DRN-4659252

## The complaint

Mr T complaints that Gain Credit LLC trading as Drafty ("Drafty") gave him a line of credit without carrying out the appropriate affordability checks. Had it carried out better checks it would've seen he was using his overdraft, had a personal loan and arrears on a credit card.

## What happened

Mr T was granted a running credit facility on 7 December 2021. This had a £550 credit limit – and it remained the same while he held the facility. Mr T repaid the facility in August 2023.

Mr T 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 T was not given a payday loan.

In Drafty's final response letter to his complaint issued in December 2023, it explained the information it had gathered from Mr T before it approved the facility. It concluded - given the estimated monthly repayment; Mr T was likely to be able to afford it.

Unhappy with this response, Mr T referred the complaint to the Financial Ombudsman, where it was considered by an investigator. She thought the checks Drafty carried out before initially granting this facility were likely proportionate although she did have some concerns with the declared income Mr T provided and the results Drafty received from the credit reference agency.

Mr T had declared he earned £20,000 per month, which the investigator concluded wasn't likely accurate and so Drafty should've sought to have verified the income – had it done so it would've discovered he earned at least £1,600 per month.

Drafty was given information from the credit reference agency which indicated his credit commitments were greater than what he declared. But even using the figure from the credit reference agency and his actual monthly income than the facility still appeared affordable.

The investigator also explained Drafty had an obligation to monitor the facility and she reviewed the way Mr T borrowed and repaid the facility. Having done so, she couldn't see anything that would've given Drafty cause for concern or to have prompted it to carry out any further affordability checks.

Mr T didn't agree with the outcome, and told us this across a number of emails, and I've summarised his response below.

- Mr T says that the account was always withdrawn to the "*max*" and said he used to pay in more money just so that he could bring the account above the limit in order to withdraw funds.
- Mr T's financial position deteriorated in 2022 and 2023 because he had become reliant on payday loans, and this led to missed payments being recorded on his credit file.

- He was resorting to withdrawing cash from his credit cards as he didn't have access to any other funds.
- Mr T tended to only pay the minimum payment due to Drafty and it should've done more when he was only making small repayments each month to draw down again.
- Mr T accepts he only took 6 drawdowns, but this was the maximum he could take as it would take three months' worth of minimum payments to repay enough capital to be able to draw again.

The investigator responded to Mr T's points and explained why his comments hadn't changed her mind and as no agreement could be reached, Mr T's complaint has been passed to me to decide.

**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.

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Drafty 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 Drafty could take into account before agreeing to lend. The key thing was that it required the 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 T's Drafty facility.

As explained, Mr T 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 T would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr T's repayment record for any sign that he may have been experiencing financial difficulties.

*What happened when Drafty approved the facility*

Mr T was granted a facility with a £550 credit limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility. This hypothetical situation assumed that Mr T 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 T repaid what he owed in 12 monthly instalments.

Had Mr T done that, he'd have repaid Drafty a total of £745.73 meaning twelve monthly repayments of nearly £63.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr T could make monthly repayments of around £63 at an absolute minimum.

Drafty says it agreed to Mr T's application after he'd provided details of his monthly income and expenditure and it carried out a credit check. Mr T declared he worked full time and received an income of £20,000 per month. Drafty appears to have done some sort of verification check here because it says that it decreased Mr T's income by £2,000 per month. So, for the affordability assessment it used a figure of £18,000.

However, like the investigator, I do have some concerns about whether it was reasonable for Drafty to have accepted that Mr T earned £20,000 or £18,000 per month. This income seems to be inconsistent with the other information Drafty collected as well as the fact that a credit line of £550 was granted. So, I do think that Drafty ought to have double checked with Mr T about the validity of his monthly income.

Drafty could've gone about doing this a number of ways, it could've asked for copy of his pay slips or possibly a copy of his bank statement – which would've showed the salary he received. Mr T has provided us with copy bank statements from the months before the facility was approved, and having looked at these, I think a more accurate income (and therefore the figure Drafty ought to have used) was £1,660 per month. Even with this reduced income figure the credit facility still looked affordable.

Mr T declared monthly outgoings of £350, this was broken down into a number of categories such as £75 for credit expenses and £25 for transport. This does seem particularly low, given that initially Drafty believed his income was £20,000 per month. However, Drafty also carried out a credit search and based on what I've seen it didn't react to the information it was given.

The credit check results showed that Mr T had 12 active credit accounts. According to the results of the credit checks, none of Mr T's active accounts were in delinquency, and he hadn't had any defaults recorded on his credit file within the last six years. So, I think it would've been reasonable for Drafty to have concluded, from the credit check results that Mr T wasn't likely experiencing any financial difficulties.

In saying that, Drafty was told that Mr T's monthly credit commitments were likely to be greater than the £75 that he had declared, based on the results of its check Drafty was on notice that these costs came to at least £478 per month. Drafty ought to have reacted to this information and concluded that Mr T's monthly outgoings were greater than what he had declared. But even if Drafty had substituted the credit commitment figure given to it in the credit check results with the rest of his monthly outgoings, Mr T still had sufficient disposable income in which to afford to service and repay the facility.

This information Mr T declared to Drafty, showed he had enough disposable income each month in which to service and repay the facility. For the start of this relationship, I think it was entirely fair and proportionate for Drafty to have relied on the information Mr T declared to it about his income and his living costs. I am therefore not upholding Mr T's complaint about the approval of the facility.

*Monitoring the facility*

Although I don't think Drafty was wrong to have provided the facility, that wasn't the end of its obligations to Mr T. At the time, 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, could be suggestive of potential financial difficulties. In practice, CONC 6.7.2(1)R meant Drafty needed to be mindful of Mr T'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 T made his drawdowns and his repayments, I can see why the investigator didn't think Mr T showed signs of financial difficulties or had any obvious difficulties serving and repaying the facility.

Between the inception of the account in December 2021 and when the facility was closed Mr T drew down on the facility a total of six times. But he drew only one between December 2022 and August 2023, when the facility was then fully repaid.

I can see there are times where Mr T made the minimum payment each month before then making additional smaller payments – such as in May 2022. Where after making the contracted minimum payment, he made further payments totalling £20 before moments later withdrawing just over £100 – the minimum amount he could draw from the facility. So, I do think, that there were times when Mr T was making additional monthly payments solely in order to be able to draw again.

This pattern of usage could of course be concerning, and after Mr T had held the facility for around a year, he had drawn down a total of five times and had for at least two of those drawdowns he had made smaller payments in order to draw down again. So perhaps Drafty at this point needed to be on notice that Mr T was having money management problems because after a year he still owed the full balance of the facility.

In saying that, after December 2022, Mr T then went on to make the minimum payment for seven months without drawing down again and he made significant headway into the outstanding balance. Although, I accept that in August 2023, he returned and borrowed the available credit of £200 the pattern of his usage had changed, and by this point he was using the facility as Drafty would've expected. There were no missed payments or any other indications that Mr T was having or likely having financial difficulties.

Overall, I've thought about Mr T's comments about the way he used the facility, and I can see what he is saying in as much as the drawdowns at least for the first year appeared to follow a similar pattern. However, thinking about the number of drawdowns and how the facility had been repaid, I don't think there is quite enough to have alerted Drafty of possible financial difficulties.

In to the second year of the facility, Mr T's usage does appear to change, although he is still making his minimum payment – which is what would be expected, he doesn't draw down as often and so it would've been reasonable for Drafty to have concluded the facility was still affordable for him.

I'm sorry to hear about Mr T's deteriorating financial position throughout 2022 and 2023. But that wasn't reflected in the way the facility was used and as there were no missed payments, or credit limit increases. There wasn't anything that would've prompted Drafty to have carried out further checks such as a credit search.

Overall, having reviewed the information provided to the Financial Ombudsman I have decided to not uphold Mr T's complaint. I appreciate he will be disappointed by this, but I hope he has an understanding of why I've reached those conclusions.

## My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 17 April 2024.

Robert Walker
**Ombudsman**