

## **The complaint**

Mr P 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 P was granted a running credit facility on 23 June 2021. This had a £1,480 credit limit – and it remained the same while he held the facility. Mr P has had some problems repaying the facility and an outstanding balance remains which he is paying to a third party.

Mr P 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 P was not given a payday loan.

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

Unhappy with this response, Mr P referred the complaint to the Financial Ombudsman, where it was considered by an investigator. She thought the checks Drafty carried out before granting this facility were likely proportionate.

The investigator also explained Drafty had an obligation to monitor the facility and having reviewed the way Mr P used the facility, she did have some concerns about the way the facility was used in September 2018. But this pattern stopped in October 2018 and so she didn’t think this usage ought to have prompted any further checks. She didn’t uphold the complaint.

Mr P didn’t agree with the outcome saying he had found a final decision on the Financial Ombudsman Service’s data base against Drafty from 2020 about a facility taken out in 2016 that was upheld after four months because of the way the facility had been used. Mr P highlighted relevant sections of the Consumer Credit Sourcebook (CONC) to show Drafty’s regulatory obligations.

The investigator explained why these points hadn’t changed her mind and as no agreement could be reached, Mr P’s complaint 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 time – which includes section 5.2.1 of CONC which Mr P had highlighted.

Drafty 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 Drafty could take into account before agreeing to lend. The key thing was that it required the 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 P's Drafty facility.

As explained, Mr P 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 P would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr P's repayment record for any sign that he may have been experiencing financial difficulties.

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

As explained, Mr P 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 P 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 this will always be dependent on the circumstances of the individual case.

Mr P was granted a facility with a £1,480 credit limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility to Mr P. This hypothetical situation assumed Mr P 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 P repaid what he owed in 12 monthly instalments.

Had Mr P done that, he'd have repaid Drafty a total of £1,999.67 meaning twelve monthly repayments of nearly £167.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr P could make monthly repayments of around £167 at an absolute minimum.

Drafty says it agreed to Mr P's application after he'd provided details of his monthly income and expenditure and it carried out a credit check. Mr P declared he worked full time and received an income of £1,745 per month. Drafty says this was independently verified with a third party. Mr P also declared monthly outgoings of £900.

The information Mr P declared to Drafty, showed he had enough disposable income each month in which to service and repay the facility. For the start of this relationship I think it was entirely fair and proportionate for Drafty to have relied on the information Mr P declared to it about his living costs.

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 P had nine active credit accounts and one mortgage account, owing just over £13,000 to his creditors. According to the results of the credit checks, none of Mr P'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 P wasn't likely experiencing any financial difficulties.

I can see that as part of his submission to the Financial Ombudsman and as part of his complaint to Drafty, Mr P has provided a copy of his bank statements from around the time the facility was advanced. I'm sorry to hear about what Mr P 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 P and the credit reference agency didn't suggest that Mr P 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. This means I can't fairly conclude Drafty needed to have taken this 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 P. 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 P'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 P made his drawdowns and his repayments, I can see why the investigator had some concerns about the way Mr P had used the facility in September 2018.

Between the inception of the account and the start of September 2018 Mr P drew down on the facility and made more than the minimum payment. The way he borrowed and repaid and the fact this was early on in the lending relationship wouldn't have given Drafty any cause for concern that he was either misusing the facility or was having or likely experiencing financial difficulties.

However, I can see that Mr P had in effect drawn down and repaid the facility in full four times in the month of September 2018. And so, I do think there were signs that perhaps Mr P wasn't using the facility as Drafty had intended and clearly wasn't making his repayments over a reasonable period of time.

After September 2018 Mr P made what appears to be his minimum repayment as expected, and then only drew down another £29 – the pattern of drawing on the facility and then repaying it in full had stopped. Therefore, as Mr P appeared to return to a more reasonable use of the facility and the fact it was still quite early on in the relationship, I think it was just about reasonable for Drafty to have allowed the use of the facility to continue without making further checks into Mr P's finances at this time.

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

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 February 2024.

Robert Walker  
**Ombudsman**