

## The complaint

Miss M complains Gain Credit LLC trading as Drafty (“Drafty”) gave her lines of credit and increased her credit limit without carrying out sufficient checks.

## What happened

Miss M was granted five credit facilities and a summary of her facilities can be found in the table below.

facility number	starting facility limit	number of credit limit increases	final credit limit	agreement date	repayment date
1	£500.00	2	£980.00	25/07/2018	18/01/2019
2	£500.00	3	£1,050.00	11/04/2019	21/12/2020
3	£500.00	1	£940.00	31/05/2021	10/09/2021
4	£250.00	1	£750.00	20/11/2021	10/06/2022
5	£200.00	0	£200.00	23/07/2022	12/01/2023

Miss M was given running credit facilities where she could either request funds up to her agreed credit limit in one go or could take multiple drawdowns up to the limit. She was also able to borrow further, up to the credit limits, as and when she repaid what she owed. To be clear, Miss M was not given payday loans.

In Drafty’s final response letter issued in March 2023, it explained the information it had gathered from Miss M before it approved each facility and what it did to monitor Miss M’s use of the facilities. It concluded given the estimated monthly repayments, Miss M was likely to be able to afford them.

Unhappy with this response, Miss M referred the complaint to the Financial Ombudsman, where it was considered by an investigator, and she partly upheld the complaint. She firstly didn’t think Drafty had done anything wrong when it approved and increased the credit limits for facility 1, 3 and 4.

In relation to facility 2, she thought Drafty made a reasonable decision to provide the facility but she thought when the credit limit increased for a third time, around a year into Miss M having it, Drafty ought to have carried out further checks. But those further checks wouldn’t have indicated to Drafty that Miss M was having difficulties. That said, by 4 October 2020 the investigator thought the facility was no longer affordable for her and Drafty should’ve suspended it.

The investigator also didn’t think given the number of facilities, Miss M’s time in debt and the results of Drafty’s credit checks that the fifth and final facility ought to have been granted and so that facility was fully upheld.

Drafty said it agreed with the investigator’s assessment.

Miss M didn't agree, with the outcome about facility 2, because she says at the time, she had missed payments on the first facility and she was close to her credit limit on a number of accounts.

Miss M also didn't agree with the outcome reached for facility 3, saying the information she provided about her income and expenditure didn't match with the credit report she has. Miss M says due to her previous usage and high level of debt further checks were needed.

As no agreement has been reached, the case has been passed to me to decide.

### **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 Miss M's Drafty facility.

Drafty has accepted that some of the time Miss M used facility 2 ought not have happened and it also agreed to fully uphold the complaint about facility 5. Miss M didn't disagree with the investigator's decision not to uphold facility 1 or 4. It therefore seems that facility 1, 4 and 5 are no longer in dispute and so I say no more about them except that I have outlined at the end of the decision what Drafty has agreed to do in order to put things right for Miss M in relation to facility 5.

Instead, this decision will focus on Miss M's second and third facility and I will look at the decision to grant the facilities and then what Drafty did to monitor them.

As explained, Miss M was given open-ended credit facilities. Overall, I think that means the checks Drafty carried out had to provide enough information for it to be able to understand whether Miss M would be able to both service and then repay her facilities within a reasonable period. Drafty also needed to monitor Miss M's repayment record for any sign that she may have been experiencing financial difficulties.

### **Facility 2**

#### *What happened when Drafty approved the facility*

Having carefully thought about everything provided, I don't think Drafty needed to have made further enquires with Miss M before it approved this facility. It was reasonable for it to

have relied on the information Miss M provided along with the credit check results it received. I've explained why below.

Miss M was granted a facility with Drafty with a £500 limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost to Miss M. This hypothetical situation assumed that Miss M did the following:

1. drew down the maximum credit limit on the first day of the facility being provided,
2. she kept to the terms of the agreement and
3. Miss M repaid what he owed in 12 monthly instalments.

Had Miss M done that, she'd have repaid Drafty a total of £665.82 meaning twelve monthly repayments of around £55.48 each.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Miss M could make monthly repayments of around £56 as an absolute minimum.

Drafty says it agreed to Miss M's application after she'd provided details of her monthly income and expenditure and it carried out a credit check. Miss M declared she worked full time and received an income of £1,424 per month and she also declared monthly outgoings of £400.

I've taken account of what Miss M has said, but looking at her repayment for her first facility these were made as expected, and I can't see any occasion where she missed payments or that the facility was suspended. I think actually Drafty would've looked at her first facility as showing a good repayment and so a positive indicator that she'd be able to afford this facility.

Drafty also carried out a credit check before the facility was granted, and it has provided the Financial Ombudsman with a summary of the results. The results showed that Miss M had nine active accounts and according to the results of the credit checks, Miss M's hadn't defaulted on or had any accounts enter delinquency within the previous six years.

I appreciate that Miss M has said she had credit accounts near their credit limits but that information wasn't reflected in the results Drafty received and as this was the start of a new facility it was reasonable for Drafty to have relied on the information it was given.

Overall, I think Drafty carried out proportionate checks which showed it the facility was going to be affordable for Miss M. I am therefore do not upholding the complaint about Drafty's decision to provide her with Facility 2.

#### *Credit limit increases*

In June 2019 Miss M's credit limit was increased to £710 before increasing to £920 in August 2019. During the time Miss M had the facility 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 facilities. Within the Consumer Credit Sourcebook (CONC) section 5.2A.6 says:

*"If an increase in the amount of credit or in the credit limit is not itself significant but would results in there having been, since the last creditworthiness assessment, a cumulative increase that is significant, then a further creditworthiness assessment is required."*

The adjudicator therefore thought it was reasonable for Drafty to have increased the credit limit at this time given the size of increases that were applied and how early on in the lending relationship these occurred. I would agree, and I don't think Drafty made an error at this point when her credit limit was increased.

By March 2020, there was a further credit limit increase taking her limit to £1,050 so I do agree with the investigator here that Drafty needed to have carried out further checks as her credit limit was now more than double what it was at the inception of the facility around a year before.

It's worth adding here that in December 2019, Drafty had asked Miss M to reconfirm her income and expenditure details – at this time she declared a salary increase to £1,900 per month and £350 per month of expenditure.

Had further checks been carried out around the credit limit increase it would've discovered that Miss M had three high-cost credit loans (these were not payday loans) outstanding costing her around £600 per month. So, I do think that had further checks would've likely shown Drafty that the amount Miss M had declared for monthly living costs wasn't likely to be accurate.

While I can see that the bank account Miss M provided when overdrawn I don't think that would've been sufficient in itself to have prevented Drafty from increasing the credit limit and based on what I've seen Drafty would've thought Miss M could afford the credit limit increase. So, I do not uphold the complaint about this facilities credit limit increases.

#### *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 Miss M. The relevant section of CONC 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 Miss M's repayment record and how she used the facility and step in if and when she showed signs of possible repayment difficulties.

Having reviewed the transaction data, which includes the relationship between when Miss M made her drawdowns and the repayments, there isn't anything within that which ought to have given Drafty cause for concern up to the point in October 2020 where Drafty already accepts that it should've stepped in and have taken additional steps. So, I won't be reviewing the facility beyond that date as Drafty has already accepted something went wrong after that point.

From the inception of the facility up to October 2020, Miss M drew down 16 times, but importantly, she didn't draw every month for example there was no new lending in November 2019 or February 2020. There are also times when Miss M made significant payments and / or payments that went beyond the minimum amount she was required to pay such as April 2020.

Having looked at everything there wasn't anything, as far as I can see that would've likely indicated to Drafty that her repayments were either unaffordable or unsustainable for her and that was leading to having, or likely having, financial difficulties.

As I've said, Drafty has already accepted that it needed to take action from 4 October 2020, so I say no more about the second facility after this date, because as the investigator pointed out – from then the facility will be interest free. I am therefore not going to be asking Drafty to take any further action, beyond what it has already agreed to do for this facility.

### **Facility 3**

#### *What happened when Drafty approved the facility*

The same sort of information was provided from Miss M before this loan was approved as I've described above for loan 2. And the requirements for what Drafty needed to do also remained the same.

As before the credit agreement set out a hypothetical situation for Miss M to give her an idea as to how much this facility may cost, based on those hypotheticals, Drafty needed to consider whether Miss M could afford and to service a facility with a monthly repayment of at least £57 per month.

Drafty made enquires with Miss M about her monthly income and expenditure details. Drafty says as part of Miss M's application declared she worked full time and received an income of £2,135 per month and she also declared monthly outgoings of £675.

Drafty also carried out a credit check before the facility was granted, and it has provided the Financial Ombudsman with a summary of the results. There are of course limitations with any credit search and so the information Drafty was presented with could be different to what Miss M can see in the copy of the credit report that she has provided.

There are a number of reasons for this, or it could be that recently opened accounts hadn't yet updated but it's also the case that Drafty may have only asked to see certain pieces of information. But I wouldn't be able to say that was an error, because there was no regulatory requirement for Drafty to conduct a credit search.

The credit check results were similar to those received when loan 2 was granted. There were no defaults or delinquency accounts being reported within the last six years. In my view, there wasn't anything in the results it received to have indicated that Miss M was or was likely having financial difficulties.

I appreciate Miss M says that her income and expenditure details don't match the information on her credit report, but the information, Drafty received didn't indicate that there was a mis-match and as this was a new facility I think it was entitled to have relied on the information she had provided.

For the start of a new facility, I do think the checks Drafty carried out, bearing in mind there was a small break of over five months since facility 2 had been repaid were proportionate. These proportionate checks showed that Miss M was likely to be able to afford to repay and service her facility.

#### *Credit limit increase*

The same regulatory requirement existed at the time when Drafty increased the credit limit in July 2021 to £940. This was the only credit limit increase for this facility. Having thought about everything, while I can see an argument to say that perhaps Drafty ought to have made some further enquires with Miss M, given that this was a new facility that had only

been running a couple of months without any obvious repayment problems, I've decided it was reasonable for Drafty to have increased the credit limit.

### *Monitoring the facility*

Drafty still kept the overarching obligation to monitor Miss M's facility, so as before, I've reviewed how Miss M managed her account taking note of when she made payments (and how much she paid), when she returned for further funds and how that interacted with the facilities' credit limit.

I've reviewed the transaction data, and there isn't anything from what I can see that would've led Drafty to conclude that the facility wasn't being managed correctly.

Miss M made the minimum repayment each month, and sometimes more than that for example in June 2021. There are also small gaps between when payments were made and when she drew down again, indicating perhaps that there wasn't an immediate need for credit. Indeed, shortly after the credit limit was increased, Miss M repaid and then closed the facility.

Overall, there wasn't anything within the repayments that would've indicated to Drafty that she was having, or likely having, financial difficulties. This means I don't think Drafty needed to step in for this facility and provide any assistance.

I'm therefore not upholding Miss M's complaint about the third facility.

However, Drafty has accepted that it shouldn't have allowed the second facility to run as long as it did and it shouldn't have approved the fifth facility at all. Therefore, in line with what it has already agreed to do I've reiterated what it should do to put things right for Miss M.

### **Putting things right**

I've set out below what Drafty needs to do in order to put things right for Miss M, and these are set out as two separate processes.

Drafty should've have stepped in and taken action in relation to facility 2 from 4 October 2020 and the two bullet points below set out the actions Drafty needs to take for facility 2.

- Re-work Miss M's credit facility balance so that any additional interest, fees and charges applied from 4 October 2020 onwards are removed.
- 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 Miss M, 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 Miss M's credit file from 4 October 2020.\*

Drafty also shouldn't have granted facility 5 to Miss M and I've set out below what Drafty needs to do in order to put things right for her:

- Re-work Miss M's credit facility balance so that all interest, fees and charges applied from the start are removed. This means no interest ought to have been charged for the fifth facility.

- 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 Miss M, 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 Miss M's credit file about this facility.\*

\*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Miss M a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

For the reasons given above, I am upholding Miss M's complaint in part.

Gain Credit LLC trading as Drafty should put things right for Miss M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 20 February 2024.

Robert Walker  
**Ombudsman**