

complaint

Mr T complains about the loans he had with Gain Credit LLC (trading as Lending Stream). He has said Lending Stream lent to him irresponsibly.

background

Between July 2011 and May 2017, Lending Stream gave Mr T 55 instalment loans. The loans were typically due to be repaid in six monthly instalments. The loan amounts varied from £50 to £900. From the information provided Mr T has repaid loans 1 to 54 but has an outstanding balance on loan 55. Mr T stopped repaying loan 55 and this loan has now been passed to a third party debt collection agency.

Lending Stream's records show the loan information which can be found at the appendix at the end of this decision.

When Mr T complained to Lending Stream about the loans, it didn't uphold his complaint saying that it carried out sufficient checks before lending to him but that it made a procedural error when it agreed to lend loan 43, it said it didn't obtain Mr T's credit score before agreeing this loan. As a result Lending Stream offered to refund the interest and charges of £9.60 that Mr T paid towards that loan.

Mr T didn't accept Lending Stream's offer and referred the complaint to this service where it was looked at by one of our adjudicators. Our adjudicator thought that Lending Stream's checks went far enough before lending loans 1 to 5 but didn't think the checks went far enough for loan 6 onwards. However, based on the limited information time available about Mr T's circumstances at they were unable to say loans 6 and 7 were unaffordable. Our adjudicator thought Lending Stream shouldn't have lent Mr T loans 8 to 55 as the borrowing pattern was unsustainable and the loans weren't being used for a short term purpose. Lending Stream disagreed with the adjudicator's findings.

Because this complaint wasn't resolved, it has come to me – an ombudsman – for a 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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Our adjudicator didn't recommend that loan 1 should be upheld and neither Mr T nor Lending Stream have disagreed with this finding. There was a significant gap in the lending relationship between loans 1 and 2 and I think this gap was sufficient to break the lending chain. Because neither party has disputed the adjudicator's findings on loan 1 and because of the gap between when this loan was repaid and when loan 2 was taken, I haven't specifically looked at loan 1 in this decision. My decision will focus on the second loan and continued lending chain where the dispute still remains. So I will be looking at loan 2 onwards in this decision.

Before lending money to a consumer a lender should take proportionate steps to understand whether the consumer will be able to repay what they're borrowing in a sustainable manner, without it adversely impacting on their financial situation.

These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr T's income and expenditure at the time. 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 a lender should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These would include where:

- a consumer's income is low or the amount to be repaid takes up a substantial portion of their income
- the amount, or amounts, due to be repaid are higher
- there is a larger number and/or frequency of loans
- the period of time during which a customer has been provided with borrowing is long.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Bearing all of this in mind, I think that there are three key questions for me to consider in order to fairly and reasonably determine Mr T's complaint. These questions are:

1. did Lending Stream, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr T would be able to repay in a sustainable way? If not, would those checks have shown that Mr T would have been able to do so?
2. taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr T's indebtedness in a way that was unsustainable or otherwise harmful?
3. did Lending Stream act unfairly or unreasonably in some other way?

I've carefully thought about all of these questions and what they mean for Mr T's complaint.

Lending Stream says before lending each loan, it checked Mr T income – which it recorded as varying from £1,250 to £2,000. It checked his monthly expenses and this varied from £150 to £500. It also said it checked Mr T's employment status and obtained Mr T's credit score. Mr T's credit score varied from 561 to 690. And based on what Lending Stream saw from these checks, it thought it reasonable to lend to Mr T.

Lending Stream's final response said that it used national averages for expense categories as third party verification of Mr T's declarations. Yet it has not provided any detail whatsoever on how this verification took place and what it showed in Mr T's case.

Considering that this is information that Lending Stream itself says it collected and it says it used to inform its lending decisions, it's disappointing that Lending Stream has been unable to tell me what the data was and what it revealed about Mr T's circumstances when he applied for his loans.

Lending Stream is responsible for explaining why any lending it approved was fair. Given that Lending Stream has maintained that all of Mr T's loans were responsibly lent, it ought to know – and have explained – not only what data it analysed, but also how it used and interpreted this information to make responsible lending decisions.

This service can't take it as read that any possible third party verification resulted in fair lending decisions.

Did Lending Stream, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr T would be able to repay in a sustainable way? If not, would those checks have shown that Mr T would have been able to do so?

I've carefully thought about what has provided and what it has said.

I think Lending Stream's checks for loans 2 to 5 went far enough. Loan 2 was due to repaid in six instalments, the highest instalment amount was £64.80. Mr T declared his income as £2,000 and his monthly expenses as £150. This suggests he was in a position to afford the loan repayments.

By the time Mr T was taking loan 3, he hadn't fully repaid loan 2 and so his maximum repayment he had to make during the repayment period was around £130. Again his declared income of £2,000 and his declared monthly expenses of £350 suggest that he could sustainably afford to repay this loan.

Mr T was in similar circumstances at the times of loans 4 and 5 – his income remained £2,000 and his declared expensed were now £411. I can see that at the time he took loan 4 and 5 he hadn't fully repaid loans 2 and 3 and so his repayments take into account the outstanding payments he had to make on the previous loans. So, for both these loans, Mr T was due to repay maximum amounts of around £247 and £209. But given the level of income he had left over, I think he was in a position to sustainably make the loan repayments for both these loans.

From loan 6 onwards, I would have expected Lending Stream to look to build a clearer picture of his financial circumstances and independently verify some of the information provided. I say this because Mr T had been either borrowing or repaying a loan for the last six months and for each of the loans he was still repaying at least two other previous loans. I think that may have suggested that he was dependent on these loans and Lending Stream should have been doing more before lending.

Mr T hasn't provided this service with information that would help reconstruct and understand his financial circumstances at the time of these loans so I don't know what better checks would have shown Lending Stream so I'm unable to say these loans were unaffordable for Mr T.

However, I'm concerned that Lending Stream continued to lend to Mr T repeatedly and based its lending decision on similar information from the time of the first loan without taking steps to widen its checks. Because of the limited information, I haven't recreated individual, proportionate affordability checks for loans 6 to 55. But from loan 8 onwards, I don't think that it is necessary to check whether these loans were affordable for Mr T. I'll explain why this is the case in the next section.

Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr T's indebtedness in a way that was unsustainable or otherwise harmful?

I've also looked at the overall pattern of lending. I've looked to see if there was a point at which Lending Stream should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Lending Stream should have realised that it shouldn't have provided any further lending. Given the particular circumstances of Mr T's case, I think that this point was reached by loan 8. I say this because:

- by loan 8 onwards, he hadn't fully repaid his previous loans before taking out a new loan – this meant that he was repaying at least two other instalment loans at the same time,
- 17 of those loans were more than double Mr T's starting amount,
- during the period of these loans, Mr T borrowed an average of around £170 and was due to repay total interest and charges of around £3,200 and in these circumstances, Mr T was effectively repaying interest but wasn't really making inroads to repaying the outstanding capital,
- Lending Stream ought to have realised it was likely his indebtedness was increasing unsustainably.

I think that Mr T lost out because Lending Stream continued to provide borrowing from loan 8 to 55:

- these loans had the effect of unfairly prolonging Mr T's indebtedness by allowing him to take expensive credit over an extended period of time. Mr T's borrowing was continuous for nearly two years from loans 8 to 55 and he was paying substantial amounts in interest for access to relatively low sums,
- the sheer number and frequency of loans was likely to have had negative implications on Mr T's ability to rehabilitate his finances to access mainstream credit and so kept him in the market for these high-cost loans.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I'm upholding Mr T's complaint about loans 8 to 55 because the overall pattern of lending increased his indebtedness in a way that was unsustainable or otherwise harmful and Lending Stream ought to have realised this.

Did Lending Stream act unfairly or unreasonably in some other way?

I've carefully thought about everything provided. Mr T has said that Lending Stream passed his outstanding debt to third party debt collection agency and this has meant he now had to repay more than he would have done had Lending Stream not sold the debt on.

While I appreciate Mr T being unhappy about this, the fact that Lending Stream sold on the debt doesn't on its own mean that it acted unreasonably. It's common practice among lenders to sell on debts to other parties. However, as I think Lending Stream shouldn't have given Mr T this loan, I'm directing Lending Stream to take steps to put things right with this sold on debt in the next section.

putting things right – what Lending Stream needs to do

Mr T has lost out as a result of being lent these loans and so to put things right,

- Lending Stream should refund all interest and charges Mr T paid on loans 8 to 55;
- It should also pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement*;
- Lending Stream may deduct the outstanding capital balance on loan 55 from the redress sum but it must buy back the loan before doing this,
- if Lending Stream is unable buy back the loan then it shouldn't make any deductions to the redress amount,
- the number of these loans means any information recorded about them is adverse. So all entries about these loans should be removed from Mr T's credit file.

* HM Revenue & Customs requires Lending Stream to take off tax from this interest. Lending Stream must give Mr T a certificate showing how much tax it's taken off if he asks for one.

my final decision

I uphold Mr T's complaint in part and require Gain Credit LLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 March 2019.

Oyetola Oduola
ombudsman

appendix

loan number	date taken	loan amount	date repaid
1	17/07/11	80	31/10/11
2	14/09/14	120	27/02/15
3	26/10/14	150	30/04/15
4	20/01/15	130	16/05/15
5	09/02/15	300	31/07/15
6	11/04/15	110	30/09/15
7	19/04/15	100	30/10/15
8	08/05/15	300	30/09/15
9	12/05/15	130	30/10/15
10	19/06/15	150	21/11/15
11	04/08/15	490	21/11/15
12	10/10/15	120	21/11/15
13	21/10/15	150	21/11/15
14	18/11/15	160	21/11/15
15	24/11/15	150	30/11/15
16	27/11/15	60	30/11/15
17	28/11/15	60	29/01/16
18	09/12/15	270	29/01/16
19	15/12/15	100	03/01/16
20	20/12/15	370	04/01/16
21	12/01/16	50	31/05/16
22	15/01/16	100	01/03/16
23	20/01/16	50	21/03/16
24	22/02/16	80	29/01/16
25	11/02/16	170	01/03/16
26	15/02/16	60	21/03/16
27	19/03/16	100	21/03/16
28	23/03/16	70	31/03/16
29	25/03/16	50	14/08/16
30	09/04/16	220	23/04/16
31	10/04/16	250	23/04/16
32	17/04/16	230	29/04/16
33	20/04/16	120	31/05/16
34	24/04/16	50	14/08/16
35	05/05/16	400	31/05/16
36	08/05/16	160	30/06/16
37	15/06/16	230	30/06/16
38	16/06/16	70	14/08/16
39	04/07/16	50	14/08/16
40	08/07/16	50	14/08/16
41	10/07/16	200	29/07/16
42	05/08/16	50	14/08/16
43	28/08/16	300	31/08/16
44	29/08/16	50	03/01/17
45	10/09/16	200	30/11/16
46	13/09/16	110	12/01/17
47	15/09/16	110	31/01/17

48	20/09/16	100	28/02/17
49	06/11/16	320	30/11/16
50	07/12/16	70	31/03/17
51	08/12/16	150	31/03/17
52	04/01/17	220	31/03/17
53	12/01/17	260	31/03/17
54	03/02/17	100	31/03/17
55	01/05/17	900	balance outstanding