

complaint

Mr L complains that Gain Credit LLC, trading as Lending Stream and as Drafty, lent to him irresponsibly.

background

Gain Credit LLC altered its trading names – Lending Stream and Drafty – and so for this decision I refer to it as Drafty for convenience.

Drafty offered a credit facility which commenced with a limit being determined and then the customer was able to draw down the amounts he or she requires. The credit was unsecured and had no fixed duration. Mr L applied for loans and was granted credit accounts which are different in nature to loans.

Drafty's records show that Mr L applied for a £2,000 loan in November 2015. Mr L declared a monthly income of £2,100 with outgoings of £675. Drafty says that it carried out credit checks. The credit limit for Mr L for the first account was arranged to be £1,000. Mr L repaid this on 21 September 2016.

Seven months later Mr L applied for another loan for £2,200. He declared a monthly income of £2,400 and expenditure of £950. Drafty says it did credit checks. It approved a facility for Mr L of £1,920 on 30 April 2017.

Mr L informed Drafty he was making a complaint about irresponsible lending in November 2017. He asked for account details and Drafty sent to him some details. Drafty seemed to have treated this as an informal request for details. Mr L told Drafty he was in financial difficulties in April 2018. It suspended his account and in June 2018 his formal complaint about irresponsible lending was received by Drafty. Mr L had tried to complain earlier but he had changed his email address and so Drafty did not recognise it and was not able to proceed until his new email address was confirmed. A repayment arrangement was set up in June 2018. There was an outstanding balance on this account and that may still be the case.

Each of the credit agreements (clause 5) set out the total cost of the credit based on some assumptions to illustrate the likely cost to Mr L. For Account 1, on the assumption that Mr L drew down the full £1,000 on the first day and then repaid it over 12 months in equal instalments then the total amount payable would have been just over £1,368. This would have equated to about £114 a month.

For Account 2 on the assumption that Mr L drew down the full £1,920 on the first day and then repaid it over 12 months in equal instalments then the total amount payable would have been just over £2,606. This would have equated to about £217 a month.

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Mr L's salary payment date, and it gave the minimum payment required for that cycle. It had to be the higher of certain calculations in the agreement at clause 6 which I have not set out here.

A Continuous Payment Authority was used to take the minimum payments on or near Mr L's monthly salary date. Other ways of payment were made available.

One of our adjudicator's looked at the complaint and thought that Drafty's initial approval for Account 1, and the monitoring of Account 1 was satisfactory. For Account 2 he thought that the initial approval of the facility was appropriate, but that Drafty ought to have monitored the account more closely. And that Drafty ought to have realised that Mr L was struggling from January 2018 and so he thought that it should put things right from 31 January 2018.

Neither Mr L nor Drafty have responded. The complaint remains outstanding and has been passed to me for a decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the credit was offered.

Before lending money to a consumer or approving a credit limit a lender should take proportionate steps to understand whether the consumer will be able to repay what they are borrowing in a sustainable manner without it adversely impacting on their financial situation.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves did not set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key element was that any checks needed to be proportionate and had to take into account a number of different things, including how much was being lent and when the sum being borrowed was due to be repaid.

I have seen a copy of Mr L's personal credit file dated January 2020 which would cover the period relevant for this complaint. I have seen copies of his bank statements for most of these lending periods.

I need to explain to Mr L that upon first approaching Drafty in November 2015 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Mr L was a new customer. And bearing in mind the credit limit granted for Account 1 and the monthly payments required to repay the facility within a reasonable period, Drafty was entitled to rely on the information given to it which suggested that Mr L had enough disposable income to service a credit facility with a limit of £1,000. And it carried out its own credit search. I do note that Mr L asked for £2,000 and this was not approved.

Having looked at all that Mr L has given me and Drafty's information and submissions then I think that the initial credit facility approval for Account 1 was carried out after checks I would consider to have been proportionate. And the limit approved was likely to have appeared serviceable and able to be repaid within a reasonable time.

Mr L drew down once at the beginning - £1,000 – and then just a couple of times after that (small amounts) and repaid it all within a year. So, I consider that the facility ran as it would have been envisaged to run and the monitoring of the account by Drafty for that period would not have alerted it to any issues. I do not uphold the complaint for Account 1.

The seven month gap after repaying Account 1, before Mr L applied for Account 2 does lead me to think that Drafty was able to approach that new application as if Mr L was a fresh customer. That period of non-lending to Mr L was a large enough gap to break the lending relationship. So, as I have explained earlier, in April 2017 it would not be expected, and

would not be proportionate, for Drafty to carry out a full and comprehensive financial review of Mr L's finances before lending.

Having looked at all that Mr L has given me and Drafty's information and submissions then I think that the initial credit facility approval for Account 2 was carried out after checks I would consider to have been proportionate. And the limit approved was likely to have appeared serviceable and able to be repaid within a reasonable time.

I refer to the Financial Conduct Authority Consumer Credit Sourcebook (CONC) chapter 6 which addresses the expected Business Practices in relation to the monitoring of an account. Drafty did have to monitor Mr L's account.

I think that after several months following April 2017 it would have been apparent to Drafty that Mr L was not making any inroads into the debt as he was almost always repaying the minimum amount and then drawing down to the maximum available to him. This gives me the appearance that Mr L was borrowing to cover the hole that making these payments was leaving in his finances. By November 2017 his credit limit had been increased once to £2,120 from £1,920 and his account balance was still at the top end of that limit.

I have seen that in late December 2017 Mr L contacted Drafty using the email that was registered with it for his accounts. He wrote to its complaints department at Lending Stream. He said *'I am making a complaint to you about irresponsible lending. To help me explain the details, I would like a list of my loans, showing when they were taken out and how much was repaid when.'*

On 1 January 2018 Drafty customer service replied and sent him information about one of the accounts, but not both and it was not in the format of a formal response letter. It said that he had an *'outstanding balance of £2126.50 (as of today)'* which was 1 January 2018.

Later, Mr L did try to complain further, but was using a different email account and so Drafty replied many times to say – quite rightly – that it was not able to respond to an email address not registered to him as its customer. Then in April 2018 Mr L telephoned Drafty to say that he was in financial difficulties and the account was suspended. In-between his first complaint and his telephone call to say he was not able to manage the account, Drafty had increased his credit limit.

But I do think that Drafty had been alerted to the fact that Mr L was making a formal complaint in December 2017. This together with Mr L not making any inroads into the credit balance over the nine months to the New Year 2018 leads me to think that the credit limit increase on 31 January 2018 was inappropriate. And the drawdowns from 31 January 2018 (£42.20) and then 15 February 2018 (£200) when the credit limit had been increased ought not to have been allowed. Any after that ought not to have been approved.

So I think that by continuing to offer the credit facility, Mr L was exposed to additional interest charges. And from the drawdown of 31 January 2018 and all those after it, I think that Drafty should put things right as follows:

- calculate the amount of all interest and charges Mr L paid on those new drawdowns from 31 January 2018;
- write off any unpaid interest charged from that same date;
- rework the sums paid such that on or after 1 February 2018 any amounts paid to the account are applied to the reduction of the principal;

- arrange for any outstanding balance to be paid off by agreeing a mutually agreeable and affordable repayment plan. I would expect Drafty to take Mr L's current financial situation into account when setting the repayment amounts;
- once the debt has been repaid then amend the credit file to remove any adverse payment information for that second Account.

As I understand that the outstanding balance is quite high then I do not think any surplus is likely. If there is a surplus due to Mr L then this needs to be with the added 8% annual simple interest*.

*HM Revenue & Customs requires Drafty to take off tax from this interest. It must give Mr L a certificate showing how much tax it's taken off if he asks for one.

my final decision

My final decision is that I uphold Mr L's complaint in part and direct that Gain Credit LLC trading as Drafty do as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 June 2020.

Rachael Williams
ombudsman