

## **The complaint**

Mr D complains that Gain Credit LLC trading as Drafty ("Drafty") gave him a line of credit which wasn't affordable or sustainable for him.

## **What happened**

Mr D was granted a running credit facility in August 2024. This had a £1,000 credit limit – and it remained the same while he held the facility. As of December 2024, an outstanding balance remains due.

Mr D was given a running credit facility 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 final response letter issued in October 2024 it didn't uphold the complaint. Unhappy with this offer and response, Mr D referred the complaint to the Financial Ombudsman, where it was considered by an investigator.

The investigator upheld Mr D's complaint because Drafty needed to carry out further checks before granting the facility given Mr D was already spending more than 50% of his income paying his existing credit commitments. Further checks would've shown Drafty the facility wasn't affordable.

Drafty didn't agree with the outcome saying;

- The checks and adjustments made by Drafty indicated the facility was affordable.
- Mr D's credit file didn't show any signs that he was struggling to make his existing repayments.
- The final expenses amounts used by Drafty of around £2,330 included the credit commitments it discovered in the credit check results.
- Verification through bank statements may be necessary but in the circumstances of Mr D's complaints there were no concerns about his ability to afford the facility repayments.
- The high balance on active accounts may have been noted as a risk factor but the reviewed expenditure check confirmed Mr D could afford his repayments.
- Drafty wouldn't have lent to Mr D if there was a risk he wouldn't repay what he owed.

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

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

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

Mr D was given a facility where there was an expectation 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 D 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 D. This hypothetical situation assumed that Mr D 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 D repaid what he owed in 12 monthly instalments.

Had Mr D 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 D could make monthly repayments of around £115 per month.

Drafty says it agreed to Mr D's application after he'd provided details of his monthly income and expenditure and it carried out a credit check. Mr D declared he received an income of £3,055 per month. Drafty says this was independently checked with a third party and it didn't make any adjustments to the figure provided.

However, even if Drafty had taken a closer look at Mr D's income – perhaps through a payslip or bank statements then it would've seen it had fluctuated within the three months leading up to the facility being granted of between £2,800 and £3,400 – this included salary and benefits. So, I think using the income figure Drafty used was reasonable. I think it was fair and reasonable for Drafty to have relied on what Mr D had told it.

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.

The results showed that Mr D had 15 active credit accounts owing just under £59,000 to his creditors. The investigator said Drafty wasn't aware of the types of accounts Mr D had for example the accounts could've been store cards, credit cards or other loans. The results also showed Drafty that Mr D didn't have a mortgage. But Drafty was told Mr D's commitments were costing him at least £1,643 per month.

I do know that the figure given to Drafty about the monthly credit commitments may well have been higher as it is my understanding the above figure doesn't include payments Mr D may have had to revolving credit providers, such as credit or store cards – so there was a real risk that Mr D's credit commitments were greater still.

I agree with Drafty's comments that the credit search didn't indicate Mr D was having problems managing these existing creditors – after all there are no missed payments, defaults or other delinquent markers being reported. But equally, before Drafty carried out any other adjustments it was also on notice that Mr D, was spending more than 50% of his income solely servicing existing creditors before any other costs were considered.

In addition, Mr D had declared his monthly outgoings – in total he said these came to £1,000 per month. This clearly couldn't be accurate, because Drafty was on notice that Mr D had at least £1,643 per month worth of credit commitments.

Drafty says it checked Mr D's information “...using national averages for these expenses...”. After this check Drafty calculated Mr D's monthly outgoings came to £2,330.96. I'm not clear how this figure was arrived at bearing in mind Mr D didn't give a breakdown of his monthly outgoings of £1,000 – for example what percentage was to do with credit commitments and how much for other living costs.

What I'm being asked to consider is whether the checks carried out by Drafty went far enough. I've summarised what Drafty said earlier on in the decision. In some circumstances, it's entirely fair and reasonable for Drafty to have cross checked the information Mr D provided with statistical data, indeed, that is entirely in line with the regulations in CONC 5.2A.19, which says.

*(1) For the purpose of considering the customer's non-discretionary expenditure under CONC 5.2A.17R, the firm may take into account statistical data unless it knows or has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customer's situation.*

In this complaint, I do think it wasn't fair or reasonable to rely on statistical data to cross check what Mr D had confirmed. Bearing in mind, that he had significantly underreported his monthly living costs and so I don't think using statistical data here would've provided a fair and reasonable representation of Mr D's financial position.

So, Drafty was on notice that Mr D's monthly expenditure figure couldn't possibly be accurate and it was on notice that Mr D had what I think is fair to say quite high monthly credit commitments compared to his income. In those circumstances, I do think Drafty needed to do more in order to get an accurate idea of what Mr D's day to day living costs.

I also think it would've been fair for Drafty to have made further enquires with Mr D about his credit commitments, given that it knew that the figure it was provided with didn't include revolving credit commitments and there was a risk the commitments may have been greater still.

To be clear, just because I think further checks were needed before the agreement was approved, that doesn't mean that this complaint ought to have been upheld. After all it's entirely possible that had Drafty made further checks it would've shown the facility was affordable.

Drafty could've gone about carrying out further checks a number of ways, it could've asked more detailed questions, it could've obtained copy bills, other necessary documentation or it could've asked to see Mr D's bank statements.

I accept had Drafty conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Drafty conducting a proportionate check I do think it's entirely fair and reasonable to consider the bank statements that I now have access to.

To be clear, the bank statements are only being used in order to try and establish what Mr D's likely monthly outgoings were. This wasn't and isn't intended to be conduct a full financial review – as I don't think that would've been warranted before the facility was granted.

Drafty ought to have made enquires with Mr D about his credit commitments, beyond relying on the information it received. Had further checks been made by Drafty into his monthly credit commitment it would've likely discovered his costs were around £1,800 per month – this includes payments towards loans, credit cards, mobile phone, insurance and buy – now pay later products. And of course, on top of this would have been the payments Mr D would've had to Drafty.

Had Drafty taken a closer look at Mr D's outgoings, which would have been reasonable here it would've likely discovered payments to insurance, child maintenance, petrol costs and food costs. However, given the value of these payments, had Drafty been fully aware of these it would've made the decision that the facility was neither affordable or sustainable for Mr D and not lent to him.

Drafty also needed to consider the agreement wasn't just affordable in a pound and pence sense but also whether the repayments were sustainable. And a closer look at the statements would've indicated that Mr D was already spending significant sums each month on existing payments and couldn't reasonably take on more credit.

I am therefore upholding Mr D's complaint.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr D in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **Putting things right**

- Re-work Mr D's credit facility balance so that all interest, fees and charges applied from inception are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr D to arrange a suitable repayment plan for this – if needed.

OR

- 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 D, 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 D's credit file.\*

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

### **My final decision**

For the reasons given above, I am upholding Mr D's complaint.

Gain Credit LLC trading as Drafty should put things right for Mr D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 June 2025.

Robert Walker  
**Ombudsman**