

The complaint

Miss H complains that Gain Credit LLC trading as Lending Stream (“Lending Stream”) gave her a loan she couldn’t afford because she had a lot of other debt at the time.

What happened

Miss H was advanced one loan of £1,880 on 31 August 2022. Miss H was due to make 11 monthly payments of £314.94 followed by a final payment of £295.66. Miss H has had some problems repaying the loan and Lending Stream has said the outstanding balance has been sold to a third party.

Following Miss H’s complaint, Lending Stream wrote to her to explain why it wasn’t going to Uphold it. Unhappy with this response, Miss H referred the complaint to the Financial Ombudsman.

The case was then considered by an adjudicator who upheld the complaint. He said based on the loan term and nature of the lending, Lending Stream ought to have done further checks before granting the loan. Had further checks been conducted then it would’ve discovered Miss H had at least three outstanding payday loans at the time and so the payments for this loan weren’t sustainable.

Lending Stream didn’t agree with the adjudicator’s assessment and in summary said:

- Proportionate checks were conducted because Lending Stream used information from its credit check to increase the expenditure figure provided by Miss H.
- The credit checks didn’t show any defaults or delinquencies within the last year and showed Miss H had sufficient disposable income to afford the loan.
- It wouldn’t have been proportionate to have reviewed Miss H’s bank statements.

The adjudicator explained why these comments didn’t change his mind. Lending Stream didn’t agree and requested an ombudsman’s decision.

As no agreement could be reached, the case was passed to me. I then proceeded to issue a provisional decision explaining why I was intending to not uphold Miss H’s complaint. Both parties were given a further opportunity to provide any new submissions, but these needed to have been received no later than 17 November 2023.

Neither party has provided anything new for my consideration and as the deadline for a response has now passed, I am proceeding to issue the final decision.

A copy of the 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.

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 Miss H could afford to pay back the amount she'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 Miss H'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 Miss H. These factors include:

- Miss H 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);*
- Miss H 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);*
- Miss H 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 Miss H. The adjudicator didn't consider this applied in Miss H's complaint and I agree, as only one loan was granted.

Lending Stream was required to establish whether Miss H could sustainably repay the loan – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss H was able to repay her loan 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 Miss H's complaint.

The adjudicator explained in his assessment why Lending Stream needed to have conducted more thorough checks and these more in-depth checks would've led it to conclude it ought to not have granted the loan. I've thought about this, but I don't agree the loan term on its own was enough to mean further checks needed to be done.

While the length of the agreement plays a part in whether further checks ought to have been conducted, this wasn't an unusually long agreement for an instalment loan. I can't fairly say that the fact the loan ought to have run for a year is solely enough to have prompted Lending Stream to have conducted further checks.

Taking account of the fact that this was Miss H's first loan from Lending Stream, I do think the checks it carried out were proportionate and the checks also showed it that Miss H could afford the repayments – I've explained why below.

As part of her application, Miss H declared a monthly income of £2,500. Lending Stream says it didn't feel it needed to make any adjustments to this income figure based on what it knew about Miss H.

Miss H also declared monthly outgoings of £719. This was broken down as £540 for "normal expenses" with £179 being attributed to credit commitments. However, Lending Stream says it looked at other information such as statistics that relate to the 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 expenditure figure Miss H declared for normal expenses. But, based on its response to the adjudicator's assessment Lending Stream did make adjustments to the credit commitments.

Before the 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 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 Miss H's application.

Having looked at the credit results, in my view there wasn't anything that would've led Lending Stream to have carried out further checks. It knew Miss H had 12 active accounts and these accounts were costing at least £888 per month to service and repay.

Lending Stream could also see that Miss H hadn't defaulted on any accounts within the last three years or had any delinquent accounts either. Overall, there wasn't any signs, from the credit check to indicate Miss H was in financial difficulties, or to have prompted Lending Stream to carry out further checks.

After carrying out the credit search, as Lending Stream knew that Miss H's credit commitments were more than the £179 she had declared, Lending Stream has explained that it took the larger figure of £888, added together with the other living costs Miss H had declared this gave monthly outgoings of £1,428. This still left more than sufficient disposable income for Miss H to afford the loan repayments.

Given it was the first and only loan it was reasonable for Lending Stream to have relied on the information Miss H provided to it and what it collected to show she had sufficient disposable income to afford the repayments. There also wasn't anything to suggest that Miss H was having either current financial difficulties or to indicate the loan repayments would be unsustainable for her.

Taking everything into account, I am intending to not uphold Miss H'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.

As neither party has provided any new submissions for my consideration, I see no reason to depart from the findings that I made in the provisional decision. I still don't think, given what Lending Stream knew about Miss H that it needed to do any further checks before lending.

However, the checks it did do, were proportionate to the circumstances and showed it that Miss H would likely be able to afford her loan.

I therefore do not uphold her complaint.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept

or reject my decision before 19 December 2023.

Robert Walker
Ombudsman