

## **The complaint**

Mr D complains Gain Credit LLC trading as Lending Stream (“Lending Stream”) incorrectly sold his outstanding loan balances and by doing so this led a third party to record a County Court Judgement (CCJ) against him.

In order to put things right Mr D would like a refund of the funds he paid to the third-party debt collector, the removal of the CCJ from his credit file and a payment of compensation.

## **What happened**

The complaint stems from 23 instalment loans granted to Mr D between November 2010 and July 2016 and he borrowed between £50 and £450 each time.

In 2016, Mr D raised a complaint with Lending Stream about these loans and Lending Stream provided an answer on 18 August 2016. At the time it explained Mr D had taken 23 loans and five loans remained outstanding. However, in order to resolve the complaint, Lending Stream offered a payment of £472.01. It isn't clear whether this was offer was accepted by Mr D.

Lending Stream later explained to the Financial Ombudsman that the offer related to loan one and then loans 16 – 23 – although it does seem that Lending Stream didn't explain this to Mr D in 2016.

After the outstanding loans weren't repaid by Mr D, the outstanding balance was sold to a third party who then sought and was granted a CCJ against Mr D for £1,053.51 in November 2018.

Lending Stream then contacted Mr D on 11 March 2022 for further information because it had carried out a retrospective business review of the complaint and it needed information from Mr D to enable it to determine whether, based on the information it had collected at the time, the loans were affordable for him.

Following this request for information a final response letter (FRL) was issue by Lending Stream in April 2022. In this FRL Lending Stream explained why it wasn't going to uphold Mr D's complaint about loans 1 – 5. However, it did accept that loans 6 – 23 shouldn't have been granted. To put things right it made the following offer:

- refund the interest that Mr D paid towards these loans,
- pay 8% simple interest on the above refund from the date of payment to the date of settlement (and deducting the correct rate of tax),
- use this refund to offset against any outstanding balance Mr D may have and
- remove any adverse information recorded on Mr D's credit file about these loans.

Lending Stream calculated that Mr D was owed a total refund of £2,031.30. Mr D accepted this offer and it seems the refund has been paid because a tax interest certificate has been issued to him.

In addition although not outlined in the FLR, Mr D also says that Lending Stream then agreed to arrange with the third party to have the CCJ set aside.

After Mr D referred his complaint to the Financial Ombudsman, he sent a copy of a letter he had received from the third party in October 2022, in which it confirmed:

*“With regards to a refund of the money paid towards the County Court Judgement, we would like to inform you that all repayments towards the account were sent to the Lending Stream at the time the account was recalled. We shall contact Lending Stream on your behalf to request that they contact you directly with regards to any refund you may be owed”.*

In December 2022, Mr D let us know that the third party was in the process of having the CCJ set aside. Later on, in the same month, Mr D confirmed the CCJ had been successfully set aside, and the funds he had paid the third party had now been returned to Lending Stream.

The case was then considered by an adjudicator who didn't uphold it. She explained, that she didn't think Lending Stream was wrong to have passed the outstanding loans to a third party. She also wasn't able to comment on the CCJ because the third party had instigated this and the CCJ was then granted by the Court.

The adjudicator also said that as part of the recall of the debt any payments which were made to the third party were returned to Lending Stream and the adjudicator concluded this formed part of the refund paid to Mr D.

Mr D disagreed with the assessment, and I've read all his emails, but in summary he has said:

- The loans shouldn't have been granted in the first place.
- The payments stopped because Mr D couldn't afford to make them.
- Mr D says Lending Stream instructed the third party to obtain the CCJ.
- The third party had problems having the CCJ set aside.
- Mr D says companies like Lending Stream caused him lasting personal damage and he provided details of this but to protect his privacy I will provide no further details here.

As no agreement was reached, the case was passed to me for a decision. I then made a provisional decision explaining the reasons why I was also not intending to uphold Mr D's complaint, but I provided further details as to why.

Both parties were asked to respond to the provisional decision as soon as possible, but in any event, no later than 21 September 2023.

Lending Stream didn't respond to the provisional decision.

Mr D responded with additional comments as well as provided additional documents for my consideration. In summary he said:

- The original unaffordable lending complaint wasn't upheld, instead Mr D says it made an offer of £400 as a gesture of goodwill. There was no uphold until 2022, when it contacted him.
- Mr D says Lending Stream is hiding something because he says it was only after he told them about him nearly losing his home that it accepted something went wrong

and a copy of an email from Lending Stream sent to Mr D was provided dated 12 March 2022 which does show that it considered a complaint and thought, based on the screen shot that it was reasonable for at least eight loans to have been approved.

A copy of my 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.*

*In response to our adjudicator Mr D outlined some of the personal impact this whole issue has had on his personal life, and I am sorry to read about these. I'm also sorry to hear about the problems Mr D has had with a payday lender that is no longer trading and a credit card company. But this decision can only focus on the actions of Lending Stream.*

*The crux of this complaint is what happened when Lending Stream passed the debt to the third party and secondly, what happened after Lending Stream made its offer in April 2022. What I will not be doing in this complaint is considering whether Lending Stream did all it ought to have done before it granted the loans. And I say this for two reasons.*

*Firstly, that wasn't the complaint that Mr D referred to the Financial Ombudsman and secondly, as far as I can see that complaint has been resolved. Lending Stream accepted something went wrong and it made an offer of compensation in 2022 which Mr D has accepted. And so as far as I can see that dispute has been resolved.*

*After Lending Stream's 2016 investigation into what happened it made an offer of around £420, despite us asking Lending Stream for confirmation whether this offer was actually applied to the outstanding balance, it hasn't been forthcoming with the information.*

*However, having looked at the statement of accounts for each of the loans subject to the offer, it doesn't show any credits at the time. In response to the provisional decision, I would be grateful if Lending Stream could confirm whether the 2016 offer of a refund was applied at the time, and how that may (or may not) have impacted the redress it paid in 2022.*

*Mr D has said that the refund he has been paid by Lending Stream doesn't take account of payments made to the third party for the CCJ. However, Mr D hasn't said how much or when he has paid the third party, so I don't know exactly how much he may have paid. In response to this provisional decision Mr D may wish to provide this further information.*

*In any event, Lending Stream has been consistent throughout that the refund it has paid Mr D does include the payments he made to the third party. And Lending Stream has provided a copy of an email that it received from the third party in April 2022 where the third party said "The payment history is taken directly from Mt (sic) D [full name removed] from account..."*

*This was a response Lending Stream received after contact had been made to find out whether there were for example any missing payments due to Mr D presumably querying the refund he had received. As far as I can see, based on the information I currently have available, it appears the refund Lending Stream has paid is correct.*

*Lending Stream has shown that the final five loans (loans 19 – 23) were sold to the third party in February 2018, so anything that occurred after that date in terms of collections or contact isn't the responsibility of Lending Stream because it was no longer the legal owner of the debt.*

*I appreciate that Mr D is unhappy that the outstanding balance was sold to a third party and*

*that third party took steps to apply for a CCJ. But I wouldn't be able to make a finding that Lending Stream was wrong to sell the balance, because in 2016 it provided an answer to an unaffordable lending complaint and payments don't appear to have been made to Lending Stream after that date. The loan accounts would've been sufficiently in arrears and a lender can if they wish it could assign their rights and responsibilities to a third party and this echoed in the terms and condition (3.8) of the credit agreements.*

*I also won't be able to recommend that Lending Stream makes an award for compensation purely because of the CCJ for two reasons. Firstly, it wasn't Lending Stream who sought and was granted the CCJ. At the time this happened, Lending Stream wasn't the legal owner of the outstanding balances and so I can't hold it responsible for it obtaining the CCJ. And secondly, in November 2018, a judge decided that a CCJ was an appropriate course of action. As this is the case, I can't ask Lending Stream to pay any award to Mr D solely because a CCJ was granted.*

*I do accept that Mr D may well think that because Lending Stream has now said that most of his loans ought to not have been approved, and had it taken that stance in 2016 then the CCJ may well not have been granted. But from the limited information provided, Mr D made a complaint about the loans and was given an answer – so at the time Mr D knew there may be an issue. And the answer he received at the time explained what action Lending Stream would take. I accept it has now taken a different approach to some further loans but at the time, if Mr D was unhappy with what Lending Stream had said he could've pursued this further.*

*Although the CCJ has now been set aside by the third party, it is clear from the emails that Mr D has provided that there were some difficulties in getting it set aside, and it took a number of attempts. However, there is nothing to suggest that Lending Stream caused these difficulties. And therefore, it isn't appropriate for me to make a finding because the third party isn't subject to or bound by this complaint. So, I say no more about it.*

*I'm therefore intending to not uphold Mr D's complaint.*

### **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.

I have thought about the comments that Mr D provided I am still minded to not uphold the complaint and I've explained why below.

I've considered the previous emails Mr D had provided – about the 2016 decision made by Lending Stream about the complaint– it is clear from that that the “*offer to refund the interest and charges paid towards the loan accounts amounting £472.01*”. This isn't particularly clear as it doesn't for example give the loan numbers that relates to.

It was only after further questions were asked of Lending Stream that it provided us a breakdown of what loans that offer related to – but I accept at the time Mr D may not have known that. I only mentioned the 2016 letter and offer for context as to what had happened with the complaint and the loans.

But whether or not the 2016 offer was made as a gesture of goodwill or not doesn't in this case affect the outcome that I've reached. And I say this for much the same reasons as I gave in the provisional decision. Mr D was aware that there was a potential issue with the loan because he complained about it. And then after the 2016 investigation, Mr D wasn't able to successful repay the outstanding loan balances which resulted in Lending Stream passing selling the outstanding balance onto to a third party.

I can see from the email Mr D provided in response to the provisional decision that initially in March 2022 Lending Stream didn't uphold the complaint. Mr D says that Lending Stream only changed its mind after he emailed it about his housing situation. I don't have a copy of the email that Mr D says he sent back in response. But what is clear, is by 4 April 2022 when the final response letter was issued, Lending Stream's view of the complaint had changed. And it therefore made the offer to settle the complaint about loans 6 – 23. Which was then accepted.

So, for the reasons given in the provisional decision – which should be read in conjunction with this decision, I still don't think it's appropriate and / or a need to consider whether Lending Stream was right or wrong to have approved some or all of the loans, and I say this because in Mr D's complaint form and therefore the crux of this complaint. Is that he was happy with the outcome that was eventually reached as well as the interest refund, but he was more concerned about the fact the loans were sold and a CCJ was granted. And that is what the provisional decision focused on.

Both Lending Stream and the third party who sought the CCJ have been consistent that the refund paid to Mr D included any payments that were made towards the CCJ, and in the absence of any other information showing that wasn't the case, I can't ask Lending Stream to pay any more than it has already done.

I acknowledge the CCJ took longer than Mr D may have expected to be set aside, it was – based on what we've been told eventually removed. I also, for the reasons given in the provisional decision can't ask Lending Stream to pay compensation for that when it wasn't the one that applied for the CCJ.

Finally, I've not been provided any further evidence to make me depart from the findings that I reached in the provisional decision about making an award for compensation because a CCJ was sought and granted to a third party who is separate entity and who this decision isn't against.

So, having reconsidered everything including the additional points raised I've reached the same conclusions I reached before, and that is Lending Stream doesn't have to take any further action.

### **My final decision**

For the reasons I've explained above and in the provisional decision, I'm not upholding Mr D's complaint and Gain Credit LLC doesn't have to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 November 2023.

Robert Walker  
**Ombudsman**