

The complaint

Mr F complains that Gain Credit LLC trading as Drafty ("Drafty") gave him a line of credit without carrying out the appropriate affordability checks. Had further checks been made such as reviewing his bank statements, Mr F says Drafty wouldn't have lent to him.

What happened

Mr F was granted a running credit facility on 3 October 2023. This had a £1,360 credit limit – and it remained the same while he held the facility. Mr F had problems repaying the facility and as of October 2024, the account is being managed by a third party and Mr F has a balance.

Mr F 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 F was not given a payday loan.

In Drafty's final response letter to Mr F's complaint issued in October 2024, it explained the information it had gathered from Mr F before it approved the facility and why it wasn't upholding the complaint.

Unhappy with this response, Mr F referred the complaint to the Financial Ombudsman, where it was considered by an investigator and she didn't uphold the complaint. She said, proportionate checks were carried out which showed the facility to be affordable and there wasn't anything in the way Mr F had used the facility to have given Drafty any cause for concern.

Mr F didn't agree with the outcome, saying that he had two other complaints upheld by the Financial Ombudsman for smaller loans taken around the same time as the Drafty facility. Mr F also said he had a high level of debt and it ought to have been clear to Drafty that his outgoings were more than £300 per month.

As no agreement could be reached, Mr F'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 F's Drafty facility.

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

What happened when Drafty approved the facility

As explained, Mr F 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 F was given a facility where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period.

Mr F was granted a facility with a £1,360 credit limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility to Mr F. This situation assumed that Mr F 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 F repaid what he owed in 12 monthly instalments.

Had Mr F done that, he'd have repaid Drafty a total of £1,870.88 meaning twelve monthly repayments of nearly £156. So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr F could make monthly repayments of around £156 at an absolute minimum.

Drafty says it agreed to Mr F's application after he'd provided details of his monthly income and expenditure, and it carried out a credit check. Mr F declared he worked full time and received an income of £2,091 per month. Drafty says this was independently verified through a third party and it made no adjustments to the declared income for its affordability check. For the start of the lending relationship this was a reasonable.

Drafty was told Mr F's monthly outgoings came to £300 per month – but as far as I can see, this figure wasn't broken down into categories, it was just a headline figure. However, Drafty just didn't accept the monthly outgoing figure provided by Mr F.

Drafty says it compared what Mr F said with "*national averages*" and having carried out this additional check it increased Mr F's monthly outgoings to £1,624.08. But even with this adjustment – as well as thinking about the credit search results there was still sufficient disposable income for Mr F to make his anticipated monthly payments.

Before the facility was approved Drafty carried out a credit search and it has provided a summary of the results that it received from the credit reference agency. It is worth saying here that although Drafty carried out a credit search, there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Drafty couldn't do is carry out a credit search and then not react to the information it received – if necessary.

This may be one of the reasons that Mr F's other complaints have been upheld in his favour – that those lenders carried out a different standard of credit search and or had access to other information which suggests the lending wasn't affordable for him.

However, as I've said above, as there was no requirement for Drafty to carry out a credit search to a set standard, this isn't a reason that I can uphold the complaint. Instead, I have to review the results of the data it received to see whether there was any indication that Mr F may have been experiencing financial difficulties or any other triggers that may have led Drafty to conduct further checks before lending to Mr F.

The credit check results showed that Mr F had 14 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 including payday.

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

In saying that, Drafty was told that Mr F's outstanding monthly credit commitments were likely to be at least £732 per month. In response to being told about this – as I've said above, Drafty along with thinking about his other living costs increased Mr F's total monthly outgoings to £1,624.08.

Mr F has said that he had maxed out his credit cards and I can see from the bank statements he's provided that he was using payday loans. But to be clear I don't think Drafty needed to obtain copy bank statements. And that information wasn't fully apparent in the credit file data that it saw. Given this was the start of the lending relationship I think it was just about reasonable for Drafty not to have conducted further checks solely based on the credit file results.

Overall, the information Mr F 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 F 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 F's financial position. This means I think it would've been disproportionate, at this point in the relationship for Drafty to have considered Mr F's bank statements.

As such, this also means that Drafty wouldn't have discovered Mr F's gambling. There also isn't anything else in what I've seen in the information that Drafty collected, to suggest that it ought to have reasonably known that Mr F was gambling. And as Drafty wasn't aware of Mr F's gambling, I can't say that in the circumstances of this complaint that Drafty did anything wrong.

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 F. At the time, Drafty was and is 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 F’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 F made his drawdowns and his repayments, I don’t think Drafty needed to have stepped in any sooner than it did and I’ve explained why below.

Over the first 15 days of having the facility Mr F drew down £1,150 across 7 drawdowns. Mr F then made the expected minimum payment before drawing down a further £200. Mr F then made his minimum payment as expected in November 2023 before coming back a couple of days later to drawdown a further £150. There was then only one more drawdown and three payments to the account before payments ceased from the end of December 2023 until February 2024 when a payment plan was agreed.

Mr F didn’t drawdown on the facility long enough for any clear pattern to have been established as to how he may repay and then take further drawdowns and so I can’t say Drafty didn’t something wrong when it monitored his facility.

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

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 F 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 F’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 7 February 2025.

Robert Walker
Ombudsman