, I do not uphold Mr M's complaint about loans 1 and 2.*

## **Loans 3**

*Lending Stream carried out the same sort of checks before this loan was approved as it did for loans 1 and 2. This time, Mr M declared a monthly income of £2,320 – a significant increase on what he had declared before. He also declared outgoings of £1,100. As before, Lending Stream didn't make any adjustments to these figures.*

*A credit search was also carried out and the same caveats apply to the results that Lending Stream has been able to provide for these loans. As before some of the information is incomplete, so Lending Stream did not know how long ago it was since the last default (if there was any) or how long-ago Mr M had an account enter delinquency.*

*But it did know Mr M had 14 active accounts and his monthly commitment was at least £277 to service these other accounts. This does seem quite low considering the number of accounts that Lending Stream was told about but it is of course possible some of these had low balances or were accounts that were still open but which Mr M didn't use.*

*For loan 3, I think it's fair to say that Lending Stream knew that Mr M had £277 of existing commitment (and only possibly as some of the other loans could be factored into this figure) but in December 2022 he was due to pay Lending Stream £470.30. And on top of this, Lending Stream also knew of £975 of general living costs bringing Mr M's total outgoings to around £1,722.30 – so the loan may have looked affordable.*

*However, I've also considered everything else that Lending Stream knew, and I do think that by this loan further checks needed to have been conducted. Mr M now had three loans running concurrently, and although he appeared to be making his payments for loans 1 and 2 without any difficulty his monthly costs to service these loans had significantly increased, from around £118 per month at loan 1 to now up to around £470 per month. I do think this large increase ought to have given Lending Stream cause for concern.*

*On top of this, his income had increased with each loan even though Mr M had remained with the same employer. But given the relatively short period of time the loans were granted over I do think further checks needed to have been conducted so that Lending Stream was satisfied this loan was both affordable and sustainable.*

*Lending Stream could've gone about doing this a number of ways, it could've asked for evidence of his income as well as copy bills, a copy of his full credit report, bank statements or any other documentation Lending Stream felt it needed to obtain.*

*Mr M's representatives has provided a copy bank statement from Mr M from the month before the final loan was granted so I think it's entirely reasonable to consider it. I would point out though that, the bank statements provided are for a joint account between Mr M and another party it's possible that some or all of the payments may not be related to Mr M's expenditure.*

*However, whilst I can see Mr M's income being paid into the account there doesn't appear to be any other sources of income apart from benefits. Knowing this I don't think it's unreasonable to conclude that in effect there was one main source of money that Mr M paid into that went towards supporting the household.*

*I've looked back through the bank statements from August 2022 and at that time I can see the salary from the company Mr M declared he worked for – however, this salary then stopped being received (during this time there wasn't any other salary received into the account). Then a new salary from a different company is being received at around £540 per week, so what Mr M declared as his income at around the time of loan 3, appears to be broadly accurate.*

*I can see that there are costs for running vehicles, other credit cards and insurance products as well as the rent which was costing £495 per month. So just the rent and the payments to Lending Stream was costing around £1,000 per month. On top of this there is money being used for gambling and betting sites, in October 2022, so the month before this loan was approved around £800 was spent on such transactions.*

*So, I don't think, given the other costs I can see such as food, insurances and other day to day living costs, that Mr M had enough money to be able to afford the repayment for this third and final loan. In my view the loan was unaffordable, and Lending Stream would've likely known this had it carried out what I consider to be a proportionate check.*

*I am therefore intending to uphold Mr M's complaint about loan 3 only.*

## **What I've decided – and why**

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

Having taking account of the new submissions by Lending Stream I am still intending to conclude that the final loan ought to not have been granted because further checks would've shown that Mr M wasn't likely able to afford it.

My reasons for upholding the complaint are the same as they were in the provisional decision, that being I do think further checks were needed before granting the third loan – and had further checks been conducted than Lending Stream ought to have concluded that the loan repayments were neither affordable of sustainable for Mr M.

Firstly, the issue of the credit check results. Lending Stream has clarified in response to the provisional decision that there wasn't any delinquent or defaults recorded in the results when loan 3 was approved. The reason why I said the data may have been incomplete is because for loan 3, it has provided details of the "RN" number – which is the total cost of some of Mr M's monthly credit commitments – which amounted to £277. But this figure is blank for loans 1 and 2 despite Lending Stream knowing that he had 12 active accounts.

It's also worth saying here that Lending Stream accepted Mr M's monthly credit commitments of £125 – so Lending Stream knew that at minimum Mr M's monthly credit commitments were more than double that what he had declared – and yet as far as I can see no adjustment was made to reflect this.

In addition, for loan 2, it was given some information to suggest an account may have recently been in delinquency, but that there is no data at all, in relation to this for loan 3. However, Lending Stream has now clarified there were no defaults / and or delinquent accounts. I'm prepared to accept this for the purposes of the affordability assessment, but that still doesn't change the outcome I've reached.

Linked to this is the comment around Mr M's increasing (or not) indebtedness. But, from the evidence provided in the credit search I'm not sure how Lending Stream could say this. Afterall, it knew by the final loan that Mr M had 14 active credit accounts, which was an increase of 2 when loans 1 and 2 were granted.

Given this, it seems unlikely, that the debt would've decreased, but even if it had – and to be clear I can't say with any certainty that it did, because I don't know how much overall debt Mr M had. But what I can say is that by loan 3, Mr M still had loans 1 and 2 outstanding. This meant, a combined monthly repayment of around £470 was payable by Mr M solely to Lending Stream – which is a significant increase compared to the start of the lending relationship.

It's this overall value of payments to Lending Stream each month, along with this being the third active loan, which ought to have led it to conclude that further checks were needed. Lending Stream that says while Mr M had been gambling while it lent to him, it hadn't been as high as the £800 – in the month before the loan was advanced.

I've thought about this, but I don't think I can fairly conclude that had Lending Stream known about Mr M's gambling (at the time) was as high as £800 and it expected it to drop the following month the loan should have been granted. Indeed, that wouldn't be sustainable, because Lending Stream is in effect saying that the gambling needed to reduce in order to make the loan affordable – and that was in no way guaranteed.

And while the gambling may not have been as high previously, there were indicators that Mr M was regularly spending sums on such sites – indeed in September 2022 the total spent on such sites came to £450. But the regularity of the transactions ought to have been of concern for Lending Stream as well.

I've also considered Lending Stream's comments around the bank account being joint and the wider position of the account, but I had already considered this as part of my review of the complaint. Although having reviewed the bank statements again, there does appear to be benefit payments being received into the account.

But even factoring in the salary that I can see Mr M received as well as the household benefits, given the commitments that he had to make to rent, Lending Stream and what was being spent on gambling and betting sites makes this loan likely unaffordable and unsustainable.

Finally, Lending Stream has commented on another decision it has recently received, whereby the Ombudsman in that complaint, said it was acceptable for there to be some adverse payment information such as defaults.

I've thought about this and while its pleasing to see that Lending Stream are trying to learn from the decisions that are issued, I don't see the relevance in this complaint. Considering Lending Stream has confirmed that there weren't any defaults or delinquent accounts at the time and that wasn't and isn't the reason why I am upholding Mr M's complaint.

So, I still think Mr M's complaint ought to be upheld about loan 3, for the reasons I gave in the provisional decision as well as the reasons outlined above. I've therefore set out below what Lending Stream needs to do in order to put things right for Mr M.

### **Putting things right**

In deciding what redress Lending Stream should fairly pay in this case I've thought about what might have happened had it not lent loan 3 to Mr M, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr M in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Lending Stream's liability in this case for what I'm satisfied it has done wrong and should put right.

I think that Lending Stream shouldn't have given Mr M's loan 3 so it should:

- A. Lending Stream should add together the total of the repayments made by Mr M towards interest, fees and charges on loan 3.
- B. Lending Stream should calculate 8% simple interest\* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
- C. Lending Stream should pay the total of "A" and "B".
- D. Lending Stream should remove any adverse information recorded on Mr M's credit file in relation to loan 3.

\*HM Revenue & Customs requires Lending Stream to deduct tax from this interest. Lending Stream should give Mr M a certificate showing how much tax it has deducted, if he asks for one.

### **My final decision**

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint in part.

Gain Credit LLC trading as Lending Stream should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 March 2024.

Robert Walker  
**Ombudsman**