

## The complaint

Miss M complains, through a representative, that Gain Credit LLC trading as Lending Stream (“Lending Stream”) provided her with loans without carrying out sufficient affordability checks.

## What happened

A summary of Miss M’s borrowing can be found in the table below;

loan number	loan amount	agreement date	repayment date	number of weekly instalments	largest weekly repayment
1	£100.00	09/02/2017	16/06/2017	24	£10.60
2	£200.00	07/04/2017	24/08/2017	24	£21.20
Gap in lending					
3	£300.00	29/04/2018	18/10/2018	24	£31.80
Gap in lending					
4	£300.00	14/03/2019	23/04/2020	24	£23.20
5	£150.00	27/07/2020	17/02/2021	24	£11.86

The largest repayment column is the cost per loan, but where loans overlapped the cost was greater. For example, when loans 1 and 2 were running concurrently, Miss M’s contractual repayment was no more than £31.80 per week. For loans 1 to 3 the amount Miss M was due to pay Lending Stream varied week on week. Whereas for loans 4 and 5 the amount Miss M was due to pay was fixed each week.

Following Miss M’s complaint, Lending Stream explained why it wasn’t going to uphold it. This was because the checks it carried out showed that Miss M could afford these loan repayments. Unhappy with this response, Miss M’s representative referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator, and she explained why the checks were proportionate, which showed Lending Stream these loans were affordable - bearing in mind the investigator considered there was at least two chains of lending.

Miss M’s representative didn’t agree. They said before loan 3 was granted, the consumer had taken out a large loan with a home credit provider and had fallen into arrears - to the extent that she needed a debt management plan. In addition, five months before loan 3, Miss M was over her credit limit on a credit card. Finally, Miss M also defaulted on loan 4, and yet the fifth loan was still granted.

As no agreement could be reached the complaint was then passed to me. I then proceeded to issue a provisional decision where I upheld the complaint in part about loan 5.

Both parties were asked for any further submissions as soon as possible, but in any event, no later than 1 February 2024.

Lending Stream agreed with the findings in the provisional decision, and it made an offer to put things right. Miss M's representative was informed of the offer, and it also agreed with the outcome.

A copy of the provisional findings follows this 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. And I've used that to help me decide this complaint.*

*Lending Stream had to assess the lending to check if Miss M could afford to pay back the amount she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances of the application. 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 Miss 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 Miss M. These factors include:*

- *Miss 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);*
- *Miss 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);*
- *Miss 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 Miss M. The investigator didn't consider this applied in Miss M's complaint and I agree, given the number of loans, values of the loans and the gaps between them.*

*Lending Stream was required to establish whether Miss M could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss M was able to repay her 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 Miss M's complaint.*

### **Loans 1 to 4**

*When looking at these loans, I've kept in mind that there are at times significant gaps between when a loan is repaid and when a new one was advanced. For example, there is an 8-month gap between Miss M repaying loan 2 and being advanced loan 3. These gaps are long enough in my view for Lending Stream to have treated Miss M's application afresh and so for these four loans, there are three chains of lending.*

*As part of her application for all of these loans, Miss M declared a monthly income of £900*

for loan 1, £1,500 per month for loans 2 and 3 and then £1,180 per month for loan 4. Lending Stream says it didn't feel it needed to make any adjustments to this income figure based on what it knew about Miss M. For these loans, I think it was entirely proportionate for it to use the income figure provided by Miss M, without the need to verify it.

Miss M also declared monthly outgoings of £550 for loan 1 and then £150 for loans 2 to 4. For each loan this figure was broken down into "normal expenses" and "credit specific expenses". For example, for loan 1 Miss M declared £300 of normal expenses and £250 of existing credit commitments.

Lending Stream says it looked 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, the only adjustment Lending Stream made was to the normal living expenses for loan 2 – when it increased these by a further £83 per month. But even with the adjustment, Miss M still had sufficient disposable income to afford the loan.

Before each loan was approved, Lending Stream 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 Miss M's application.

Having looked at the credit check results, in my view there wasn't anything that would've prompted Lending Stream to have carried out further checks before the loans were advanced. I also can't see anything to have prompted it to have carried out further checks – given the results it received.

I've thought about what Miss M's representative has said about needing a DMP and having problems repaying a loan shortly before loan 3. But this doesn't appear to have been reflected in the information Lending Stream received – and as that was a first loan of a new chain, I think it was reasonable for Lending Stream to have relied on the information it received from Miss M and the credit reference agency.

And from the information that it did receive, it showed she had sufficient disposable income to afford the repayments.

Taking everything into account, I am intending to not uphold Miss M's complaint about loans 1 to 4. This is because Lending Stream carried out proportionate checks which showed these loans to be affordable.

## **Loan 5**

Lending Stream says there was a gap in lending between loans 4 and 5, and I can understand that – the gap was around three months. However, in this case, I don't think it's fair to say that a new lending chain has started with loan 5. Miss M had been indebted through loan 4 for about a year and so a three-month gap isn't enough, in my view, to have broken the chain. I've kept that in mind when thinking about the checks Lending Stream carried out.

The same checks were conducted before this loan was advanced as Lending Stream had previously carried out. Miss M declared a monthly income of £1,240 with outgoings of £325. Lending Stream adjusted these expenditure figures up by £83.20 per month, but this still left sufficient disposable income to afford the repayments.

The credit check results, showed that in total Miss M had three defaults recorded on her

*credit file and three loans had entered delinquency within the last year. The most recent delinquent account had been recorded six months before, which given the problems she had with repaying loan 4 – which I will come on to below - are likely related to that.*

*But Lending Stream knew of Miss M had significant repayment problems connected to loan 4. This loan ought to have been repaid in August 2019, but it took Miss M more than twice as long as the original term to fully settle the loan. Indeed, due to non-repayment of the loan, Lending Stream took additional steps including issuing a notice of default on 26 October 2019. Then, when Miss M did contact it and start payments again with Lending Stream in February 2020, it took her nearly two months to repay about £80 worth of arrears.*

*To me, it isn't clear why - given it had taken twice as long for loan 4 to be repaid and those difficulties persisted to the point that a default needed to be applied - Lending Stream thought it reasonable to have advanced loan 5 without any additional checks being conducted. At the very least, it needed to have made enquires with Miss M to find out whether the difficulties she had experienced in 2019 had since passed. I do think, before loan 5, Lending Stream needed to have had a greater consideration as to the state of Miss M's overall finances.*

*I do therefore think it's arguable, given the previous repayment problems, that it was enough for Lending Stream to have perhaps realised that Miss M would unlikely be able to make her repayments without having further difficulties. But even if Lending Stream hadn't concluded this, I still think the previous repayment problems ought to have prompted it to consider whether it knew enough about Miss M's actual financial position, for it to be satisfied that the borrowing was sustainable.*

*Lending Stream could've gone about reviewing and verifying the information Miss M had provided a number of ways. It could've asked to see evidence of her income, her outgoings, bills, bank statements or asked to see a full copy of her credit report – not just the information it received from the credit reference agencies. This would've enabled Lending Stream to have probed further, as to why Miss M appeared to have had previous payment difficulties. Lending Stream didn't do this and so I'm satisfied, in the circumstances it hasn't carried out a proportionate check.*

*Miss M's representative has provided a copy of her credit file. Although it was generated in 2023, it covers the last six years, and so will provide details of her credit balances and details of other credit accounts that were active at the time loan 5 was granted.*

*Miss M had a number of loans and mobile phone contracts to pay and these alone were costing her £800 per month – which was taking up nearly 70% of her declared income. On top of this, Lending Stream would've also likely discovered she was having significant payment problems repaying a home credit loan – that was meant to be costing Miss M £30 per week. But Lending Stream would've seen that for a period of at least a year no payments had been made and it was only in the months before this loan was approved, that she started to make any sort of headway into repaying the balance.*

*Overall, the credit checks showed that Miss M had other repayment problems serving other debt and was due to pay these other creditors a significant portion of her income each month. I think better checks would've shown Lending Stream this and had it made better checks it wouldn't have lent to Miss M.*

*I am therefore intending to uphold the complaint about loan 5 only and I've set out below what Lending Stream needs to do, in order to put things right for Miss M.*

### **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.*

No new submissions were provided in response to the provisional decision and both parties have now accepted the outcome that I outlined in the provisional decision I therefore, see no reason to depart from those findings and I still don't think Lending Stream should've advanced loan 5 to Miss M.

I've outlined below what Lending Stream has already agreed to do in order to put things right for her.

### **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 5 to Miss 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, Miss M may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she 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 she 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 responsible lender would have been able to lend to Miss 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 Miss 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.

Lending Stream shouldn't have given Miss M loan 5. So, to put things right:

- A. Lending Stream should add together the total of the repayments made by Miss M towards interest, fees and charges on this loan, including payments made to a third party where applicable, but not including anything Lending Stream have already refunded.
- B. It should calculate 8% simple annual interest\* on the individual payments made by Miss M which were considered as part of "A", calculated from the date Miss M originally made the payments, to the date the complaint is settled.
- C. Lending Stream should pay Miss M the total of "A" plus "B".
- D. It should remove any adverse information recorded on Miss M's credit file in relation to loan 5.

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

### **My final decision**

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 7 March 2024.

Robert Walker  
**Ombudsman**