

The complaint

Miss J complains Gain Credit LLC trading as Drafty (“Drafty”) irresponsibly provided an unaffordable credit facility. She also says Drafty decreased the credit limit without giving her any prior warning which caused her financial problems. Miss J is also unhappy about the help and support she was offered as well as Drafty terminating the facility.

What happened

Miss J approached Drafty for a running credit facility on 22 December 2021 and she was given a facility with a £500 credit limit – the limit was decreased in April 2022 to £375. Miss J has had some problems repaying the facility and it appears an outstanding balance still remains due.

Miss J 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.

In Drafty’s final response letter, it explained that no error was made when it decreased Miss J’s credit limit and it also explained that the account had been defaulted due to non-payment of arrears.

Unhappy with this response, Miss J referred the complaint to the Financial Ombudsman, where it was considered by an investigator. She explained the checks Drafty carried out before it approved the facility were proportionate and showed it Miss J could service the payments. The investigator also explained that Drafty had an obligation to monitor the facility. She thought, given how the facility had been used, she wasn’t able to uphold this part of Miss J’s complaint.

Finally, she didn’t think Drafty had made an error when it decreased the credit limit. This was because the terms and conditions of the facility allowed Drafty to do so. She also thought Drafty putting Miss J on a number of payment holidays was reasonable and when payments weren’t made, it was also fair for Drafty to terminate and default the facility.

Miss J didn’t agree. In summary, she said:

- that she didn’t receive the decrease in credit limit notification but then later, after searching her emails, she did forward a copy of the notification to the investigator.
- Miss J only made the payment on 27 April 2022 in order to be able to draw down from the facility again, but Drafty reduced the credit limit after her payment. This meant she wasn’t able to take any further funds. Miss J then says she had to approach friends in order to pay her other commitments.
- Miss J made the payment to Drafty in good faith and so expected to be able to draw down further funds.
- Had Miss J known Drafty was going to decrease the limit she would’ve contacted it in order to set up a repayment plan.

The investigator wrote to Miss J to explain why these points didn't change her mind and 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.

This decision is broken down into two parts. Firstly, I have dealt with the affordability and the monitoring of the facility. I then move onto what happened when the credit limit was decreased and the subsequent actions of Drafty.

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 when deciding whether to lend to Miss J, Drafty had to take proportionate steps to ensure she would've been able to repay what she was borrowing in a sustainable manner without it adversely impacting on her financial situation. Put simply Drafty had to gather enough information so that it could make an informed decision on the lending.

Although the guidance Drafty needed to adhere too didn't set out what compulsory checks that were needed, 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 Miss J's Drafty facility.

As explained, Miss J was given an open-ended credit facility and so I think that means the checks Drafty carried out had to provide enough for it to be able to understand whether Miss J would be able to both service, and then repay, her facility within a reasonable period. Drafty also needed to monitor Miss J's repayment record for any sign that she 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 Miss J before it approved the facility. It was reasonable for it to have relied on the information Miss J provided along with the credit check results it received. I've explained why below.

Miss J 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. Miss J was given a facility where there was an expectation that she'd repay what she 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.

Miss J 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 of the facility to Miss J. This hypothetical situation assumed that Miss J 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 J repaid what she owed in 12 monthly instalments.

Had Miss J 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 J could make monthly repayments of around £57 as an absolute minimum.

Drafty says it agreed to Miss J's application after she'd provided details of her monthly income and expenditure and it carried out a credit check. Miss J declared she worked full time and received an income of £1,500 per month and she also declared monthly outgoings of £700. So based on the information that Miss J provided Drafty, the facility looked affordable.

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 J had nine active accounts and according to the results of the credit checks, Miss J had defaulted on one account - but that had occurred 51 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 J wasn't likely experiencing any financial difficulties at the time that she applied for the facility.

Overall, I think Drafty carried out proportionate checks which showed it the facility was going to be affordable for Miss J. I am therefore not upholding the complaint about Drafty's decision to provide her 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 Miss J. The relevant section of the guidance in the Consumer Credit Sourcebook 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 J'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 when Miss J made her drawdowns and her repayments, as well as how she utilised the credit facility, there isn't anything within that which ought to have given Drafty cause for concern up to March 2022. In March 2022, the facility was suspended due to non-payment and was the final month that Miss J took funds from the facility.

There also wasn't anything else that I can see within the repayments that would've indicated to Drafty that she was having, or likely having, financial difficulties.

I am therefore not upholding Miss J's complaint about Drafty's decision to approve the facility nor in the way it monitored the facility up to March 2022. An outstanding balance remains

due, and I would remind Drafty of its regulatory obligation to treat Miss J fairly and with forbearance.

Credit limit decrease

I can see that Miss J didn't make her March 2022 payment, and so Drafty suspended the facility. This meant Miss J couldn't drawdown any further on the facility until it was up to date, but interest would still accrue on any outstanding balance. I don't consider this an unreasonable course of action. But this is a possible indicator that Miss J was starting to have problems managing her facility because she wasn't able to make the payment as and when Drafty expected it.

I can then see from the list of transactions provided by Drafty that Miss J made a number of payments to Drafty between 22 and 27 April 2022. These payments had the effect of curing the arrears and so Drafty reinstated the credit facility. This was a reasonable course of action given there were now no longer arrears on the facility.

However, it also sent an email on 27 April 2022 - where Drafty explained it had decreased the credit limit on the facility from £500 to £375. Miss J has provided a copy of the email notification she received from Drafty telling her:

"As a responsible lender, we do periodic reviews of your account. This is to make sure it is affordable for you. When appropriate, we may decrease or even offer to increase your credit limit.

Based on a recent review of your account, we are reducing your credit limit.

From today, it will change from £500 to £375."

I therefore have to consider whether the actions of Drafty were allowable under the terms and conditions that govern the use of the facility and whether it did anything wrong by not telling Miss J – in advance - that it would decrease her limit.

The starting point is to consider the credit agreement, as well as the terms and conditions, to see whether Drafty actually had the authority to decrease the limit. Section 3 of the terms and conditions titled "*Suspending your Account*" provides Drafty with the means to decrease a credit limit – if it sees fit. Section 3.1 says:

3.1 We can prevent or limit the use of your Account or decline a draw down where:

What follows are a number of subpoints that outline possible reasons why Drafty may decrease the credit limit or curtail use of the facility. In this case, part (a) says "*you have missed a payment and/or your Account is in arrears*". I accept that, by the time the credit limit decrease occurred, Miss J had corrected the arrears. But nonetheless, the account had been in arrears, which is a sign that the previous credit limit may have become unaffordable for Miss J.

In addition, the credit agreement Miss J agreed to when taking the facility says;

"2.2 As a responsible lenders, we will keep your credit limit under review and may vary it based on your circumstances"

Section 2.3 goes on to explain that if the credit limit is to be decreased Drafty *may* provide advance notice – but importantly it doesn't have to. But it does confirm there maybe

situations where the decrease occurs and then a consumer is told afterwards – as is this the case here.

Given the content of the terms and conditions and the credit agreement, I'm satisfied that firstly, Drafty had the right to set and alter the credit limit and secondly, it provided the notice after the decrease occurred – as allowed under the terms of the facility. This is fully in line with the terms and conditions and the credit agreement and so the fact the credit limit decreased isn't something that I can say Drafty did wrong.

I understand Miss J's frustration at the timing of the decrease, after all this occurred shortly after Miss J had made sufficient payments to Drafty to cure the arrears on the facility. Miss J said that she only made the payment in good faith, on the understanding she'd be able to draw down again - which is something she needed to do in order to meet her other commitments. But Drafty was under no obligation to allow Miss J to take further draw downs if it felt it needed to take in and take some action - which is what happened here.

This would suggest that Miss J was already experiencing some financial difficulties – given she says she needed to free up the balance on the facility in order to draw down again. So, I do think, knowing this in hindsight, means that Drafty's decision to limit Miss J's overall debt was a positive step to take. Drafty was under no obligation to allow Miss J to continue to drawdown on the account.

I'm sorry to hear Miss J had to borrow from friends as a result of Drafty's decision to decrease the credit limit. But we would expect a lender to offer forbearance, in this case, Drafty felt that it needed to decrease the credit limit on the facility. As such, I can't say that an error was made in regard to this aspect of her complaint.

Afterall, part of the complaint was reviewing whether Drafty should not have lent to her in the first place - so I can't reasonably say that its decision to reduce the credit limit after there were signs that Miss J may be experiencing financial difficulties is unreasonable. On the contrary, this is what I'd expect a responsible lender to do to avoid a consumer getting further into debt that they may not be able to afford to repay.

Having looked at the statement of accounts provided by Drafty it does seem that Miss J has not made any further payments towards her balance – which resulted in the facility being suspended once again in May 2022. Although the decrease in Miss J's credit limit meant she was actually over the new prescribed limit by Drafty, it doesn't appear from the statement of accounts that Miss J was penalised for being over her new credit limit. But she was charged interest (in line with the agreement) on the total balance.

However, no payments were made to repay the debt even so I think it was entirely fair and reasonable, and in line with guidance issued by the Information Commissioner's Office, to send a default notice to Miss J in July 2022.

Payment holidays were then agreed by Drafty in July and August 2022. This stopped the account from defaulting at that time. In my view this is a reasonable course of forbearance, to enable Miss J to get her finances back in order.

But unfortunately, no payments were made after the end of the payment holidays. So Drafty took the decision to terminate the account in October 2022. By terminating the agreement, it prevented any further interest, fees and charges being added to the balance and would enable a discussion to take place in order to repay what is owed. Again I think given what had happened, and as no repayments had yet to be made based on the evidence I've received since the repayment holidays had ended, this seems reasonable action to have taken in the circumstances.

I am therefore not upholding Miss J's complaint. I appreciate she will be disappointed by the decision I've reached. But having reviewed the terms and conditions and the credit agreement, I am satisfied that Drafty was entitled to alter the credit limit and so I can't say it has acted unfairly.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 9 February 2024.

Robert Walker
Ombudsman