

The complaint

Mr L complains Gain Credit LLC trading as Drafty (“Drafty”) gave him a line of credit he couldn’t afford to repay. Mr L also says he agreed a repayment plan with Drafty but the interest on the facility wasn’t stopped at this time.

What happened

Mr L approached Drafty for a running credit facility on 17 January 2022 and Mr L was given a facility with a £250 credit limit – which didn’t change while Mr L held it. Mr L has had some problems repaying the facility and from February 2023 he is paying £16.51 per month towards the outstanding balance.

Mr L 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 L was not given a payday loan.

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

Unhappy with this response, Mr L referred the complaint to the Financial Ombudsman, where it was considered by an adjudicator. And she thought while the facility appeared affordable from the outset Drafty ought to have done more. Drafty ought to have done some further checks into Mr L’s existing credit commitments, because the credit check results showed that Mr L had commitments despite him having declared there wasn’t any. And even taking account of what the adjudicator could see in Mr L’s credit file – had Drafty made further enquiries about the credit commitments it still would’ve thought the facility was affordable.

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

Finally, she didn’t think Drafty had done anything wrong when it tried to set up a payment plan with Mr L. It had concerns about the authority of Mr L’s representative (at the time) and instead emailed his personal account but didn’t hear anything from him.

Mr L didn’t agree and asked for an ombudsman’s decision. 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 borrowed 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 consider 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 L's Drafty facility.

As explained, Mr L 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 L would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr L'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 do think Drafty ought to have made further enquires with Mr L about his credit commitments, but even if it had done so, it still would've thought the facility was affordable for him.

As explained, Mr L wasn't given a payday loan, Mr L was given a facility where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time. What constitutes a reasonable period of time is laid out in the regulations but it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

Mr L was granted a facility with Drafty with a £250 limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost of the facility to Mr L. This hypothetical situation assumed that Mr L 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 L repaid what he owed in 12 monthly instalments.

Had Mr L done that, he'd have repaid Drafty a total of £338.97 meaning a total monthly repayment of around £28.24.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr L could make monthly repayments of around £29 at an absolute minimum.

Drafty says it agreed to Mr L's application after he'd provided details of his monthly income and expenditure and it carried out a credit check. Mr L declared he received an income of £2,500 per month and he also declared monthly outgoings of £225. This expenditure was broken down as £75 for food, £25 utilities and £125 for transport.

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 L had 18 active accounts and credit commitments of at least £215 per month. This is important, because as part of the affordability check, Mr L declared that he didn't have any existing credit commitments. So Drafty was on notice, that the information Mr L provided about his credit commitments was not likely to be accurate.

In addition, Drafty was told that Mr L had defaulted on one credit account within the last 12 months. But then the information is contradictory because the results indicate that the last defaulted account was 55 months before the facility was granted. Clearly, both results can't be correct.

So, I do agree with the adjudicator, when the facility was approved, Drafty ought to have made some further enquires with Mr L about the nature and cost per month of his existing credit commitments. Mr L has provided a copy of his credit file and so I've looked at this to see what Drafty may have seen had.

From this credit report, I can see that Mr L had a hire purchase agreement costing £269 per month as well as a loan costing £195 per month. On top of this he had four current accounts, but there wasn't any adverse information recorded about them.

There were also four credit card accounts, unfortunately the report doesn't show what the balance was of the cards at the time the facility was granted, but even if I assume that the cards were at the maximum limit Mr L would've owed these providers a total of £902.

Finally, there were three mail order accounts, again, I can't see the balance of those accounts at the time the facility was approved. But the most Mr L could've owed these companies was £1,520.

Based on Mr L's own credit report, he did have some other creditors that needed servicing, and just the loans were costing £464 per month and then there were credit cards and mail order accounts. However, even taking account of these payments, I still think had Drafty made further enquires it would've seen that Mr L would've had sufficient disposable income to pay and then service his credit facility.

This does mean, I don't think Drafty's checks needed to extend to for example obtaining copies of Mr L's bank statement. I also accept Mr L's actual financial position may not have been reflected either in the information provided, or the information Drafty obtained. But Drafty could only make its decision based on the information it had available.

Overall, I do think Drafty needed to consider Mr L's credit commitments more closely given the results of the credit search which showed contradictory information between what Mr L had declared and his monthly commitments. However, even if Drafty had taken a closer look at Mr L's existing credit commitments and substituted those figures into his outgoings, the facility still looked affordable.

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 L. 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 facilities. 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 L'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 L made his drawdowns and his repayments, there isn't anything within that ought to have given Drafty cause for concern. Between January 2022 and the last drawdown in July 2022, Mr L drew down seven times. But he also fully repaid the facility once, in April 2022. There 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 L's facility.

Other considerations

Mr L says that his representative at the time put a payment plan in place, but Drafty continued to apply interest to the balance. Although, a payment was received by Drafty for £9.12 in August 2022. This doesn't appear to have been a formal repayment plan which had been agreed between Mr L and Drafty and after August 2022, no payments were made until February 2023.

I can see, from the copies of the emails Drafty has sent to us, that it had some concerns about Mr L's representative's authority (when the complaint was first raised) to deal with this matter on his behalf. Drafty emailed Mr L directly to outline that it would look into the complaint but would write to him directly, instead. This email was sent to Mr L at the email address he provided Drafty when he applied for the facility.

I can also see that each time Drafty received an email from Mr L through the email address his representative provided, Drafty emailed Mr L directly and sign posted him to the relevant part of its business in order to set up a plan or discuss the outstanding balance. However, Mr L didn't, for whatever reason, respond to Drafty's emails about setting up of the repayment plan. And therefore, Drafty wasn't to know, what if anything Mr L could afford each month and so no repayment plan was formally put in place.

I understand Mr L's concerns about the increasing balance, but the facility was defaulted and then terminated on 6 October 2022 and so the balance has not increased since that time as the defaulting of the account prevented further interest being added.

Overall, given what Drafty has said, and the fact that it emailed Mr L directly about his account. I don't think it has done anything wrong in relation to this element of the complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 August 2023.

Robert Walker
Ombudsman