

The complaint

Ms C complains that Gain Credit LLC, trading as Drafty, provided her with credit when she could not afford it.

What happened

This was not a loan. Drafty offered a credit facility which commenced with a limit being determined and then the customer was able to draw down the amounts he or she required. The credit was unsecured and had no fixed duration.

Briefly, Ms C applied for a credit facility of £200 in September 2018 and Drafty approved it. The limit was increased several times. In December 2018 to £600, in April 2019 to £780, September 2019 to £890, and in January 2020 to £1,020 and it remained at that. Ms C had declared that her monthly income for her full time employment was £2,482 and her monthly expenditure was £1,200. So, it had calculated that Ms C's disposable monthly income was £1,282. Drafty says that it carried out credit checks.

The credit agreement set out the total cost of the credit based on some assumptions to illustrate the likely cost to Ms C. On the assumption that Ms C drew down the full £200 on the first day and then repaid it (plus interest and charges) over 12 months in equal instalments then the total amount payable would have been just over £266. This would have equated to about £22 a month (Clause 5 in the agreement).

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Ms C's salary payment, and it gave the minimum payment required for that cycle. It had to be the higher of certain calculations which are in the agreement at clause 6 which I have not set out here.

A Continuous Payment Authority was used to take the minimum payments on or near Ms C's monthly salary date. Other ways of payment were made available. Using the information I have from Drafty, the account was suspended in March 2021 there is an outstanding balance on the account.

In November 2022, one of our adjudicators looked at the complaint and thought that Drafty's decision to approve the credit facility initially was right. And in relation to that part where Drafty ought to monitor the account, she thought that Drafty should have suspended the account from 24 June 2020.

Drafty did not agree with our adjudicator's redress calculations and so the whole complaint remained unresolved and was passed to me.

I considered it all and issued a provisional decision on 24 February 2023. Both parties had until 10 March 2023 to respond. I have duplicated the provisional decision in the next section of this decision and it is in smaller type to differentiate it, and forms part of this decision.

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.

My finding in my provisional decision dated 24 February 2023

I have considered the law, any relevant regulatory rules and good industry practice at the time the credit was offered.

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

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves did not set out compulsory checks, they did list several things a lender could consider before agreeing to lend. The key element was that any checks needed to be proportionate and had to consider several different things, including how much was being lent and when the sum being borrowed was due to be repaid. Initial approval of the credit facility.

Ms C has explained some personal circumstances which affected her and her family in or around 2018 and for privacy reasons I make no mention of details here. Ms C has said:

'I took out a Drafty loan on 08/09/18, I was in some financial difficulty at the time. Due to continuing financial difficulty I continued to utilise further advances offered by Drafty to enable me to support my children and pay other debts. Drafty continued to offer further advances despite further missed payments and defaults being lodged on my credit file. Since opening the account I had 4 further defaults on my credit file and during this time I was offered 3 further advances.

Then 5 months after the latest default despite always maintaining my monthly payments one way or another I received communication from Drafty advising I was being placed on a managed payment plan which was increasing my payment from 2% to 8% which on top of my existing financial difficulties was completely unmanageable for me.'

'...Yes during that time I confirmed my income and that I would afford the additional advances, in reality I could not and was using this as means to stay afloat and pay other debts. My credit file reflected this with missed payments and defaults.'

I need to explain to Ms C that upon first approaching Drafty in September 2018, usually it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review.

Ms C was a new customer. And bearing in mind the credit limit granted and the monthly payments required to repay the facility within a reasonable period, Drafty was entitled to rely on the information given to it which suggested that Ms C had enough disposable income to service a credit facility with a limit of £200.

However, Drafty has sent to us its results of the credit search it did in September 2018. Their brevity is usual as I am used to seeing the format in which these credit searches are presented to us. And although it was not a requirement that Drafty carried out a credit search before lending it did do that. I'd consider that to have been prudent.

Having got that information – even in its brief format – then it needed to be factored into the creditworthiness assessment. And here is a summary of Ms C's results:

Number of default accounts	Value of default accounts	Number of delinquent accounts	Value of delinquent accounts
3 accounts, most recent being four months	£8,800	4, and the most recent being four months	£17,000

before		before	
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The value of the nine active accounts Ms C was registered as having was £20,000. Likely there was an overlap between these figures.

The credit search did not reveal that Ms C had a mortgage, but I know from her own credit file that she did. I can't explain why that would not have registered.

In my view this gave Drafty enough to consider that additional checks ought to have been done. The amount of the credit limit was low at £200 and I have seen that Ms C applied for that sum which is a modest application. But – having thought carefully – I think that the recent debt history was enough for Drafty to have done more. And I don't necessarily mean a full financial review and that might have meant looking at Ms C's bills and payslips and outgoings, or her bank account statements. I mean that it could have utilised the information it had searched already and gather more detail. And I say that because the amount Ms C was asking for was modest.

I have the benefit of the credit file sent to us by Ms C and reviewing that I can see a correlation in the information (in brief form) Drafty had obtained and the detail that credit file from Ms C provided. It shows me that the defaults had been for credit cards and for substantial sums. And she had several debt collection accounts which meant that she had had other issues earlier in time such that those accounts were already with debt collectors.

Plus, Ms C had one bank loan costing her £341 a month, and she was paying a mail order account around £73 a month and had two loans with another company costing £28 each (£56) so these added up to £470 at least.

Ms C's mortgage was a joint account and the monthly cost was £632. Drafty's FRL does show that she had told it about her rent/mortgage cost and had listed it as £475. That may have been because she shared it with her husband. The food cost of £125 a month was far too low to have been a reasonable figure and so I'd say it ought to have been increased.

Even having done that, on a pure 'pounds and pence' calculation, I think that Drafty may have concluded she could afford the facility. But a creditworthiness assessment needs to go further and in some sets of circumstances, such as these with Ms C, where Drafty knew of Ms C's recent issues with managing her money then I think it ought to have done more.

So, even if Drafty had drilled into the detail of the credit search it had already carried out, I consider it would have found out the same sort of details I have from Ms C's credit file report. Admittedly they are not always the same but here they broadly show the same – that Ms C had had recent severe difficulties leading to several recent defaults and was dealing with other delinquent accounts too.

Having thought about it carefully I do not think that Drafty should have lent to Ms C at all.

I plan to uphold Ms C's complaint from the beginning and I plan to direct that Drafty puts things right for her from September 2018.

This is the end of the duplicated provisional decision.

In that provisional decision, I indicated that in view of the age of this complaint I am unlikely to be persuaded to accept any extensions of time from either party without good reason. Resolutions is what both parties need on this complaint.

How did both parties respond?

Ms C has agreed with my provisional findings.

Drafty has responded to say that it agrees and will refund the interest and charges from 8 September 2018 and will remove adverse information from Ms C's credit file from 8 September 2018.

Its calculations (which are not set out here) indicate that there will be a set off – which I agree with – and Ms C's refund will mean that the account will be paid off and likely closed.

Considering the responses from both parties then I see no reason to depart from the provisional findings duplicated above. Those are repeated here and become part of the final decision.

For the reasons given, I uphold Ms C's complaint.

Putting things right

My understanding that the current state of the account is that Ms C has been paying under a repayment plan and there is an outstanding sum. If that remains the case, and if the debt is with another third party, then Drafty needs to bring the debt back 'in-house' and remove any of that third party's costs so that those are not passed on to Ms C. Then Drafty needs to do as follows:

- Re-work Ms C's credit facility balance so that all interest, fees and charges applied to it from the beginning in September 2018 are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Ms C to arrange a suitable repayment plan for this.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Ms C, along with 8% simple interest* on the overpayments from the date they were made (if they were) until the date of settlement.

If no outstanding balance remains after all adjustments have been made, then Drafty should remove any adverse information from Ms C's credit file including the default entry.

I note that Drafty's recent response indicates it will do all of the above.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Ms C a certificate showing how much tax it has taken off if she asks for one.

My final decision

My final decision is that I uphold Ms C's complaint and I direct that Gain Credit LLC, trading as Drafty, should put things right for Ms C as outlined in my decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 10 April 2023.

Rachael Williams
Ombudsman