

The complaint

Miss K complains Gain Credit LLC trading as Drafty (“Drafty”) gave her a line of credit she couldn’t afford.

What happened

Miss K approached Drafty for a running credit facility on 17 September 2021 and she was given a facility with a £500 credit limit – the limit was increased on one occasion in June 2022 to £650. Miss K has had some problems repaying the facility and by March 2023 the outstanding balance stood at £737, and her facility had been terminated.

Miss K was given a running credit account where she could either request funds up to her agreed credit limit in one go or could take multiple drawdowns up to the limit. She was also able to borrow further, up to the credit limit, as and when she repaid what she owed. To be clear, Miss K was not given a payday loan.

In Drafty’s final response letter issued in March 2023, it explained the information it had gathered from Miss K before it approved the facility. It concluded given the estimated monthly repayment, Miss K was likely to be able to afford the facility.

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

The adjudicator also explained that Drafty also had an obligation to monitor the facility. She thought, given how the facility had been used and the value of the credit limit increase that Drafty’s decision to increase the limit was reasonable. She also said Drafty was right to take the action that it did when payments were missed which led to the facility being terminated and a default being applied.

Miss K didn’t agree, saying while the facility may have been affordable, she could only repay it by borrowing other loans. When the credit limit was increased Miss K was paying 4 credit cards, 2 high-cost credit loans and car finance. She also provided details of how COVID-19 impacted on her earnings and due to the amount of debt she had, Miss K went on a repayment plan facilitated by a well-known debt advice charity. Finally, she said that her income at the time was around £1,050 per month and her outgoings were more than £250.

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 reviewing about whether Drafty did what it needed to before agreeing to Miss K's Drafty facility.

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

In response to the adjudicator's assessment Miss K commented on a debt management plan and whether Drafty was or wasn't included in it. Later, Miss K provided more details about what happened and it seems that this issue stemmed from a lack of authority with the debt advice charity. But, I say no more about this issue here and if Miss K thinks something may not have gone wrong than she will need to take this up with the relevant party as a separate issue.

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 Miss K before it approved the facility. It was reasonable for it to have relied on the information Miss K provided along with the credit check results it received. I've explained why below.

Miss K was granted a facility with Drafty with a £500 limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost to Miss K. This hypothetical situation assumed that Miss K did the following:

1. drew down the maximum credit limit on the first day of the facility being provided,
2. she kept to the terms of the agreement and
3. Miss K repaid what she owed in 12 monthly instalments.

Had Miss K done that, she'd have repaid Drafty a total of £677.94 meaning twelve monthly repayments of around £56.49 each.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Miss K could make monthly repayments of around £57 as an absolute minimum.

Drafty says it agreed to Miss K's application after she'd provided details of her monthly income and expenditure and it carried out a credit check. Miss K declared she worked full time and received an income of £1,469.83 per month and she also declared monthly outgoings of £250.

Even if I were to accept that Miss K's declared outgoings were too low, she did tell Drafty in July 2022 that her outgoings were £675 – so even if Drafty had used this figure it would have still been reasonable for Drafty to think that Miss K had sufficient disposable income to pay and service her 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 Miss K had eight active accounts and according to the results of the credit checks, Miss K's had defaulted on one account but that had occurred 59 months before the facility was approved. So, I think it would've been reasonable for Drafty to have concluded, from the credit check results that Miss K wasn't likely experiencing any financial difficulties.

I appreciate that Miss K has said her income wasn't as high as she declared, but Drafty could only make its decision based on the information it was provided, and at this point in the lending relationship I don't think Drafty needed to have verified the information it had – it was entirely reasonable for it to have relied on what it was told.

I think Drafty carried out proportionate checks which showed it the facility was going to be affordable for Miss K. I am therefore not upholding the complaint about Drafty's decision to provide her with a facility.

Credit limit increase

In June 2022, Drafty increased Miss K's credit limit from £500 to £650. During the time Miss K had the facility 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 facilities. Within the Consumer Credit Sourcebook (CONC) section 5.2A.6 says:

"If an increase in the amount of credit or in the credit limit is not itself significant but would result in there having been, since the last creditworthiness assessment, a cumulative increase that is significant, then a further creditworthiness assessment is required."

The adjudicator therefore thought it was reasonable for Drafty to have increased the credit limit at this time given the small increase that was applied and how Miss K had used her facility up to this point.

By June 2022, she had held the facility for around 9 months and including the initial drawdown she had only drawn down a total of 3 times. There wasn't anything in the way that Miss K repaid her facility up until this point to suggest that she was having financial difficulties or that the small increase in the credit limit would be unaffordable or unsustainable for her. So, I do not uphold this element of her complaint.

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 Miss K. The relevant section of CONC 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 Miss K's repayment record and how she used the facility and step in if and when she showed signs of possible repayment difficulties.

Having reviewed the transaction data, which includes the relationship between when Miss K made her drawdowns and the repayments, there isn't anything within that which ought to have given Drafty cause for concern up to July 2022. Between October 2021 and the last drawdown in June 2022, Miss K drew down a total of 4 times, but importantly, she didn't draw every month for example there was no lending in November 2021 or January 2022. So her usage of the facility didn't indicate that she was dependent on the facility.

I appreciate Miss K says that this payment could only have been made by borrowing from another lender, but at the time Drafty wouldn't and couldn't have known that. There also wasn't anything within the repayments that would've indicated to Drafty that she was having, or likely having, financial difficulties.

I can see that Miss K didn't make her July 2022 payment, and so Drafty suspended the facility, this meant Miss K couldn't drawdown any further on it until the account was up to date, but interest would still accrue on any outstanding balance. I don't consider this an unreasonable course of action.

Miss K then brought the account up to date in August 2022 – but by this time her August payment was also late. By paying more than the minimum amount required, as a result Drafty removed the suspension from the facility. This wasn't an unreasonable course of action for it to take, given that by now the account was up to date, and Miss K had paid more than the minimum in doing so. Miss K then drawdown for the final time – a further £100.

I don't think that Drafty, before the final drawdown needed to take any further action, Miss K had missed a payment and was late with the August payment but this was the first time she had showed any sign of having any sort of difficulty managing her payments for her facility. I also don't think, at this moment in time Drafty needed to take any further action such as verifying the information Miss K had previously provided about her income and expenditure.

I'm sorry to hear about Miss K's circumstances, and it does seem that based on what she has told us, Drafty may not have had the full picture of her situation either at the time the facility was approved or during the course of her servicing it. But I don't think, given the credit limits and how she managed her payments this would've led Drafty to have asked either further questions or have verified the information Miss K had provided.

Further payments were then not made, and Drafty then took the decision to default and terminate the facility. Given the time since the last payment and considering the Information Commissioner's Office guidance, I don't think Drafty made an error by defaulting the account.

Having looked at all of the information I am not upholding Miss K's complaint. An outstanding balance remains due, and I would remind Drafty of its regulatory obligation to treat Miss K fairly and with forbearance.

My final decision

For the reasons given above, I am not upholding Miss K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept

or reject my decision before 2 January 2024.

Robert Walker
Ombudsman