

The complaint

Mr R complains 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 11 June 2021. This had a £1,100 credit limit – and it remained the same while he held the facility. Although the facility is still open it hasn't been used since November 2021 and Drafty confirmed in September 2023 that there is no outstanding balance.

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 September 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 referred the complaint to the Financial Ombudsman, where it was considered by an investigator. She thought the checks Drafty carried out before initially granting this facility were proportionate.

The investigator also explained Drafty had an obligation to monitor the facility and having reviewed the way Mr R borrowed and repaid the facility, she didn't have any concerns and there were, in her view, no signs Mr R was or was likely having financial difficulties. She therefore didn't uphold the complaint.

Mr R didn't agree with the outcome and instead asked for a final decision. Therefore, 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.

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 do before agreeing to Mr R's Drafty 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

As explained, Mr R wasn't given a payday loan where he had to repay all of what he borrowed plus the interest due when he next got paid. Mr R was given a facility where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period. What constitutes a reasonable period is laid out in the regulations but it's important to note that a reasonable period will always be dependent on the circumstances of the individual case.

Mr R was granted a facility with Drafty with a £1,100 limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility to Mr R. This hypothetical situation assumed that Mr R did the following:

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

Had Mr R done that, he'd have repaid Drafty a total of £1,491.46 meaning twelve monthly repayments of just over £124.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr R could make monthly repayments of around £125 at an absolute minimum.

Drafty says it agreed to Mr R's application after he'd provided details of his monthly income and expenditure and it carried out a credit check. Mr R declared he worked full time and received an income of £2,264.75 per month. Drafty says this was independently verified with a third party. Mr R also declared monthly outgoings of £225.

This information showed Drafty that Mr R had enough disposable income each month in which to service and repay the facility. I appreciate Mr R says that his declared outgoings were significantly more than that, but that wasn't reflected in the information he gave Drafty and while I'll come onto the credit checks below, I've not seen enough other information to suggest that further checks were needed to verify this.

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 Mr R had 9 active accounts owing just over £13,000 to his creditors. Although credit commitments were declared by Mr R of £125 per month as part of his applications, I do think Drafty ought to have concluded that perhaps his monthly credit commitments were more than this, given the total outstanding debt. But even if Drafty had increased Mr R's credit commitments to reflect the information it was given, I still think it would've thought the facility was affordable.

According to the results of the credit checks, none of Mr R's active accounts were in delinquency and he hadn't had any defaults recorded on his credit file within the last six years. So, I think it would've been reasonable for Drafty to have concluded, from the credit check results that Mr R wasn't likely experiencing financial difficulties.

I can see that as part of his submission to the Financial Ombudsman and as part of his complaint to Drafty, Mr R has provided a copy of his bank statements from around the time the facility was advanced. I'm sorry to hear about what Mr R has told us about his gambling, and I can see that from his bank statements he was spending significant amounts on such sites.

However, the information wasn't disclosed to Drafty as part of the application and the information Drafty did receive both from Mr R and the credit reference agency didn't suggest he was having or likely having financial difficulties. In addition, I don't think Drafty needed to have taken a closer look at the bank statements before it approved the facility, as I think it obtained a reasonable amount of information in the circumstances, to fairly decide if the lending was affordable. This means Drafty didn't need to take this information into account when conducting its affordability assessment.

Overall, I think Drafty made a fair and reasonable decision to provide the 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. At the time, 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.

Having reviewed the transaction data, which includes the relationship between when Mr R made his drawdowns and his repayments, there isn't anything within that which ought to have given Drafty cause for concern.

Between June 2021 and the last drawdown in October 2021, Mr R drew down a number of times, but importantly, he didn't draw every month. For example, there was no lending in September 2021 and there were times when Mr R made significant payments towards his facility too – which I come on to below.

In addition to the drawdowns, Mr R was making at least the minimum payment each month – and sometimes more - such as in July 2021 where the facility was repaid in full. There also wasn't anything within his repayments that would've indicated to Drafty that he was having, or likely having, financial difficulties. On the contrary, Mr R's use of the account was not unusual and fairly typical of how many people use such accounts. So, there was nothing in how Mr R was using the account that I think should've aroused Drafty's suspicions that he was struggling financially.

Overall, having reviewed the information provided to the Financial Ombudsman, I have decided to not uphold Mr R's complaint. I appreciate he will be disappointed by this, but I hope he has an understanding of why I've reached those conclusions.

My final decision

For the reasons given above, I am not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 February 2024.

Robert Walker
Ombudsman