

## **The complaint**

Mr W complains Gain Credit LLC trading as Drafty ("Drafty") gave him a line of credit without carrying out sufficient checks.

## **What happened**

Mr W approached Drafty for a running credit facility on 12 July 2022 and he was given a facility with a £1,730 credit limit. Mr W repaid his facility in August 2023.

Mr W 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 W was not given a payday loan.

In Drafty's final response letter issued in June 2023, it explained the information it had gathered from Mr W before it approved the facility. It concluded given the estimated monthly repayment, Mr W was likely to be able to afford it. However, Drafty did make an offer to settle the complaint because it said:

*"... we can see there is a possibility that allowing the continued use of the loan beyond May 03, 2023 may not have been sustainable in the long term."*

It then outlined the offer to put things right, which was to refund any interest, fees and charges incurred on drawdowns after 3 May 2023, to this sum pay 8% simple interest (less any tax) was to be added, use this sum to adjust the balance and then remove any negative markers from Mr W's credit file related to the credit after 3 May 2023.

Unhappy with this response, Mr W referred the complaint to the Financial Ombudsman, where it was considered by an investigator. She thought the information Mr W gave when his facility was approved wasn't plausible and so further checks needed to have been conducted. But she concluded that had further checks been undertaken, Drafty would've still thought the facility was affordable.

The investigator also explained that Drafty had an obligation to monitor the facility. She looked at how Mr W had used the facility, and like Drafty she thought there were signs around the start of May 2023 that perhaps the facility was no longer sustainable for him. But as Drafty had already made an offer, she thought the offer was a fair and reasonable resolution to the complaint.

Mr W didn't agree, saying Drafty should have done more during the time he had the facility which would've shown his financial difficulties. 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.

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 W's facility.

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

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

Having carefully thought about everything provided, I do think Drafty ought to have done more before it granted the facility and I agree with the investigator that the declared figures provided by Mr W about his living costs weren't plausible. But even if Drafty had taken further steps it would've seen the facility was affordable. I've explained why below.

Mr W was granted a facility with Drafty with a £1,730 limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility. This hypothetical situation assumed that Mr W 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 W repaid what he owed in 12 monthly instalments.

Had Mr W done that, he'd have repaid Drafty a total of £2,345.66 meaning twelve monthly repayments of around £195.47 each.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr W could make monthly repayments of around £196 at an absolute minimum.

Drafty says it agreed to Mr W's application after he'd provided details of his monthly income and expenditure and it carried out a credit check. Mr W declared he worked full time and received an income of £2,661.63 per month and he also declared monthly outgoings of £0.

This information showed Drafty that Mr W enough disposable income each month in which to service and repay the facility. But, like the investigator I would question whether it was fair and reasonable of Drafty to have believed that Mr W didn't have any outgoings at all.

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 W had 9 active accounts and these accounts were costing Mr W at least £189 per month to service. Although no credit commitments were declared by Mr W as part of his application, I think it was reasonable that Drafty could've used this figure for Mr W's monthly credit commitment.

According to the results of the credit checks, none of Mr W's active accounts were in delinquency and he hadn't had any defaults recorded on his credit file within the last 41 months. So, I think it would've been reasonable for Drafty to have concluded, from the credit check results that Mr W wasn't likely experiencing any financial difficulties.

Ordinarily, I'd likely conclude that the checks Drafty carried out were proportionate. However, I don't think I can say that here. Mr W declared £0 for monthly outgoings which just wasn't plausible especially given that Drafty was given information that suggested he had credit commitments of at least £189 per month.

So, I do think Drafty needed to have undertaken further steps before the facility was granted to satisfied itself that Mr W did indeed have the low monthly outgoings that he declared. Drafty could've gone about doing this a number of ways, it could've asked to see evidence of any income or outgoings or as I've done here, used the bank statements that Mr W provided.

I've reviewed the bank statements for the month before the facility was granted and I can see that Mr W had taken a loan from Drafty's sister company but this appeared to have been repaid by the time he returned for this facility. In addition, I can see that Mr W was using another flexible credit product from another provider. There are also credit cards and payments covering costs for a vehicle.

But overall, had Drafty looked at Mr W's bank statement or made further enquires with him about his living costs – which is what I think it needed to do, then it would've likely discovered that Mr W could afford to repay and service his facility.

Overall, I don't think Drafty carried out proportionate checks before the facility was granted, but had it done so, it still would've advanced it to Mr W.

### *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 W. 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 Mr W's repayment record and how he used the facility and step in if and when he showed signs of possible repayment difficulties.

For this part of the decision, I also haven't reviewed the transaction after May 2023 because Drafty has already accepted it needed to have stepped in at this point. But what I would say is that I don't disagree that by then, after having the facility for close to a year and the pattern of how Mr W was starting to use the facility was established that Drafty needed to step in and take some action.

Having reviewed the transaction data before Drafty accepted something went wrong, which includes the relationship between when Mr W made his drawdowns and his repayments, there isn't anything within that which ought to have been overly concerning for Drafty.

Between the inception of the facility and the end of April 2023, Mr W drew down a number of times, and although he did draw every month there are times such as in August and September 2022 where he made payments above the minimum that was expected.

In addition to the drawdowns Mr W was making at least the minimum payment each month – and sometimes more such as in March 2023. There wasn't anything within his repayments that would've indicated to Drafty that he was having, or likely having, financial difficulties so I don't think Drafty needed to have stepped in any sooner than it has offered. So, I don't think Drafty needed to do any further checks while Mr W held the facility.

For completeness, I've outlined below what Drafty needs to do and what it has already agreed to do in the final response letter to put things right for Mr W.

### **Putting things right**

In line with what Drafty has already agreed to do, it should;

- Re-work Mr W's credit facility balance so that any additional interest, fees and charges applied to drawdowns from 3 May 2023 from 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 Mr W, 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 W's credit file recorded after 3 May 2023.\*

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

### **My final decision**

For the reasons given above Gain Credit LLC trading as Drafty has already made an offer to settle the complaint as it outlined in the final response letter, and I think this offer is fair in all the circumstances.

So, my decision is that Gain Credit LLC trading as Drafty should pay this offer to Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 February 2024.

Robert Walker  
**Ombudsman**