

## The complaint

Mr C 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 C was granted a running credit facility in February 2022. This had a £1,660 credit limit – and it remained the same while he held the facility. Mr C had some problems repaying the lending and Drafty has provided a copy of a default notice it issued in June 2024. As of November 2024, an outstanding balance remains due.

Mr C 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.

In Drafty's latest final response letter issued on 26 June 2024 partly upheld Mr C's complaint because it said *"...we've come to a conclusion that there was a possibility that allowing the credit facility may not have been sustainable in the long term."* It then made the following offer to Mr C;

- Refunded interest, free and charges on redraws after 16 December 2022.
- Pay 8% simple interest on this amount, minus any tax that is due.
- Use the refund to adjust Mr C's outstanding balance and then remove any negative markers on his credit file from 16 December 2022.

It then provided some further caveats about the credit reference agency and the need to repay what was owed. At the time the offer was made, this would reduce Mr C's outstanding balance from £891.76 to £629.33.

Unhappy with this offer and response, Mr C 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 weren't likely proportionate given the credit check results, but further checks wouldn't have made any difference to Drafty's decision to lend. She also thought the offer made by Drafty was fair and reasonable. Mr C didn't agree with the outcome saying;

- By not upholding the complaint from the start Drafty is profiting from its incorrect decision to lend.
- Mr C provided a copy of his credit file showing in February 2022 he had six defaults.
- Drafty ought to have carried out a credit search with all the credit reference agencies rather than just the one it used.
- Mr C wants the default removed from his credit file and the balance written off.

The investigator explained why these points hadn't changed her mind and as no agreement could be reached, Mr C'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.

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 C's Drafty facility.

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

Firstly, I'm sorry to hear about Mr C's health problems, I do hope things have improved for him.

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

Mr C 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 C was granted a facility with a £1,660 credit limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility to Mr C. This hypothetical situation assumed that Mr C 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 C repaid what he owed in 12 monthly instalments.

Had Mr C done that, he'd have repaid Drafty a total of £2,250.75 meaning twelve monthly repayments of nearly £188.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr C could make monthly repayments of around £188 at an absolute minimum.

Drafty says it agreed to Mr C's application after he'd provided details of his monthly

income and expenditure and it carried out a credit check. Mr C declared he received an income of £2,548 per month. Drafty says this was independently verified with a third party. Mr C also declared total monthly outgoings of £1,200.

The information Mr C declared to Drafty, showed he had enough disposable income each month in which to 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 C declared to it about his income and his living costs.

Drafty also carried out a credit check with one of the credit reference agencies before the facility was granted, and it has provided the Financial Ombudsman with a summary of the results.

However, Mr C has said it may not be sufficient to carry out a credit search with just one of the credit reference agencies because there maybe adverse information reported with of the agencies that isn't reported to another. Mr C is correct in saying that. Not all creditors report to all of the credit reference agencies.

But there was no regulatory requirement to carry out a credit search at the time let alone one to a specific standard. This does mean that a lender may only ask for certain pieces of information for example details of active accounts. The results received by Drafty may also differ from the credit report which Mr C has provided us from a different agency. But I do think it's entirely fair and proportionate for Drafty to have relied on the results that it received – without having to run a credit search on Mr C through all of the credit reference agencies.

The results showed that Mr C had 15 active credit accounts owing just under £16,000 to his creditors. And as the investigator said, based on what its shared, it wasn't aware of the types of accounts Mr C had. The results also showed Drafty that Mr C didn't have a mortgage. But Drafty did know that Mr C's commitments were costing at least £479 per month.

Drafty was told Mr C had two defaulted accounts recorded on his credit file and the most recent of these was recorded 26 months before the agreement was entered in to. Mr C says he had more defaults than this – 6 – but that information wasn't present in the data Drafty received from the credit reference agency.

Given, the number of defaults and how long ago the most recent one was recorded, I think it was entirely fair and reasonable for Drafty to not be overly concerned by these. I don't think these alone would've prompted it to decline the application or conduct further checks.

However, Drafty was told that the month before the agreement started a delinquent account was recorded on his credit file. The investigator suggested that knowing this, Drafty ought to have probed this further. I don't disagree, as Mr C was perhaps showing signs that he wasn't able to manage his existing credit commitments.

Had Drafty looked into this more closely, I think it would've likely seen that Mr C had difficulties making credit card repayments in October and November 2021, but these accounts had been brought up to date by the time the Drafty agreement started. And there didn't appear to have been any other adverse information reported in the months leading up to the start of the Drafty facility. I don't think, overall, that the delinquent markers would've caused Drafty to do any more or to decline his application.

As I've said, Drafty was also told that Mr C's credit commitments came to at least £479 per month, which is more than the £225 Mr C declared as part of his application. But even if Drafty would've added the extra £254 the outcome would've been the same – Drafty would've concluded the facility was affordable.

Overall, in my view, it would've been proportionate for Drafty to make further enquires with Mr C about the missed payment – but even if it would've done, I don't think it would've altered its decision to lend. I don't think Drafty was wrong to have granted Mr C his credit 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 C. 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 C's repayment record and how he used the facility and step in if he showed signs of possible repayment difficulties.

Firstly, Drafty has already accepted, in its latest final response letter, that something went wrong because it has offered compensation to Mr C as outlined in the background of this decision. It has accepted something went wrong from 16 December 2022. As Drafty has accepted this, and has offered redress in line with what the Financial Ombudsman may have awarded, had the complaint been upheld at this point, I won't be reviewing Mr C's usage from this date.

But, in order to resolve the complaint, Drafty should pay the redress it has already agreed to pay and which was outlined in the final response letter of 26 June 2024.

I've reviewed the transaction data, which includes the relationship between when Mr C made his drawdowns and his repayments, how much his repayments were and whether there was anything else that Drafty needed to consider.

Between the inception of the account and December 2022, Mr C drew down on the facility and at times made payments that were significantly more than the contracted minimum, and it took a couple of months of usage before Mr C had utilised the full credit agreement.

There was a change in the way Mr C used the facility from July 2022. From July 2022, Mr C appears to only be making sufficient payments in order to leave enough of the facility free to enable him to drawdown the minimum amount of £100. But, at the point where Drafty may have needed to have stepped in, it's already done, as outlined above.

In my view, the offer that Drafty has already made to settle the complaint is fair and reasonable in the circumstances, and it doesn't need to do any more.

It's likely a balance will still be due once any refund is applied and Mr C has told us about a change in circumstances from July 2024, which means he isn't currently working. I'm sorry to hear of this. And Drafty will need to take this on board when discussing any repayment plan with Mr C. I would also remind Drafty of its obligation to treat Mr C fairly and with forbearance moving forward.

Mr C has offered an amount of money each month to go towards the balance but this is

something that he will need to discuss with Drafty moving forward to come to a mutually agreeable arrangement.

### **Putting things right**

In order to put things right, Drafty should pay the offer that it made to Mr C as laid out in the final response letter of 26 June 2024.

### **My final decision**

Gain Credit LLC trading as Drafty has already made an offer to settle the complaint by reducing Mr C's balance inline with upholding the complaint from 16 December 2022 – this is the offer outlined in the final response letter of 26 June 2024. I think this offer is fair in all the circumstances of the complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2025.

Robert Walker  
**Ombudsman**