

## Complaint

Mr S has complained about a running account facility he took out with Gain Credit LLC (trading as "Drafty") in November 2016. He says Drafty should never have given the facility in the first place.

## Background

One of our adjudicators reviewed what Mr S and Drafty had told us. And he thought Drafty's checks before giving Mr S his facility were proportionate. So he didn't uphold Mr S' complaint. Mr S disagreed and asked for an ombudsman to look at his complaint.

## My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about high-cost lending on our website. And I've used this approach to help me decide Mr S's complaint.

Mr S says Drafty shouldn't have given him his running account facility. I think it would be helpful for me to start by explaining that Drafty gave Mr S this facility when it was regulated by the Financial Conduct Authority ("FCA"). And the relevant regulatory rules in place at the time were set out in the Consumer Credit Sourcebook ("CONC") section of the FCA Handbook of rules and guidance.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer a loan of this type. And it says a firm had to consider *"the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation"* as well as *"the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement (like Mr S' facility), to make payments within a reasonable period."*

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says *"a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation."*

And CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *"In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit."*

CONC 5.3.1(2) then says *"The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."*

I've kept all of this in mind when thinking about whether Drafty did what it needed to before agreeing to Mr S' facility. As explained, Mr S was given what was an open-ended credit facility. So overall I think that this means the checks Drafty carried out had to provide enough for it to be able to understand whether Mr S would be able to both service and then repay his facility within a reasonable period of time.

As Mr S' credit agreement contained a hypothetical repayment schedule (should the total amount available have been drawn down) requiring monthly payments of around £60 in order for the facility to be repaid within a reasonable period of time. So, in these circumstances, I think that Drafty needed to carry out proportionate and sufficient checks to ensure itself that Mr S could make monthly repayments of £60.

Drafty says it agreed to Mr S's application after he'd provided details of his monthly income and expenditure and looked at his credit score. It says the information it gathered showed that Mr S would be able to comfortably make payments of £60 a month. And in these circumstances it was reasonable to lend. On the other hand, Mr S says his full credit file and his bank statements would've shown the extent of his existing indebtedness as well as his problem gambling and that this would have made it clear that he couldn't afford to repay any further credit.

I've carefully thought about what Mr S and Drafty have said. The first thing for me to say is that this was Mr S' first loan with Drafty. The information provided does suggest that Mr S was asked to provide details of his income and expenditure. Bearing in mind the amount of the monthly repayment, the questions Drafty asked Mr S, this was Mr S' first loan and the credit score recorded, I don't think it was unreasonable for Drafty to rely on the information Mr S provided.

I accept Mr S's actual financial position wasn't reflected either in the information provided, or the information Drafty obtained. And Mr S' actual financial position is apparent from his full credit file and his bank statements. I'm also sorry to hear Mr S was struggling financially and what he's said about his mental health. But Drafty could only make its decision based on the information it had available at the time. And, at this stage of the lending relationship between the parties, I don't think proportionate checks would've extended into Drafty asking Mr S to evidence what he was declaring, or it asking him for his bank statements.

Equally I can only uphold a complaint where I can safely say a lender did something wrong. And, in this case, I don't think Drafty did anything wrong in deciding to lend to Mr S - it carried out a reasonable and proportionate check. Drafty reasonably relied on the information provided with and given the amount of the repayments involved and Mr S' loan history, I don't think it was unreasonable for Drafty to lend – especially as there wasn't anything obvious, in the information it had, to suggest Mr S wouldn't be able to sustainably repay this facility.

So overall I think the checks Drafty carried out were proportionate. As this is the case, I'm not upholding Mr S' complaint. I appreciate this will be very disappointing for Mr S. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

My final decision is that I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 May 2020.

Jeshen Narayanan  
**Ombudsman**