

The complaint

Mr R complains that Gain Credit LLC trading as Lending Stream (“Lending Stream”) gave him loans without carrying out the correct affordability checks. Had it made better checks, he says it would’ve likely discovered he had defaults recorded on his credit file and he was stuck in a cycle of borrowing.

What happened

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

| loan number | loan amount | agreement date | repayment date | number of monthly repayments | Largest monthly repayment per loan |
|-------------|-------------|----------------|----------------|------------------------------|------------------------------------|
| 1 | £100.00 | 16/03/2023 | 23/03/2023 | 6 | £35.02 |
| 2 | £950.00 | 07/04/2023 | 24/04/2023 | 6 | £291.02 |
| 3 | £990.00 | 24/04/2023 | 01/05/2023 | 6 | £329.45 |
| 4 | £150.00 | 15/06/2023 | 23/06/2023 | 6 | £52.34 |
| 5 | £500.00 | 18/07/2023 | 24/07/2023 | 6 | £172.87 |

Following Mr R’s complaint, Lending Stream wrote to him to explain why it wasn’t going to uphold it about loans 1 - 4. However, for loan 5, Lending Stream said:

“Although this loan was affordable, we thought about the number of loans and the time between each loan being taken out. We can see that it might not have been a good idea for us to make this loan.”

It then offered to put things right for Mr R by refunding the interest and charges he paid towards the loan, along with 8% simple interest and it would also remove any adverse credit file data recorded about this loan.

Unhappy with this response and offer, Mr R referred the complaint to the Financial Ombudsman.

The case was then considered by an investigator who upheld the complaint in full. She said that while the checks Lending Stream carried out appeared proportionate given the amount of disposable income Mr R had, when loan one was advanced, she thought that was sufficient for it to conduct further checks to get a true picture of his financial position.

Had further checks been conducted, Lending Stream would’ve likely discovered shortly before loan one was advanced, he had defaulted on an account, and he was repaying other payday loan companies over £1,000 per month.

She also raised concerns with the information Lending Stream accepted from Mr R about his income and expenditure and the fact it made adjustments to the figures for loan one but not for the other four loans.

Finally, she thought the same checks needed to have been conducted – that is a further

review before loans 2 – 5 were given and had it done so, it would've discovered that these loans were neither affordable nor sustainable.

Lending Stream didn't agree with the proposed outcome and said in summary:

- Mr R had enough disposable income to repay loan one.
- These loans are tailored for people who need a small amount of credit for short periods. As it was the first loan, there was no need for Lending Stream to carry out further checks.
- A thorough evaluation of Mr R's income and expenditure was carried out and there were no triggers to have led Lending Stream to believe it needed to carry out further checks.

No agreement could be reached, the complaint was passed to me and I proceeded to issue a provisional decision explaining the reasons why I thought Lending Stream ought have not have advanced loans 3 – 5. Both parties were asked for any further submissions as soon as possible, but no later than 7 March 2024.

Lending Stream responded and agreed with the findings that I made in the provisional decision. The Financial Ombudsman hasn't heard from Mr R.

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 Mr R 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 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 Mr R'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 R. These factors include:

- *Mr R 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 R 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 R 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 R. The investigator didn't consider this applied in Mr R's complaint and I would agree, given the number of loans and the sums lent.

Lending Stream was required to establish whether Mr R 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 R was able to repay his loans sustainably. But it doesn't automatically follow that this was the case.

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

Loan 1

As part of his application, Mr R declared a monthly income of £2,100. Lending Stream says it didn't feel it needed to make any adjustments to this income figure and it had no reason to doubt the accuracy of the amount declared by Mr R.

Mr R also declared total monthly outgoings of £795. This figure was broken down as either "normal expenses" or "credit specific expenses". For this loan Mr R declared all of his outgoings were for normal expenses with zero going towards credit commitments.

Lending Stream also said 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, Lending Stream added an additional £173 per month to Mr R's declared monthly outgoings and then £201 towards his credit expenditure. Therefore, for its credit assessment it believed Mr R's monthly outgoings came to £1,169.

Lending Stream also carried out a credit search and it has provided 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 R'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 loan was advanced. It knew that Mr R had at least 14 active accounts, and the most recent default was recorded around eight months before the loan was approved. I appreciate this is different information to what the investigator saw when she reviewed Mr R's complaint. But the information Lending Stream was given didn't show a recent default and as I've said it was entitled to reply on the results of its credit search.

The previous default, could in some situations could be a sign of ongoing financial difficulties, given how close the default was to the account start date. But there wasn't any other signs of difficulties either in the information Mr R provided or from the results of Lending Stream checks.

Overall, given what Lending Stream was told, I think it was just about reasonable for it to conclude that Mr R wasn't in financial difficulties, or to have prompted it to carry out further checks at the time of these loans being approved.

So, while I understand why the investigator thought further checks were warranted, I don't agree additional checks were needed. I accept that if Mr R had as much disposable income as lending Stream believed than it does call into question why he needed such a small loan. But the onus is on Lending Stream to conduct proportionate affordability checks and I'm satisfied it has done that here.

I've weighted this up against the fact this was for a first loan where the capital sum was modest and the monthly repayments even smaller. The checks also showed there was

sufficient affordability. Lending Stream also reacted to the credit check results by increasing Mr R's credit commitments in its calculations.

Taking everything into account, I am intending to not uphold Mr R's complaint about this loan.

Loan 2

Around two weeks after Mr R repaid loan one much quicker than planned, he returned for a significantly larger capital loan which resulted in larger monthly repayments. The fact that Mr R returned for a new larger loan fairly quickly after loan one was repaid, isn't on its own a sufficient reason to expect Lending Stream to have automatically carried out further checks.

Mr R declared the same income as he did for loan one, which isn't surprising given the close proximity of the loan. Mr R also declared total monthly outgoings of £900. Lending Stream once again considered the information Mr R provided but unlike loan one it didn't make any adjustments to what he declared.

I do have some concerns with this approach. Firstly, out of the living costs that Mr R declared he told Lending Stream he had existing credit commitments of £125 per month whereas Lending Stream's credit checks indicated these costs were at least £206 per month. It's worth mentioning here that the credit check results were similar to those received at loan one – and so not enough to have prompted further checks.

I've not read too much into the fact this estimated credit commitment figure is very similar to loan one because this loan was advanced around a month later. But Lending Stream should've added another £81 to his outgoings to reflect the increased cost.

In addition, for loan one Lending Stream increased Mr R's regular living costs by £173 but didn't do this for loan two, and it isn't clear why. Given how close the loans were together I think it would've been reasonable given just a month earlier Lending Stream thought the costs were higher it should've applied the same amounts here.

There is potentially an argument here for Lending Stream to have carried out further checks, but for a second loan I think that would've been disproportionate. Instead, I think Lending Stream ought to have used the same figures it calculated for loan one, so it should've taken what Mr R declared for his outgoings of £900 and to that added the difference in the cost of his credit commitments of £81 and then added a further £173 which Lending Stream added to loan one's living costs. Had it done this, which I think would've been the right course of action it would've led to a total monthly outgoing of £1,154.

But even if Lending Stream had taken this action – which I think would've been proportionate then Lending Stream would've still concluded that Mr R had sufficient disposable income to afford the monthly contracted payments. I am therefore intending to not uphold Mr R's complaint about this loan.

Loans 3 and 4

The same checks that Lending Stream carried out for the previous loans were again carried out here. This time, for loan three, Mr R's declared income had increased by £100 per month, this isn't such a large enough increase that it ought to have been of a concern to Lending Stream. Lending Stream also made enquires with Mr R about his expenditure and the figures he provided were similar to loan two – this time he declared his outgoings were £975 per month.

I again have concerns about the fact that no adjustments were made to these figures given that Lending Stream knew these couldn't be correct. Firstly, the credit check results indicated Mr R's commitments were greater than what he declared to Lending Stream. Secondly for loan one – which was only taken just over a month before had led it to increase his living costs by a further £173.

Mr R repaid loan two much quicker than planned, and by doing so, he had in effect used around half of his declared income to settle it – just over £1,000. Then on the same day that loan two was repaid, Mr R returned to Lending Stream for again a larger loan – this resulted in contracted payments of nearly £330 per month.

This ought to have led Lending Stream to ask further questions of Mr R to establish why he needed to return for such a large loan on the same day he had repaid a similar loan and to have understood what his actual outgoings were.

Lending Stream could've gone about verifying the information a number of ways. It could've asked to see a copy of his full credit report, copy wage slips / bills and / or it could've copy bank statements.

Mr R has provided copy bank statements for his accounts from around the time this loan was approved so I think it's entirely fair and reasonable for me to review these. I accept that what I'm able to see now may not have been available to Lending Stream at the time, but I have to now try and recreate what I consider a proportionate check may have shown it.

Had Lending Stream carried out the sort of checks that I think it needed to, it would've discovered that he was operating a high cost running credit facility that was costing around £850 per month to service. He also had credit cards costing a minimum of £300 per month to repay and a credit union loan costing £150 per month. On top of that he had a number of direct debits for things such as mortgages, council tax and other insurances – these were costing Mr R at least £800 per month.

On top of the credit commitment and direct debit costs Mr R also had his regular everyday living costs such as food and travel. Given the outgoings that I can see in his bank statement Mr R didn't have sufficient funds to be able to afford the monthly contracted payment for this loan or any of the other loans that were granted.

I am therefore intending to uphold Mr R's complaint about loans three and four.

Loan 5

Lending Stream has already accepted something went wrong with this loan and it has offered to pay compensation to Mr R in line with what the Financial Ombudsman would have recommended had we decided the loan shouldn't have been advanced. I say no more about this loan because it is no longer in dispute, but I have included what Lending Stream needs to do in the section below.

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.

As no new submissions have been provided, I see no reason to depart from the findings that I reached in the provisional decision. Lending Stream had already agreed to pay compensation for loan 5, and I also thought, given Mr R's lending history further checks were needed before loans 3 and 4 were granted. Had those further checks been conducted Lending Stream would've likely concluded loans 3 and 4 weren't affordable for the reasons I outlined in the provisional decision.

I therefore have concluded Lending Stream ought to not have advanced loans 3 – 5 and I've set out below what Lending Stream needs to do, and what it has agreed to do, in order to put things right for Mr R.

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 stopped lending to Mr R from loan 3, 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 R 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 R 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 R 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 R loans 3 – 5. So, I currently intend to say that it do the following.

- A. Lending Stream should add together the total of the repayments made by Mr R towards interest, fees and charges on these loans.
- B. To this it should calculate 8% simple interest* on the individual payments made by Mr R which were considered as part of "A", calculated from the date Mr R originally made the payments, to the date the complaint is settled.
- C. It should pay Mr R the total of "A" plus "B".
- D. Lending Stream should remove any adverse information it recorded on Mr R's credit file in relation to loans 3 - 5.

*HM Revenue & Customs requires you to deduct tax from this interest. You should give Mr R 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 R's complaint in part.

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

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

Robert Walker
Ombudsman

