

## **The complaint**

Mr B 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 B was granted a running credit facility on 25 December 2023. This had a £1,000 credit limit – and it remained the same while he held the facility. Mr B has an outstanding balance and Drafty says the account is currently with a third-party collection agency.

Mr B 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 B was not given a payday loan.

In Drafty’s final response letter to his complaint issued in April 2024, it explained the information it had gathered from Mr B before it approved the facility. It concluded - given the estimated monthly repayment - Mr B was likely to be able to afford it.

Unhappy with this response, Mr B referred the complaint to the Financial Ombudsman, where it was considered by an investigator. She initially said, that given the amount of outstanding debt Mr B had and which Drafty knew about. Drafty, perhaps ought to have carried out some further checks. At the time, the investigator didn’t have any documentation and so she couldn’t conclude Drafty had made an error.

Mr B then provided his bank statements and a full credit file, and this led the investigator to reconsider the complaint. But having done so, while Mr B had a large amount of total debt, the majority of that was on a hire purchase agreement and the amount Drafty calculated as Mr B’s monthly credit commitments appeared to be consistent with the information, in the credit report.

Mr B didn’t agree with the outcome, saying.

- He didn’t provide any details of his income and expenditure when he applied for the facility because he applied for it through an intermediary.
- Had Drafty looked more closely into his finances it wouldn’t have approved the facility.
- The income figure used by Drafty was incorrect, with his actual income being between £1,600 and £1,800 per month.
- Mr B provided details of his commitments and he says Drafty should’ve verified his outgoings.

The investigator responded to Mr B’s points and explained why these hadn’t changed her mind and as no agreement could be reached, Mr B’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.

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 B's Drafty facility.

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

I'm sorry to hear about the impact Mr B has said this facility – and his other debts have had on his health. I do hope things have improved for him.

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

As explained, Mr B 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 B 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 B was granted a facility with a £1,000 credit limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility to Mr B. This situation assumed that Mr B 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 B repaid what he owed in 12 monthly instalments.

Had Mr B done that, he'd have repaid Drafty a total of £1,375.65 meaning twelve monthly repayments of nearly £115. So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr B could make monthly repayments of around £115 at an absolute minimum.

I know Mr B has some concerns about the interest rate Drafty applies but as this was set out in the credit agreement, and each monthly statement explains what the minimum payment is, I don't think Drafty has made an error in the manner it has applied interest to the account or how it has calculated it.

Drafty says it agreed to Mr B's application after he'd provided details of his monthly income and expenditure, and it carried out a credit check. According to the application data, Mr B declared he worked full time and received an income of £2,120 per month. Drafty says this was independently verified through a third party.

Whereas, Mr B says the income figure used for the affordability assessment wasn't accurate. He said he didn't provide Drafty with the figure but perhaps it was provided by the credit immediately who he said he applied for the facility through.

Drafty could only make its decision based on the information presented to it and it did say it carried out some sort of verification. But even, if it hadn't conducted any sort of verification into Mr B's income it still would've been entitled to have relied on the information it received without the need to check it further. I don't think Drafty needed to obtain further information about Mr B's income such as a payslip or a copy of his bank statement.

Drafty was told Mr B's monthly outgoings came to £800 per month – but as far as I can see, this figure wasn't broken down into categories, it was just a headline figure. In addition, Drafty also carried out a credit search and it's provided a summary of the results that it received.

The credit check results showed that Mr B had 12 active credit accounts – but Drafty didn't know how those accounts were broken down, for example the accounts could've been mail orders, credit cards or other loans.

According to the results of the credit checks, none of Mr B'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 B wasn't likely experiencing any financial difficulties at the time the facility was approved.

In saying that, Drafty was told that Mr B's outstanding monthly credit commitments were likely to be at least £813 per month. In response to being told about this, it increased Mr B's monthly outgoings to £1,402.72. This seems reasonable, given the information it has been provided with.

However, the credit file information showed that Mr B already had just over £30,000 of total existing debt. In my view, this is quite a significant sum considering the income that Drafty used for the affordability assessment. So, like the investigator I do think that Drafty ought to have dug a bit deeper into Mr B's outstanding credit commitments to see how his debt was constructed.

Had Drafty made further enquires with Mr B – perhaps by asking him for a copy of his full credit file, then I think it's likely it would've discovered the majority of the outstanding debt – over 66% of it related to a hire purchase agreement – costing £343 per month and associated car insurance – costing £272 per month.

Having considered the other accounts that were active at the time, I'm satisfied that had Drafty taken a closer look at the makeup of the outstanding debt Mr B had, I don't think it would've been too concerned by what it saw. In addition, the monthly credit commitment it calculated was broadly accurate.

Overall, the information Mr B 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 it gathered and received about Mr B which demonstrated the facility was affordable.

There also wasn't anything else in what Drafty received to have prompted it to either decline the application nor enough to have prompted it to carry out a full financial review into Mr B's financial position. This means I think it would've been disproportionate, at this point in the relationship for Drafty to have considered Mr B's bank statements.

Overall, I don't think Drafty made an error when it approved the facility.

### ***Monitoring the facility***

Although I don't think Drafty was wrong to have provided the facility, that wasn't the end of its obligations to Mr B. 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, could be suggestive of potential financial difficulties. In practice, CONC 6.7.2(1)R meant Drafty needed to be mindful of Mr B'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 B made his drawdowns and his repayments, I don't think Drafty needed to step in any sooner than it did and I've explained why below.

Mr B withdrew his full credit limit on the day the facility was approved, and he then made his January 2024 payment as expected. However, based on the statements that I have seen, since then there have been no further drawdowns – because Drafty suspended the facility due to non-payment. And the statement of account suggests that a payment may have been made in April 2024, but this was then refunded a matter of hours later.

But as there has only been one drawdown, I can't fairly conclude that the manner in which Mr B used the facility ought to have given Drafty cause for concern because there was no pattern for it to consider.

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

An outstanding balance remains due and Mr B may wish to contact the third party to discuss a way forward. I would remind Drafty that it has an obligation to treat Mr B fairly and with forbearance.

I've also considered whether Drafty has acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Drafty lent irresponsibly to Mr B or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 September 2024.

Robert Walker  
**Ombudsman**