

The complaint

Mr M complains Gain Credit LLC trading as Drafty ("Drafty") gave him a line of credit without carrying out sufficient checks.

What happened

Mr M approached Drafty for a running credit facility on 22 October 2021 and Mr M was given a facility with a £550 credit limit – the limit was increased on one occasion in March 2022 to £1,130. Mr M has had some problems repaying the facility and by June 2023, the outstanding balance of £1,482.74 had been passed to a third party to collect on behalf of Drafty.

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 March 2023, it explained the information it had gathered from Mr M before it approved the facility. It concluded given the estimated monthly repayment that Mr M was likely to be able to afford the repayments.

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

The adjudicator also explained that Drafty had an obligation to monitor the facility. She thought, that when the credit limit was increased by more than double the original limit Drafty ought to have carried out some further checks. Drafty didn't do this at the time, but the adjudicator reviewed Mr M's bank statements which he had provided. After she reviewed them, she concluded that even if Drafty had undertaken further checks it would've likely thought the new credit limit was affordable for Mr M.

Mr M didn't agree, saying Drafty should never have approved the facility. Mr M provided some further information about his finances at the time including that he was covering his partner's bills as well. While Mr M did make a large payment to Drafty this was only possible as he had taken on another loan. At the time, Mr M says he was living beyond his means.

As no agreement could be 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.

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.

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 a £550 limit. In the credit agreement, a hypothetical situation is laid out to show the potential cost to Mr M. This hypothetical 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 £575.73 meaning twelve monthly repayments of around £47.97 each.

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 £48 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 £2,276.10 per month and he also declared monthly outgoings of £975. This expenditure was broken down as £475 for a mortgage / rent, £275 for utilities and £225 for food.

This information showed Drafty that Mr M had around £1,300 of disposable income each month in which to service and repay the facility. Drafty could've reasonably concluded the facility was affordable for Mr M.

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 3 active accounts and these accounts had outstanding balances of £100. Although no credit commitments were declared by Mr M as part of his applications, as the outstanding balances were low, even adding the total amount of credit outstanding to his living costs still made the facility 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 15 months. So, I think it would've been reasonable for Drafty to have concluded, from the credit check results that Mr M wasn't likely 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 about him, 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 likely to be affordable for Mr M. I am therefore not upholding his complaint about Drafty's decision to provide him with a facility.

Credit limit increase

In March 2022, Drafty increased Mr M's credit limit from £550 to £1,130. 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 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 for this credit limit increase, Drafty ought to have carried out some further checks to ensure that Mr M would be able to afford the increased payments and that he would be able to service and repay the facility with the new limit. I agree with this, given Drafty had more than doubled Mr M's original credit limit.

The adjudicator felt it was proportionate to have reviewed Mr M's copy bank statements and I also would agree. But looking at bank statements was one of a number of ways Drafty could've gone about building a more detailed picture of Mr M's finances.

I've also looked at the bank statements, and it does seem that Mr M's income was made up of a combination of wages and benefits – and in the month before the facility balance increased this income came to around £2,500 which is around the same amount of income Mr M declared to Drafty when his facility was approved.

In terms of credit commitments, I can see a payment towards a credit card, a payment to a buy-now pay later loan and there is also a payment to a third-party debt collector. But there isn't anything from the bank statements to indicate that Mr M was struggling to pay these commitments or that they were not being paid in a sustainable manner.

The adjudicator concluded Mr M had around £500 per month disposable income – a figure that Mr M says he never had available. Having looked at the bank statements, while I can see payments for living costs, there isn't anything to show that Mr M was struggling to pay

them or didn't have any left over each month to afford the increase in the credit limit Drafty proposed.

I've taken on board what Mr M told us that he was covering his partner's bills, and he also explained around this time he had to take time off work. But that wasn't reflected in the information Drafty may have seen and therefore, I can't fairly conclude from looking at the bank statements that Drafty would've or ought to have known that Mr M may have struggled to make his payments.

Monitoring the facility

Although I don't think Drafty was wrong to have initially provided the facility or when it increased the credit limit, that wasn't the end of its obligations to Mr M. 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, 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 within that which ought to have given Drafty cause for concern. Between October 2021 and the last drawdown in November 2022, Mr M drew down a number of times, but importantly, he didn't draw every month for example there was no lending in December 2021 or May 2022. There was also a time when Mr M made significant payments towards his facility such as July 2022. I appreciate Mr M says that this payment could only have been made by borrowing from another lender, but at the time Drafty wouldn't have reasonably known that.

In addition to the drawdowns Mr M was making at least the minimum payment each month – and sometimes more such as 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.

Having reviewed all the evidence, I am not upholding Mr M's complaint. An outstanding balance remains due, and I would remind Drafty of its regulatory 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 19 December 2023.

Robert Walker
Ombudsman