

The complaint

Mr R complaints through a representative that Gain Credit LLC trading as Drafty (“Drafty”) gave him a line of credit without carrying out the appropriate affordability checks.

What happened

Mr R was granted a running credit facility on 6 November 2021. This had a £2,000 credit limit – and this limit was decreased to £1,940 in April 2022. Mr R has had some problems repaying the facility and by May 2023 he still owed £1,720.21 which was being repaid through a debt management plan.

Mr R was given a running credit account where he could either request funds up to his agreed credit limit in one go or could take multiple drawdowns up to the limit. He was also able to borrow further, up to the credit limit, as and when he repaid what he owed. To be clear, Mr R was not given a payday loan.

In Drafty’s final response letter issued in January 2023, it explained the information it had gathered from Mr R before it approved the facility. It concluded given the estimated monthly repayment, Mr R was likely to be able to afford it.

Unhappy with this response, Mr R’s representative referred the complaint to the Financial Ombudsman, where it was considered by an adjudicator. In her latest assessment she thought the checks Drafty carried out before initially granting this facility were likely proportionate. Although, she did have some concerns over the amount of income Mr R had declared. But she concluded, that even if Drafty had verified Mr R’s monthly income it still would’ve approved the facility.

Drafty also had an obligation to monitor the facility and having reviewed the way Mr R borrowed and repaid the facility, she did have some concerns around Mr R’s use of it given the number of drawn downs and repayments in November 2021. And the small gap between when Mr R would make a payment and then withdraw again ought to have led to Drafty to have carried out further checks in January 2022 to ensure the facility was sustainable and affordable.

Mr R provided copy bank statements and the adjudicator was able to see that in the month before – December 2021 Mr R had repaid other credit providers around £1,700 and had recently taken new borrowing totalling £1,000. So, she upheld his complaint as Mr R was unlikely to have been able to sustainably repay this lending.

Mr R, through his representative, agreed with the outcome the adjudicator had reached. Drafty didn’t agree with the adjudicator’s assessment. It said based on previous Financial Ombudsman’s decisions it would only request bank statements where there was evidence that the facility may not have been affordable. At the time of the application Mr R had sufficient disposable income. Mr R’s use of the facility was as Drafty expected, and the trend of Mr R repaying the facility and then borrowing again hadn’t been ongoing for long enough to have made Drafty believe it needed to do further checks.

However, Drafty did agree to uphold the complaint from 23 May 2022 which is when it was first told of Mr R's financial difficulties. Drafty offered to refund the interest fees and charges paid towards the account and it also agreed to remove the adverse information reported on Mr R's credit file.

The adjudicator explained why these comments hadn't changed her mind. But she did put Drafty's offer to Mr R but it wasn't accepted.

As no agreement has been reached, the case has been passed to me for a final 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.

I've also taken into account the law, any relevant regulatory rules and good industry practice at the relevant times.

In practice, all of this meant that a lender had to take proportionate steps to ensure a consumer would've been able to repay what they were borrowing in a sustainable manner without it adversely impacting on their financial situation. Put simply the lender had to gather enough information so that it could make an informed decision on the lending.

Although the guidance didn't set out compulsory checks it did list a number of things a lender could take into account before agreeing to lend. The key thing was that it required a lender's checks to be proportionate.

Any checks had to take into account a number of different things, such as how much was being lent and when what was being borrowed was due to be repaid. I've kept all of this in mind when thinking about whether Drafty did what it needed to before agreeing to Mr R's Drafty facility.

As explained, Mr R was given an open-ended credit facility. Overall, I think that means the checks Drafty carried out had to provide enough for it to be able to understand whether Mr R would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr R's repayment record for any sign that he may have been experiencing financial difficulties.

What happened when Drafty approved the facility

Mr R accepted the findings the adjudicator reached about the complaint – which was to uphold the complaint from 28 January 2022. And Drafty also didn't appear to disagree with the adjudicator's findings that it made a reasonable decision to provide the facility. So, I won't be making a finding about whether Drafty was right or wrong to have approved the facility because this element of the complaint is resolved.

What I would add, because it's important for the context of how Mr R used the facility is like the adjudicator, I don't think it was reasonable, based on the information that Mr R had provided for Drafty to believe that he had over £8,000 per month in disposable income. This large amount stemmed from the fact Mr R declared that he earned £9,999 per month.

I don't think at this time, Drafty needed to have verified his expenditure, but I do think it would've been prudent to have checked Mr R's income perhaps with a payslip. Had it done so, it would've likely discovered his income was around £2,300 per month while this still made the facility affordable I have kept this in mind when thinking about how Mr R used his facility.

Monitoring the facility

Although I don't think Drafty was wrong to have initially provided the facility, that wasn't the end of its obligations to Mr R. When the facility was approved, Drafty was regulated by the Financial Conduct Authority, and it issued guidance on this type of lending and what it says should be expected from lenders when granting these types of loans. Within the Consumer Credit Sourcebook (CONC) section 6.7.2R says:

“(1) A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties”

CONC 1.3 provides a non-exhaustive list of some indicators, which when present in a consumer's circumstances, which could be suggestive of potential financial difficulties. In practice, CONC 6.7.2(1)R meant Drafty needed to be mindful of Mr R's repayment record and how he used the facility and step in if and when he showed signs of possible repayment difficulties.

The conclusions I've reached in this section, are related to my view that Drafty, as I've mentioned above ought to have done more before providing the facility to satisfy itself that Mr R's income was accurate.

On the day the facility was approved - 6 November 2021 – Mr R withdrew the maximum amount that he could - £2,000. But within four hours of the drawdown Mr R had repaid £1,004 of the capital. Then around 12 hours later, and still on the same day, Mr R drew down another £500. Before withdrawing a further £300 on 9 November 2021.

On 10 November 2021, Mr R made a repayment of £500 before quickly withdrawing another £300. And then an hour after the repayment Mr R made a further payment of £240. The following day, Mr R withdrew another £300 before making a payment of £200. After this repayment on 11 and 12 November 2021 Mr R drew down another £500.

Overall, I do think there were signs solely from the November 2021 usage of the facility that Mr R may have been having some difficulties given how quickly he was drawing down and making repayments. During the course of the month, he drew down £4,000 and made repayments totalling £2,080. This is a significant amount to borrow and repay considering Mr R's actual income, which I think Drafty ought to have known about.

So, while November 2021 usage was concerning, I don't think at this point it would've led Drafty to either do further checks or suspend the facility.

Mr R also, at the end of the month made his monthly minimum repayment as expected, and around two days later, Mr R appears to have drawdown the maximum he could - £120 taking him back up to the credit limit.

In December 2021, Mr R once again paid his minimum payment as expected of £212.60. However, a little over three hours after making the payment Mr R returned for further funds taking him back up to his credit limit by drawing down another £100. Although, Mr R's usage of the facility had reduced as there were no other drawdowns in that month.

At the end of January 2022, Mr R made his minimum payment again - £244.52 before returning later the same day to borrow all he could - £150 which again took Mr R back up to around his credit limit.

This was now in effect the third month in row where Mr R had paid the minimum stipulated by Drafty before fairly quickly drawing down any available credit that he had left. Mr R had done this for three months in a row. And along with the significant usage which was seen in November 2021 as well as the concerns I've already discussed about Mr R's income ought to have led Drafty to consider whether it knew enough about Mr R's actual financial position.

It therefore ought to have taken steps to build a full picture of his finances, which could've been done a number of ways, such as reviewing copy bank statements, asking for evidence of his income, copy bills or asking for a full copy of his credit report. I can see that Drafty didn't do any of these.

Mr R has provided copy bank statements for the period of time when he held the facility and so I've considered these to see what Drafty may have discovered. Having done, so I've seen much the same that the adjudicator pointed out in her view. Mr R had a number of high-cost credit loans, payday loans and a revolving credit facility – in December 2021 alone he paid around £1,500 to such creditors. On top of this he also had at least two credit cards which needed repaying which was cost at least another £150.

And on top of this, he borrowed at least £700 new money that would need to be repaid and serviced in January 2023 from other high-cost providers - who he didn't appear to have been repaid in December 2023. This would indicate the start of a new relationship with another company. As well as further funds from a revolving credit facility that he held with another provider. These drawdowns in December 2021 came to a further £300.

Overall, had Drafty carried out further checks – which is what I think it needed to do in January 2022 it would've likely discovered that Mr R wasn't in a position to continue to service the facility in a sustainable manner and Drafty should've stepped in and offered assistance.

I've thought about Drafty's comments about the time that is usually passed or has been allowed to pass in other ombudsman's decision before either further checks were warranted and / or the facility obviously became unsustainable for a consumer. Drafty says in this case, that point has been reached too early.

But my remit is to consider the individual circumstances of a complaint in order to come to a decision and as part of that a review of the way Mr R used the facility is a factor. Of course, being consistent is part of that, but that consistency wouldn't and doesn't mean that I can't and shouldn't consider the individual circumstances of a complaint. And I'm satisfied that in Mr R's case a review of the early part of the lending relationship is important context when deciding whether Drafty did anything wrong.

And, for the reasons above, I do think there were some concerning signs fairly early in the lending relationship that Mr R may have been having some difficulties given how quickly he was borrowing and then making repayments towards the facility.

For the reasons outlined above, I am upholding the complaint, in part, from 28 January 2022 and I've outlined below what Drafty needs to do in order to put things right for Mr R.

Putting things right

In order to put things right, Drafty should carry out the following:

- Re-work Mr R's credit facility balance so that all interest, fees and charges applied to it from 28 January 2022 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr R to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr R's credit file, it should backdate this to 28 January 2022.

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 Mr R, 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 Mr R's credit file.*

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Mr R a certificate showing how much tax it's taken off he asks for one.

My final decision

For the reasons given above, I am upholding Mr R's complaint in part.

Gain Credit LLC trading as Drafty should put things right for Mr R as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 November 2023.

Robert Walker
Ombudsman