

## **The complaint**

Miss S complains through a representative that Gain Credit LLC trading as Drafty ("Drafty") gave her a line of credit without carrying out the appropriate affordability checks.

## **What happened**

Miss S was granted a running credit facility on 13 April 2021. This had a £350 credit limit – and it remained the same while she held the facility. Miss S has had some problems repaying the facility and an outstanding balance remains which has been sold to a third party.

Miss S was given a running credit account where she could either request funds up to her agreed credit limit in one go or could take multiple drawdowns up to the limit. She was also able to borrow further, up to the credit limit, as and when she repaid what she owed.

In Drafty's final response letter, it explained the information it had gathered from Miss S before it approved the facility. It concluded given the estimated monthly repayment Miss S was likely to be able to afford her facility.

Unhappy with this response, Miss S's representative referred the complaint to the Financial Ombudsman, where it was considered by an investigator.

The investigator didn't uphold the complaint and explained Drafty had carried out proportionate checks into Miss S's income and expenditure which showed the facility was likely to be affordable. Although there was some adverse credit file information, the investigator explained why this wouldn't have been of concern to Drafty.

Miss S's representative didn't agree with the outcome saying in summary;

- A review of Miss S's own credit file showed more defaults than Drafty's checks, accounts with recovery agents as well as around £8,000 of debt.
- A default, nine months before ought to have been of concern to Drafty because it showed Miss S was struggling to manage her finances.
- Proportionate checks ought to have involved Drafty verifying Miss S's income and looking more closely at her expenditure.

The investigator explained Miss S's credit report had been considered but also that Drafty was entitled to have relied on the information the credit reference agency had provided it. The investigator concluded Drafty's checks didn't need to go further which meant bank statements weren't needed.

The representative responded saying the default only nine months before ought to have warranted further checks which ought to have included looking at Miss S's bank statements. As no agreement could be reached, Miss S's complaint has been passed to me to decide.  
Your text here

## **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.

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 Miss S's Drafty facility.

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

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

Miss S was given a facility where there was an expectation that she'd repay what she 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.

Miss S was granted a facility with a £350 credit limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility. This hypothetical situation assumed Miss S did the following:

1. drew down her maximum credit limit on the first day of the facility being provided,
2. she kept to the terms of the agreement, and
3. Miss S repaid what she owed in 12 monthly instalments.

Had Miss S done the above, she'd have repaid Drafty a total of £474.56 meaning twelve monthly repayments of nearly £40. Although I note Drafty says the minimum was around £54 per month. But whether I use Drafty's figures which were outlined in the final response or the figures from the credit agreement doesn't make any difference to the outcome that I've reached. In these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Miss S could make monthly repayments of around £40 as an absolute minimum.

Drafty says it agreed to Miss S's application after she'd provided details of her monthly income and expenditure and it carried out a credit check.

Miss S declared she received an income of £1,800 per month. However, Drafty didn't just rely on what Miss S told it about her income, it appears to have carried out some sort of cross reference into Miss S's income – likely through a third party. I say this because Drafty has shown for the affordability assessment it used a monthly income figure of £1,620.

Miss S was also asked questions about her monthly expenditure across a number of different variables, including rent, utilities and existing credit commitments to name a few. Miss S told Drafty that her monthly outgoings came to £300.

While the information Miss S gave to Drafty showed the facility to be affordable, Drafty went about using statistical data to cross reference the information Miss S had provided as part of her application. Having done so it increased Miss S's monthly outgoings by £421 – bringing the total it used for the affordability assessment to £721. But still, even with larger monthly outgoings, the facility still appeared affordable.

Before the facility was approved Drafty carried out a credit search and it has provided the results 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. Drafty was also entitled to rely on the results that is received.

But what I have done is review the information that Drafty received to see whether it showed that Miss S was having, or likely to be having, financial difficulties. And if so, was there enough to have prompted Drafty to have either carried out further checks or to have declined the application.

While I can see Miss S's representative has provided a copy of Miss S's own credit report, I've used the data provided to Drafty from the credit reference agency because this is what it saw and was told about Miss S's finances before it approved the facility.

The results showed that Miss S had nine active credit accounts owing creditors £2,000. The results also confirmed Miss S didn't have a mortgage. According to the results of the credit checks, none of Miss S's active accounts were in delinquency.

However, the results do show that nine months before the facility was approved Miss S defaulted on an account – which had a balance of £700 and another account had also entered delinquency at the same time. But, within the last nine months no other adverse information had been reported to the credit reference agencies. Overall, I think it was just about reasonable for Drafty to have approved the facility without carrying out any further.

The credit checks are what is at the crux of this complaint. Miss S's representative say the default and delinquent accounts ought to have led Drafty to carry out further checks which should've included reviewing her bank statements. I've thought about what it has said, but in the circumstances of this complaint I disagree that further checks were needed.

Part of my consideration is that the monthly repayments Miss S had to make were small – at most £54 and the rest of the checks Drafty carried out suggested that there was more than enough disposable income for Miss S to be able to afford this.

Drafty also didn't just rely on what Miss S has told it – it in my view correctly and fairly uplifted her expenditure and decreased her monthly income based on the results of additional checks which it says were carried out. This was proportionate and the correct course of action to have taken.

But while the credit check results did suggest around nine months before the facility was granted Miss S had encountered some repayment problems, the information given to Drafty

suggested those problems were not immediately present at the point the facility was approved. And so, taking that into account, along with the monthly repayment amount, has led me to conclude, that Drafty carried out proportionate checks before it lent. The results of those checks indicated Miss S would likely be able to repay the facility.

I do not uphold Drafty's 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 Miss S. 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 Miss S's repayment record and how she used the facility and step in if and when she showed signs of possible repayment difficulties.

However, having reviewed the data, I can see that Miss S drew down on the facility once and didn't make any payments. As a result, Drafty sent a number of letters before terminating the facility in July 2021. I think Drafty's actions here were reasonable, by terminating the agreement it prevented further interest, fees and charges from being added to the balance.

I don't think Drafty made an error with how it monitored Miss S's facility.

The final response letter provided details of the third party who currently owns the debt and so Miss S may wish to reach out to them to discuss a way forward to repay what is owed.

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

Finally, I've also considered 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 Miss S or otherwise treated her 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 Miss S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 10 April 2025.

Robert Walker  
**Ombudsman**

