

## **complaint**

Mr A complains that Gain Credit LLC, trading as 'Drafty', lent irresponsibly.

## **background**

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.

Drafty's records show that Mr A applied for £3,000. Mr A declared a monthly income of £2,600 with outgoings of £1,180. Gain Credit says that it carried out checks. The credit limit for Mr A was arranged to be £1,250 on 24 March 2016. Drafty explained to this service that:

*'· A credit worthiness check was completed and the third party credit reference agency confirmed a rating which was satisfactory for the account obligation  
· We checked via a third party source the customer's other credit obligations at the time of his account approval and these similarly met all reasonable affordability criteria  
· The customer's consumer credit debt to annualized income was 20.51%  
Based on the above information we conclude that proper and proportionate affordability checks were conducted...'*

The credit agreement set out the total cost of the credit based on some assumptions to illustrate the likely cost to Mr A. On the assumption that Mr A drew down the full £1,250 on the first day and then repaid it over 12 months in equal instalments then the total amount payable would have been just under £1,689. This would have equated to about £140 a month.

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Mr A's salary payment 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 A's monthly salary date. Other ways of payment were made available.

Mr A wrote to Gain Credit by email on 9 May 2016 asking *'to extend my credit line to £2,500.'* Drafty's response was to say that he needed to have established an account *'in good standing'* and able to meet affordability requirements before any increases were likely. And he would be given 30 days' notice of any increase in his limit.

I have used the monthly Drafty statements of account to set out a list of what Mr A drew down during that year and what he repaid. Mr A has explained that in order to repay the full amount in May 2016 he borrowed that sum from a third party. This table is not a substitute for the actual statements for calculating any redress.

Drawdown date	Amount of drawdown	Interest charged	Minimum payment due	Statement date	Due date
24 March 2016	£1,250	£40.50	£103	10 April 2016	20 April 2016
20 April 2016	£62.50	£67.61	£103	10 May 2016	20 May 2016
30 May 2016	£1,250 having repaid £1,210 plus the minimum on 20 May 2016	£49.50	£89.50	10 June 2016	20 June 2016
2 July 2016	£62.50	£66.17	£128.67	10 July 2016	20 July 2016
28 July 2016	£62.50	£66.65	£129.15	9 August 2016	19 August 2016
24 August 2016	£62.50	£71.51	£134.01	10 September 2016	20 September 2016
-	-	£65.10	£124.48	10 October 2016	20 October 2016
24 October 2016	£121.88	£63.38	£125.88	8 November 2016	18 November 2016
26 November 2016	£62.50	£71.15	£133.65	10 December 2016	20 December 2016
22 December 2016	£62.50	£69.62	£132.12	10 January 2017	20 January 2017
20 January 2017	£62.50	£69.86	£132.36*	10 February 2017	20 February 2017
-	-	£63	£157.86*	10 March 2017	20 March 2017
-	-	£69.75	£227.61*	10 April 2017	20 April 2017

\* means that this was not paid

The March 2017 statement was labelled 'Arrears' and Mr A's account was suspended. The balance in February 2017 was £1,319.86 and in March 2017 was £1,382.86. In April the balance was £1,452.61.

Mr A refers to his having a County Court Judgment but I have not been sent anything to show me this was in place at the time of lending or at all. .

Correspondence between Gain Credit and Mr A commenced in February 2018 and Mr A said: *'Simple checks would have shown numerous pay day loans and other outstanding credit on my credit history. I cannot believe that Drafty would go on a credit score alone and not ask about previous or current lending. The credit score you stated you received when you did your checks was completely incorrect. My credit score has never been that high and believe this was grossly overstated so your company could give me the loan which I could not afford.'*

One of our adjudicator's looked at the complaint and thought that Drafty's initial approval for the account in March 2016 was satisfactory. And that Drafty ought to have realised that Mr A was struggling from November 2016 and so he thought that it should put things right from 26 November 2016.

Drafty disagreed and made several points, some of which have been outlined above and other ones included:

- it carried out monthly credit searches and noted that in the course of the year his debt obligations reduced substantially;
- it asked Mr A if his circumstances had changed around November 2016;
- it said that *'if minimum monthly payments are made, a customer is legally allowed to access the full credit line that has been granted at any time.'*

The complaint remains unresolved so it 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 A's personal credit file dated February 2018 which would cover the period relevant for this complaint. I have seen copies of his bank statements for this period.

I need to explain to Mr A that upon first approaching Drafty in March 2016 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Mr A was a new customer. And bearing in mind the credit limit granted 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 A had enough disposable income to service a credit facility with a limit of £1,250. And it carried out its own credit search. I do note that Mr A asked for £3,000 and this was not approved.

Having looked at all that Mr A has given me and Drafty's information and submissions then I think that the initial credit facility approval 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 A has explained that he was able to repay the full amount in May 2016 because he borrowed the money to do it but a) Drafty would not know that nor be expected to know that; and b) such repayment was not likely to have placed Drafty on alert to any concerns about Mr A's ability to repay.

After that, Drafty did have to monitor Mr A's account and it has explained to us how it did that. And I've taken the time to set out a summary of all of the Drafty Statements in the table above to show the pattern of drawdown and repayment.

Our adjudicator referred to the fact that Mr A asked for the limit to be increased. I have seen this email too and I think it was May 2016 (not September 2016) and so quite soon after the credit facility had been offered. As I have mentioned earlier, Drafty's response was to say that he needed to have established an account 'in good standing' and able to meet affordability requirements before any increases were likely. No increases in his limit were offered to Mr A.

I think that after several months it would have been apparent to Drafty that Mr A 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 to me gives the appearance that Mr A was borrowing to cover the hole that making these payments was leaving in his finances. And as I have seen Mr A's personal credit file I can see that late 2016 Mr A was obtaining more and more debt from a number of sources including long term and short term lenders, for large sums with substantial repayments due each month. These showed that other debt was increasing. And I think that by October or November 2016 Drafty was likely to have had enough information from its own research and information to ask further questions.

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. One indication of a risk of a customer being in financial difficulties is where it seems that the customer is borrowing to repay borrowing. Drafty has explained that it carried out monthly credit searches and although I have not seen those specific results I have been able to see Mr A's personal credit file to give me an idea as to what his situation was like and therefore what likely would have appeared on a business credit search. I can see that Drafty has said that those credit searches for personal credit files and those used by businesses may differ but I do not think that the difference was likely so great that the types of loans and short term loan debts Mr A was getting into by the Autumn of 2016 would not register.

Drafty has said that around November 2016 it asked Mr A if anything had changed. This may have been prompted by something it had noticed or seen from monitoring the account, but I do not know what. But what I do think is that there were many months of relatively consistent drawdowns by Mr A to the maximum available. In one month he did not drawdown the £62.50 and the next month he drew down double. So there was no reduction in the overall balance of the debt. I would have expected more than an enquiry by Drafty to Mr A. If that was the extent of its additional checks then I do not think they were enough. I do think that by November 2016 Mr A's financial situation was such that more thorough checks would have revealed it if they had been done by Drafty.

So I think that by continuing to offer the credit facility, Mr A was exposed to additional interest charges. Mr A was not coping with the account. And from the drawdown of 26 November 2016 I think that Drafty should put things right as follows:

- calculate the amount of all interest and charges Mr A paid from 26 November 2016;

- write off any unpaid interest charged from that same date;
- rework the sums paid such that from 26 November 2016 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. As Mr A is currently in a Debt Management Plan so I would expect Drafty to take Mr A's current 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.

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 A 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 A 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 A'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 A to accept or reject my decision before 11 November 2019.

Rachael Williams  
**ombudsman**