

The complaint

Mr M complains Gain Credit LLC trading as Drafty (“Drafty”) gave him a line of credit he couldn’t afford to repay and this was demonstrated by the fact he needed a number of repayment holidays.

What happened

Mr M was approved for a running credit facility on 22 February 2022 with a £820 credit limit – which didn’t change while Mr M held the facility. Mr M has had some problems repaying the facility and from April 2023 he is making repayments through a repayment plan.

Mr M was given a running credit account 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. To be clear, Mr M was not given a payday loan.

In Drafty’s final response letter issued in December 2022, it explained the information it had gathered from Mr M before it approved the facility. It concluded given the estimated monthly repayment, Mr M was likely to be able to afford the credit facility.

Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman, where it was considered by an adjudicator. And she thought the checks Drafty carried out before granting this facility were likely proportionate.

Drafty also had an obligation to monitor the facility and having reviewed the way Mr M borrowed and repaid the facility and the other information that was provided she also didn’t think Drafty had done anything wrong either.

Finally, she could see a number of payment holidays had been approved for Mr M. And she didn’t think Drafty was wrong to approve the payment holidays in April, September, October or November 2022.

But she thought, Drafty ought to have done more in December 2022 before it approved the payment holiday given the number of recent payment holidays that had been granted. But she didn’t recommend Drafty do anything for Mr M because after the December 2022 payment holiday he returned to normal contractual repayments until he went onto a repayment plan – so she couldn’t conclude Mr M was in a materially different position.

Drafty didn’t have anything further to add.

Mr M didn’t agree, and I’ve read everything he has said and in summary:

- Mr M’s outgoings to other credit companies was greater than Drafty found out from its credit search and
- Mr M said these commitments came to around £720 per month and so the facility shouldn’t have been provided to him.

As no agreement has been reached, the case has been passed to me for a final decision.

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 times.

In practice, all of this meant that a lender 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 a lender could take into account before agreeing to lend. The key thing was that it required a lender's 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 M's Drafty facility.

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

What happened when Drafty approved the facility

Having carefully thought about everything provided, I don't think Drafty needed to have made further enquires with Mr M before it approved the facility. It was reasonable for it to have relied on the information Mr M provided along with the credit check results. I've explained why below.

As explained, Mr M wasn't given a payday loan where he had to repay all of what he borrowed plus the interest due when he next got paid. Mr M was given a facility where there was an expectation that 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 a reasonable period will always be dependent on the circumstances of the individual case.

Mr M was granted a facility with Drafty with a £820 limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility to Mr M. This situation assumed that Mr M 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 M repaid what he owed in 12 monthly instalments.

Had Mr M done that, he'd have repaid Drafty a total of £1,111.82 meaning twelve monthly repayments of around £92.65.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr M could make monthly repayments of around £93 at an absolute minimum.

Drafty says it agreed to Mr M's application after he'd provided details of his monthly income and expenditure and it carried out a credit check. Mr M declared he worked full time and received an income of £1,640.17 per month and he also declared monthly outgoings of £700. This expenditure was broken down as £375 for mortgage / rent, £125 for utilities, £25 food and £175 for outstanding credit commitments.

This information showed Drafty that Mr M had around £940 of disposable income each month in which to service and repay the facility.

Drafty also carried out a credit check before the facility was granted, and it has provided the Financial Ombudsman with a summary of the results.

The results showed that Mr M had 10 active accounts and credit commitments of at least £540 per month. While this is more than what Mr M declared as part of his application, even if you use the amount Drafty was told about, along with the other expenditure Mr M had declared, the facility would've still looked affordable.

According to the results of the credit checks, none of Mr M's active accounts were in delinquency and he hadn't had any defaults recorded on his credit file within the last year. So, I think it would've been reasonable for Drafty to have concluded, from the credit check results that Mr M wasn't experiencing any financial difficulties.

I appreciate that Mr M has provided copies of his bank statements as well as a copy of his credit file, but at this point in the relationship, considering the cost per month to Mr M and what else Drafty knew, I think it would've been disproportionate for it to have carried out further checks, such as reviewing his bank statements.

Overall, I think Drafty carried out proportionate checks which showed it the facility was going to be affordable for Mr M. I am therefore not upholding his complaint about Drafty's decision to provide him with a facility.

Monitoring the facility

Although I don't think Drafty was wrong to have initially provided the facility, that wasn't the end of its obligations to Mr M. When the facility was approved, Drafty was regulated by the Financial Conduct Authority and it 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:

“(1) A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties”

CONC 1.3 provides a non-exhaustive list of some indicators, which when present in a consumer's circumstances, which could be suggestive of potential financial difficulties. In practice, CONC 6.7.2(1)R meant Drafty needed to be mindful of Mr M's repayment record and how he used the facility and step in if and when he showed signs of possible repayment difficulties.

Having reviewed the transaction data, which includes the relationship between when Mr M made his drawdowns and his repayments, there isn't anything which ought to have given Drafty cause for concern.

Between February 2022 and the last drawdown in August 2022, Mr M drew down five times. And, apart from the payment holidays he was making at least the minimum payment each month – and sometimes more such as in March 2022. There also wasn't anything within his repayments that would've indicated to Drafty that he was having or likely having financial difficulties.

In my view, Drafty hasn't made an error in the way it monitored Mr M's facility.

Other considerations

I've also considered that Mr M requested a number of payment plans from Drafty – five in total. All were requested through the online chat function and each time Mr M had told Drafty that he had an unexpected bill to pay.

Like the adjudicator, I think the first four – the ones approved by Drafty in April, September, October and November 2022 were reasonable, given what Mr M had told Drafty and how the account had been managed each time after the payment holidays had ended.

It is possible, that come the final repayment plan in December 2022 Drafty needed to have done more, after all this was the fourth request in four months, and Mr M needed it for the same reasons as the previous holidays. Which perhaps indicated that Mr M may have been having wider financial difficulties. Drafty ought to have really done more at this point to make sure that offering yet another repayment plan was a fair course of action. It didn't do this.

However, considering that shortly after the end of this payment holiday Mr M brought the account up to date, before going into a repayment plan, I can't fairly say the action Drafty took in December 2022 was unreasonable or has left Mr M in a materially different position. Overall, I won't be asking Drafty to take any further action.

An outstanding balance remains due, and I would remind Drafty of its obligation to treat Mr M fairly and with forbearance.

My final decision

For the reasons given above, I am not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 September 2023.

Robert Walker
Ombudsman