

## **The complaint**

Mr C complains Gain Credit LLC trading as Lending Stream unfairly defaulted his loan account. Mr C says he didn't receive the notice of default because he wasn't living at the registered address Lending Stream had for him.

Mr C also says the loan wasn't sustainable for him.

## **What happened**

Mr C was advanced two loans from Lending Stream, but the default was applied to the second loan only. Mr C's second loan was for £900 taken in January 2019. Mr C was due to make five monthly contractual payments of £312.41 and then a final payment of £237.95.

Mr C successfully paid his first three payments before having repayment difficulties. As a result of these difficulties, Mr C's second loan account was reported as being in default with the credit reference agencies. Mr C settled the loan in October 2022.

Following a complaint to Lending Stream it sent a final response letter (FRL) in October 2022 – concluding no error was made. In summary it made the following findings.

- It had previously issued a FRL about the affordability of the loans in March 2021.
- Mr C missed payments towards loan 2 and Lending Stream sent reminders to him.

Unhappy with this response, Mr C referred his complaint to the Financial Ombudsman. As part of the referral, Mr C said that he didn't think Lending Stream had checked to see whether the payments he was due to make were sustainable and he provided details of circumstances at the time.

Before the adjudicator assessed the complaint, he let Mr C know that based on the information in the FRL it is possible a complaint about irresponsible lending may be time barred. Mr C responded to say that while the affordability of the complaint may be time barred, he still wanted the sustainability of the loan to be considered.

An adjudicator then reviewed the complaint, and he didn't uphold it. Firstly, he said that he wouldn't be looking at the affordability of the loan as part of this complaint because it's possible the complaint is time barred and Mr C seemed to accept that.

In relation to the default, the adjudicator was satisfied that the required notices had been sent to the address that Lending Stream held for Mr C at the time. And as there was no response to the notice, it was reasonable for Lending Stream to report the default with the credit reference agencies.

Mr C didn't accept the outcome, in response he made the following comments:

- He accepted the affordability element of his complaint was time barred but he wanted the sustainability element of it to be considered.
- the default notice was issued one day early.

- the default on his credit file should be back dated to 4 August 2019 and not the date which shows as 27 November 2019.

As no agreement has been reached, the case has been passed to me to resolve. After the complaint was passed to me, I asked an adjudicator to let Mr C know what would and would not be considered as part of this 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.

Mr C does seem to accept that the affordability of the complaint is likely time barred – but to be clear no formal finding has been made in relation to this. However, Mr C says that he wants the sustainability of the loan(s) considered.

I can understand why Mr C wants this reviewing, but these are two sides of the same coin. As part of any affordability complaint, the Financial Ombudsman would consider whether the loans were or weren't sustainable. And as no formal assessment has been undertaken to assess a complaint about the affordability of the loans maybe time barred, I am not, as part of this decision going to address it. If Mr C wants to continue that element of his complaint, he will need to let us know so a new complaint can be set up for him.

Instead, this decision will focus on Lending Stream's actions in relation to the default that has been applied in relation to Mr C's second loan with the credit reference agencies (CRAs).

Before I look at the circumstances of Mr C's complaint it is worth considering what the Information Commissioner's Office (ICO) says. The ICO is the body set up to monitor personal data and how it is used.

The ICO has issued a paper entitled "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*". This sets out standards and guidance as to when a default can or can't be reported and so I consider this to be good industry practice. And I've reviewed what it says in order to establish whether Lending Stream has made an error in this complaint.

Principle 2 (outlined blow) – explains that if payments aren't made as expected adverse information can be recorded. So, in Mr C's case that would be in line with the payment schedule in the credit agreement.

*2. Should a payment not be made as expected, information to reflect this will be recorded on your credit file*

*If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported to the CRAs as being in arrears.*

*If this continues over time, the level of reported arrears will increase, which may result in the lender taking some form of action. This could include notification of their intention to report the account as "defaulted" (see Principle 4 below).*

Turning to principle 4, which says:

*4. If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down.*

*As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears.*

The ICO is clear, that should payments continue to be missed, then a default can be sought from as little as three months of the account being in arrears but normally this is done by the time the account is six months in arrears. I've kept these principles in mind when thinking about Mr C's complaint.

I can see from the loan 2 statement of account that Mr C made his contractual repayments due in February, March and April 2019. After April 2019 no further payments were made to the loan account until Mr C cleared the balance in October 2022.

I can see that shortly after the May 2019 payment was missed on 1 June 2019, a Notice of Sum arrears was emailed to Mr C. It's worth noting here that the email address Lending Stream says this notice was issued to is the same one that Mr C provided the Financial Ombudsman when he referred his complaint here.

A further email was sent to Mr C on 29 June 2019 when the contracted June 2019 payment was missed. This set out the arrears that Mr C owed, and it also provided a factsheet issued by the industry regulator that signposted Mr C to any appropriate help and support.

Mr C also didn't make his July 2019 payment, which meant by the start of August 2019, Mr C's account was three months in arrears and there didn't appear to have been any contact from him to discuss his situation.

Therefore, on 4 August 2019 – a default notice was sent to Mr C's registered address – this is the same one that he provided the Financial Ombudsman as part of his complaint. Mr C has said that he told Lending Stream he wasn't living at the address where the default notice was sent. Whereas Lending Stream says that it wasn't notified of a change of address. However, it's also worth noting that the notice was also emailed to Mr C.

No changes have been made to Mr C's address, so I think it's reasonable to conclude that Lending Stream was unaware of the change of address. But I also must consider that Mr C received his arrears notices in June and July 2019 to his email address and these notices contained the address that Lending Stream held for him at the time.

So, Mr C ought to have been aware before the default notice was issued that Lending Stream didn't have the correct address for him. But whether an error was made in the posting of the default notice or not, a copy of the notice was emailed to Mr C – to the correct email address, which I deal with below.

I've reviewed the contents of the default notice to ensure it complies with what a default notice should contain. Mr C had until 23 August 2019 to remedy the situation and the letter also explained the consequences of not taking any action – which included *"Register your default with the credit reference agencies to which we subscribe"*.

The default notice also gave Mr C – close to three weeks – to 23 August 2023 to bring the account up to date. This is more than prescribed by Section 88(2) of the Consumer Credit Act 1974. The default notice contained what it needed to, in order to be a valid default notice.

I accept Mr C may not have actually seen or received the posted copy of the default notice but as I've said above, I'm satisfied the account was at least three months in arrears when the notice was sent as well as emailed.

Mr C has said that the email notices weren't received and may have been routed to his spam / junk folder. While that may have been the case, I can't fairly hold Lending Stream responsible for how Mr C's email account filters messages. Lending Stream has fulfilled its obligation by sending such notices.

So, I am satisfied, that Mr C's account was sufficiently in arrears for the default notice to have been issued – as per the ICO principles. The notice was sent to the address Lending Stream held for Mr C – which is where it ought to have been sent. It was also emailed a copy of it to the correct address. And I'm satisfied the default notice contained all that it needed to do in order to be deemed a compliant default notice. I therefore can't say an error was made by Lending Stream in the process of defaulting the account.

Mr C has queried that the termination notice was sent on the last day that the default notice gave him to remedy his account – and so has said Lending Stream issued this notice a day early. While that maybe the case, it has ultimately, had no impact on Mr C's ability to either repay the loan or on any decisions he made at the time. This would've only become a potential issue, if Mr C had attempted to make a payment to Lending Stream on 23 August 2019. Given this, I am not going to be asking Lending Stream to do anything to rectify that.

It does seem that around this time Mr C was personally having a difficult time and I am sorry to hear of this but it sounds as if things have improved for him now. But, there isn't any evidence that he made Lending Stream aware of these difficulties and so it couldn't make any adjustments or come to an agreeable repayment plan with him in order to prevent the default from being applied.

Mr C's credit file shows the default was applied from 27 November 2019 and so it will be removed from his credit file from 27 November 2025. In addition, as Mr C has now paid the outstanding balance due for this loan his default should now be marked as "*satisfied*". I appreciate Mr C wants the default backed dated to 3 August 2019 – but the account wasn't defaulted on that date. That was only the day the notice was issued.

It isn't clear why there appears to be a small delay from when the account was terminated and why the default was applied. It's possible, this is due to the reporting delays with the CRAs or perhaps Lending Stream was providing Mr C with additional time to repay the balance. Whatever the reason for the default being recorded in November 2019, overall, I'm satisfied that a default notice is correct and it's not so long after the notice was issued for me to consider it to be unreasonable for Lending Stream to wait a little before registering the default.

I do not uphold Mr C's complaint.

### **My final decision**

For the reasons I've explained above, I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 August 2023.

Robert Walker

**Ombudsman**