

Complaint

Miss R says Gain Credit LLC (trading as Drafty) irresponsibly lent to her.

Background

The background to this complaint was set out in my provisional decision dated 20 May 2020. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to partly uphold the complaint. I invited both parties to let me have any further comments and evidence. Miss R appears to have accepted the findings in the provisional decision but she provided some further comments about the continued debt collection activity. Drafty didn't provide a response to the provisional decision.

My findings

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Miss R accepted the provisional decision and SNC didn't respond with any further comments or evidence it wanted me to consider, I see no reason to depart from the findings that I outlined in my provisional decision.

I'm sorry to hear that Miss R has been chased for repayment while this service considered her complaint. Unfortunately, there is no requirement on the part of Drafty or the third party to suspend collection activity while we investigate the complaint. And if Miss R with unhappy with the conduct of the third party she is entitled to raise this with them. But now the final decision has been finalised, it will enable Drafty to make the adjustments to the account.

So, in summary, I still think Drafty was wrong to have allowed Miss R to continue to drawdown on the facility from 11 August 2017 and I've explained below what Drafty needs to do to put things right.

putting things right – what Drafty needs to do

If the debt has been sold to a third party, Drafty should, if it wishes, buy the debt back and then carry out the redress below. If Drafty isn't able to, or doesn't wish to, buy the debt back then it needs to work with the third party to achieve the same results.

- remove all the unpaid interest, fees and charges applied to the outstanding balance from drawdowns made from 11 August 2017. Drafty should then re-work the facility as if the entire interest element of each payment went towards the updated outstanding balance from 11 August 2017. But importantly, Drafty needs to make sure that Miss R doesn't repay more than the principal amount she borrowed from 11 August 2017.

If, after the account rework Miss R has already paid enough to fully repay the outstanding principal due then any overpayment should be refunded to her with 8% simple interest from the date of the overpayment to the date of settlement†

- remove any adverse information recorded on Miss R's credit file recorded from August 2017.

If after doing the above, an outstanding balance remains then Miss R and Drafty should try and come to a mutually agreeable repayment plan in order to repay any outstanding principal. But I would remind Drafty of its obligation to treat Miss R fairly.

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

My final decision

For the reasons given above and in my provisional decision, I partly uphold Miss R's complaint.

Gain Credit LLC should put things right for Miss R as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 26 July 2020.

Robert Walker
ombudsman

EXTRACT FROM PROVISIONAL DECISION

Complaint

Miss R says Gain Credit LLC (trading as Drafty) irresponsibly lent to her.

Background

Miss R approached Drafty for a running credit facility in November 2015. Miss R was given a facility with a £700 credit limit. And it seems Miss R has had some problems repaying her final drawdowns on the facility because an outstanding balance remains and Miss R is currently being contacted by a third party for repayment of the balance.

This was a running credit account where a consumer could either request funds up to their agreed credit limit in one go or take multiple drawdowns up to their limit.

One of our adjudicators looked at Miss R's complaint. He thought the checks Drafty carried out before granting this facility were proportionate. So he didn't think it was wrong to have initially approved the facility.

However, the adjudicator thought Drafty should've stopped Miss R from drawing on the facility by June 2017 because she wasn't using the facility in the way that Drafty had expected her to. So, the adjudicator didn't think that Drafty should've allowed any more drawdowns after 10 June 2017.

Miss R appears to have agreed with the adjudicator's recommendation.

However, Drafty didn't agree with the adjudicator. In response, it made a number of points, including:

- it carried out monthly reviews to ensure there are no signs of financial difficulty or distress
- the checks showed that the facility had become unaffordable in September 2018 – but up to that point the facility was affordable.
- Drafty was satisfied that Miss R had sufficient disposable income to be able to continue to use the facility
- further checks showed that Miss R wasn't insolvent and
- Miss R only made 16 drawdowns in 35 months and her drawdown behaviour is common for this type of product.

These points didn't change the adjudicator's mind and because no agreement could be reached the case has been passed to me for a final decision.

My provisional findings

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 time the loans were offered.

To begin, I want to be clear that Miss R wasn't given a payday loan where she had to repay all of what she borrowed plus the interest due when she next got paid. She was given a facility where there was an expectation that she'd repay what she borrowed plus the interest due within a period of at least 12 months.

As I've said, Miss R was granted a running credit facility with a £700 limit. According to the credit agreement, had she drawn down the full amount on the first day of having the facility, and repaid that amount over 12 months, she would've paid a total of £949.20, meaning the monthly repayment would've been around £79.

Drafty has provided us with the results of the credit checks. It knew that Miss R had two defaults on her credit file, but the most recent one had been recorded some 55 months previously. It was also aware that Miss R had 9 active accounts. Overall, I don't think there was anything contained within the results which should've led Drafty to either carry out further checks or to have declined Miss R's request for credit.

Before granting the facility, Drafty asked Miss R about her monthly income, which she confirmed was £1,396 per month and she also declared expenditure of £500 per month. But Drafty made some adjustments following its checks and adjusted the monthly expenditure up – to £598 per month. This left Miss R with a disposable income of £798 per month. Based on the information that Drafty gathered it seemed that Miss R would be able to afford the repayments she was committed to making.

I also think, given this was the start of the lending relationship, it was not unreasonable for Drafty to have relied on the information it was provided. So, I don't think proportionate checks would've extended to Drafty asking Miss R to evidence her declared income and expenditure. Therefore, I don't think Drafty was wrong to have initially approved the facility.

However, that doesn't mean that Drafty hasn't done anything wrong. I've also looked at how Miss R used the facility with a view to seeing if there was a point at which Drafty should reasonably have seen that further lending was unsustainable, or otherwise harmful.

It may help if I explain that although I don't think Drafty was wrong to have provided the facility, that wasn't the end of its obligation to Miss R. When the facility was approved, Drafty was regulated by the Financial Conduct Authority (FCA). The FCA had 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:

"A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties"

And CONC 1.3 outlines some examples of what financial difficulties may look like;

The following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties;

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card*
- (2) adverse accurate entries on a credit file, which are not in dispute;*
- (3) outstanding county court judgments for non-payment of debt;*
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) consecutively failing to meet repayments when due;*
- (6) agreement to a debt management plan or other debt solution;*
- (7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling.*

In practice this meant Drafty needed to be mindful of how Miss R used the facility in order to step in if and when she showed signs of possible financial difficulties.

Our adjudicator thought Drafty should've seen this by the time Miss R took a drawdown on 10 June 2017. By this point, our adjudicator thought that Drafty would have seen that Miss R's borrowing history showed she was potentially reliant on the facility.

By then, the adjudicator felt it would've been proportionate for Drafty to have carried out some further checks on Miss R's financial position. This ought to have included verifying the information she was providing about her income and expenditure. I can't see that Drafty did this, so I think something has gone wrong here.

But I don't agree this was the point the Drafty ought to have concerns. Remember, this wasn't a payday loan so there was an expectation that this facility would run for a reasonable period of time. Indeed, Miss R hadn't taken any new drawdowns between February and June 2017. And although Miss R had been paying the minimum amount, she was making headway into the principal that she had drawn down from Drafty. So I don't think – up to this point – Drafty had made an error.

However, between June and August there seems to have been a change in the way Miss R was using the facility. Miss R had made what appears to have been the minimum repayment and then returned within a week or so for further funds – taking her up to the credit limit. So in this time, she wasn't making headway into what she owed – what Miss R was doing was just serving the debt. So I think it was in August when Drafty needed to verify with Miss R whether she was in a position to take on further drawdowns.

So, the checks needed to go beyond what Drafty was carrying out at this time which seems to be relying on information provided to it from the credit reference agencies and relying on the information Miss R was providing it.

Miss R has now provided this service with copies of her bank statements from around August 2017. It looks like from the bank statements I've seen that her total income was broadly in-line with what she declared to Drafty when the facility was granted – around £1,300 per month – so it's likely, had proportionate checks been carried out that Drafty would've confirmed this.

It seems that her direct debts and standing orders to cover items such as insurances, credit cards, mobiles, debt collection repayments and catalogue shopping accounts – came to around £800. However, this figure doesn't include food (spending of between £80 – 100 per week), and car related costs such as petrol, tax and car insurance. So in reality, looking at the bank statements I don't think Miss R was in a position to take on any further drawdowns.

In August 2017 Miss R had 4 separate catalogue shopping accounts and based on the repayments Miss R appears to only be making the minimum repayments to these facilities. She also had at least 4 credit cards where again, she appears to also making the minimum repayment. And by now, her bank statements show repayments to three separate debt collection companies. And with her monthly expenditure, there wasn't enough disposable each month to cover the minimum repayment on her facility without the need to borrow further. So I think this was the point that Drafty ought to have realised that further borrowing was likely to be harmful to Miss R.

As I've explained above, Drafty was required to monitor Miss R's account and step in where financial difficulty became apparent. But I don't think Drafty did this. I acknowledge it did step in to help in September 2018, when Drafty says the facility was unaffordable. But, in my opinion, this happened too late, and it should've done more in August 2017 to prevent Miss R from using the facility.

So I'm upholding Miss R's complaint and I don't think Drafty should've allowed any further drawdowns after she made her repayment in 11 August 2017.