DRN-4617024

Financial Ombudsman Service

The complaint

Mr W complains that Gain Credit LLC trading as Lending Stream ("Lending Stream") irresponsibly lent to him and didn't complete sufficient affordability checks.

What happened

A summary of Mr W's borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£250.00	19/01/20219	24/05/2019	6	£89.45
2	£360.00	01/05/2019	28/09/2019	6	£120.22
3	£170.00	31/05/2019	31/07/2019	6	£56.87
4	£50.00	11/07/2019	31/07/2019	6	£15.67
5	£160.00	02/02/2020	30/06/2020	6	£52.48
6	£60.00	09/02/2020	30/06/2020	6	£18.77
7	£180.00	11/02/2020	29/05/2020	6	£55.55
break in lending					
8	£300.00	17/01/2022	sold	6	£89.18
9	£250.00	20/02/2022	sold	6	£88.31
10	£230.00	21/02/2022	sold	6	£80.75

The "*highest repayment*" column above is the largest payment per loan, but of course where loans overlapped the total cost to Mr W would be greater. For example, when loans 1 and 2 were running at the same time, Mr W would need to pay Lending Stream £209.67 per month.

Mr W had some problems repaying his final three loans and Lending Stream says these were sold to a third-party collection agency on 21 April 2022. Mr W has also said these loans are being repaid through a debt management plan. If he has any concerns about the debt management plan, in the first instance he should speak to the agency who put the plan into place.

Following Mr W's complaint Lending Stream wrote to him to explain why it wasn't going to uphold the complaint about any of the loans. Unhappy with this outcome, Mr W referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator, and he didn't uphold the complaint about loans 1 to 5 and loans 8 to 10. This was due to the checks carried out, but also because there was a significant break in borrowing between loans 7 and 8.

But he thought loans 6 and 7 ought to not have been granted because the pattern of lending was now harmful for Mr W and the investigator recommended Lending Stream pay compensation.

Lending Stream agreed with the investigator's recommendation.

Mr W didn't fully agree, saying some of the loans were taken close together for example his final two loans were all taken within days of each other.

As no agreement could be reached the case has been passed to me to decide.

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.

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 W 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 W'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 W. These factors include:

- Mr W 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 W 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 W 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 W. The investigator thought this applied to loans 6 and 7 and Lending Stream agreed with this.

Lending Stream was required to establish whether Mr W 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 W 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 W's complaint.

Loans 1 – 5

As part of his application for these loans, Mr W declared, and Lending Stream has recorded, that he had a monthly income of £1,200 for loans 2 – 4 and £1,300 per month for loans 1 and 5. Lending Stream says it didn't feel it needed to make any adjustments to the income figures based on what it knew about Mr W. I consider this a reasonable approach to take given the capital advanced and the small break in lending between loans 4 and 5.

Mr W also declared monthly outgoings of between £550 and £800 per month for loans 1 – 4 and then after the small break in lending, for loan 5 these costs were declared as being £300 per month. For each of his loans the monthly expenditure figure was broken as either "*normal expenses*" or "*credit-specific commitments*".

Lending Stream says it looked at other information such as available 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 make any adjustments to the figures it was provided with. Overall based on what Mr W declared Lending Stream could reasonably believe these loans were potentially affordable.

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'd also add that there is no regulatory requirement for a credit search to be carried out, 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 W's application.

When these loans were approved, Lending Stream was on notice that in the not too distance past Mr W had defaulted on at least one account and had another account become delinquent. However, at the point at loan 1 was granted, these adverse payment markers had been recorded over a year before. Given there hadn't been any new adverse payment information I don't think this information would've been of concern to Lending Stream.

As part of his application for loan 5, Mr W declared that he had monthly credit commitments of £75 and no adjustments were made to this sum. But this amount was clearly incorrect, given the credit check results indicated Mr W's monthly cost were around £700 per month.

But, even if Lending Stream had substituted the figure it was given in the credit checks into the rest of his monthly expenditure, Lending Stream would've still thought the loan was just about affordable. Overall, the credit search results weren't enough to have prompted further checks or to have declined the credit applications.

Taking everything into account, I am not upholding Mr W's complaint about these loans.

Loans 6 and 7

In response to the investigator's assessment, Lending Stream agreed that these loans ought to not have been granted and it agreed to pay compensation to Mr W as outlined by the investigator.

Therefore, as Lending Stream has accepted these loans ought to not have been granted, I say no more about them. But for completeness I've outlined below what Lending Stream has accepted that it needs to do in order to put things right for Mr W.

Loans 8 – 10

There was then a significant break in borrowing between when Mr W settled loan 7 and when he returned for loan 8 of around 19 months. This gap was large enough for Lending Stream to have treated Mr W's application afresh. So even though Mr W was approaching

Lending Stream for his ninth loan, it could be treated as the first loan in a new lending chain and that will have implications for what a proportionate check may have been.

Lending Stream carried out the same sort of checks for these loans as it had done so with Mr W's previous loans. Mr W's income was recorded as being £1,500 or £1,600 per month. The incomes are close enough that I don't think the increase would've prompted Lending Stream to have carried out further verification checks. For new loans in a lending chain, it was fair and proportionate for Lending Stream to have relied on what it was told.

Mr W's outgoings were recorded as being £525 and £700 per month – based on the information declared to Lending Stream it would've been reasonably confident Mr W would be able to afford these loans.

Credit searches were also carried out and the same caveats apply to the results. Having reviewed the results, I don't think there was anything contained within them that would've prompted Lending Stream to have undertaken further checks. It knew that he had five active accounts and at most, his credit commitments were costing around £387 per month.

The credit checks showed that Mr W's credit commitments were greater than he had declared to Lending Stream as part of his application. But as before, had Lending Stream used the credit commitment given to it by the credit reference agency it still would've thought the loans were affordable.

I've also thought the fact that by loan 10 was granted Mr W now had monthly commitments to Lending Stream of around £258 – which was a sizable increase from the start of this lending chain.

I've also considered that loans 9 and 10 were taken a day apart. And in some situations, these factors may have been sufficient to have prompted further checks. But in the individual circumstances of this complaint given this was a new chain of lending, the amounts Mr W borrowed and I'm satisfied that proportionate checks were conducted has led me to conclude that Lending Stream didn't make an error when it approved these loans.

Taking everything into account, I am also not upholding Mr W's complaint about loans 8 - 10.

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 loans 6 and 7 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 W 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 W 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 W 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 Mr W loans 6 and 7.

Lending Stream has sold the outstanding debts and so Lending Stream should buy these back if it is able to do so and then take the following steps. If Lending Stream are not able to buy the debts back then Lending Stream should liaise with the new debt owner to achieve the results outlined below.

A. Lending Stream should add together the total of the repayments made by Mr W towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Lending Stream may have already refunded.
B. Lending Stream should calculate 8% simple interest* on the individual payments made by Mr W which were considered as part of "A", calculated from the date Mr W originally made the payments, to the date the complaint is settled.
C. If Lending Stream wishes to buy the debts back then it can then use the amounts calculated in "A" and "B" to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Mr W. However, if there is still an outstanding balance then Lending Stream should try to agree an affordable repayment plan with Mr W but from what Mr W has said is that these outstanding loans are being repaid through a debt management plan.
D. The overall pattern of Mr W's borrowing for loans 6 and 7 means any information recorded about them is adverse, so Lending Stream should remove these loans entirely from Mr W's credit file.

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

My final decision

For the reasons given above, I am upholding Mr W's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 April 2024.

Robert Walker
Ombudsman