

The complaint

Mr B complains that Gain Credit LLC trading as Drafty (“Drafty”) gave him a line of credit without carrying out sufficient checks. Mr B also says when the payment for the facility wasn’t taken Drafty didn’t notify him and finally, he says Drafty refused to set up a repayment plan with him.

What happened

Mr B approached Drafty for a running credit facility in December 2021 and Mr B was given a facility with a £820 credit limit. In April 2022, Mr B’s limit was increased to £1,040. Mr B had problems repaying the facility. It was initially suspended in September 2023 before defaulting and being terminated in November 2023.

Mr B 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.

In Drafty’s final response letter issued in December 2023, it explained the information it had gathered from Mr B before it approved the facility. It concluded Mr B was likely to be able to afford the repayments. But Drafty did make an offer to settle the complaint because it said:

“...you were not making headway into paying what you owed within a reasonable period of time and was possibly facing difficulties in using the facility...”

It then outlined the offer to put things right, which was to refund any interest, fees and charges incurred on drawdowns after 18 April 2023. To this sum Drafty said it would add 8% simple interest (less any tax), use this sum to reduce the outstanding balance and then remove any negative markers from Mr B’s credit file related to the credit after 18 April 2023.

Unhappy with this response, Mr B referred the complaint to the Financial Ombudsman, where it was considered by an Investigator. She thought about the information Drafty gathered when the facility was approved and when it increased the credit limit. Having done so, she concluded the offer made by Drafty was fair and reasonable to resolve the complaint.

The Investigator also concluded that Drafty had contacted Mr B when he missed his September 2023 payment. She also said, Drafty couldn’t have entered into a repayment plan because Mr B had contacted it after the account had defaulted.

In response to the Investigator’s assessment, Mr B sent a number of emails and I’ve summarised the response below;

- He was unhappy Drafty sold the debt to a third party without making the adjustment it outlined in the final response.
- Mr B said he would be prepared to accept the offer as long as Drafty bought the debt back and dealt with him directly.
- Drafty hasn’t provided evidence that after the missed payment it contacted him.

- Drafty wouldn't agree a repayment plan with Mr B and when he tried to agree a plan with the third party it returned the debt to Drafty.

The Investigator made further enquires following Mr B's comments, but the information she received didn't lead her to change her mind. 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 thinking about whether Drafty did what it needed to before agreeing to Mr B's Drafty facility.

As explained, Mr B was given an open-ended credit facility. Overall, I think that meant the checks Drafty carried out had to provide enough for it to be able to understand whether Mr B would be able to both service and then repay his facility within a reasonable period. Drafty also needed to monitor Mr B's repayment record for any sign that he may have been experiencing financial difficulties.

What happened when Drafty approved the facility

Mr B 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 isn't 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.

The facility had a £820 limit and the credit agreement set out a hypothetical situation to show the potential cost of the facility to Mr B. This situation assumed that Mr B 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 B repaid what he owed in 12 monthly instalments.

Had Mr B done that, he'd have repaid Drafty a total of £1,111.82 meaning twelve monthly repayments of around £92.60 each. So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr B could make monthly repayments of around £93 at an absolute minimum.

Drafty says it agreed to Mr B's application after he'd provided details of his monthly

income and expenditure and it carried out a credit check. Mr B declared he worked full time and received an income of £2,300 per month and he also declared monthly outgoings of £1,500 – across a number of different categories. The facility appeared 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 Mr B had 12 active accounts and these accounts were costing Mr B at least £752 per month to service. Drafty discovered from its own checks that Mr B's credit commitments were greater than what he had declared - £275. But I can see Drafty adjusted Mr B's monthly outgoings to take into account the credit commitments that it discovered, so I'm satisfied it acted fairly.

According to the results of the credit checks, there was a default that had been added 71 months before he applied for the loan. This was too long in the past for Drafty to be concerned over it. So, I think it would've been reasonable for Drafty to have concluded, from the credit check results that Mr B wasn't likely experiencing any financial difficulties.

Overall, I'm satisfied Drafty conducted proportionate checks which showed Mr B would likely be able to afford the repayments. I am therefore not upholding Drafty's decision to provide the facility.

Credit limit increase

Drafty increased Mr B's credit limit in April 2022, taking it to £1,040. As far as I can tell, Drafty didn't do any further checks when this occurred. But looking at how Mr B had managed his facility up to this point in time and thinking about the size of the increase, I concur with the Investigator that the decision to increase the credit limit was reasonable. I do not uphold this part of Mr B's 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 Mr B. 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, it meant Drafty needed to be mindful of Mr B's repayment record and how he used the facility and step in if and when he showed signs of possible repayment difficulties.

For this part of the decision, I haven't reviewed the transactions after 18 April 2023 because Drafty has already accepted it needed to have stepped in at this point. But what I would say is that I don't disagree that by then, after having the facility for close to a year and the pattern of how Mr B was starting to use the facility was established that Drafty needed to step in and take some action.

Having reviewed the transaction data before Drafty accepted something went wrong, which includes the relationship between when Mr B made his drawdowns and his repayments, there isn't anything within that which ought to have given Drafty cause for concern.

Between the inception of the facility and the end of April 2023, Mr B drew down 11 times, and although he didn't draw every month Mr B would only make the minimum payment that was due.

In addition to the drawdowns Mr B was making at least the minimum payment each month. There wasn't anything within his repayments that would've indicated to Drafty that he was having, or likely having, financial difficulties so I don't think Drafty needed to have stepped in any sooner than it has already offered to do. So, I don't think Drafty needed to take any further action, beyond what it has already agreed to do and it therefore follows the offer it has made is fair and reasonable to resolve the complaint.

For completeness, I've outlined at the end of this decision what Drafty needs to do and what it has already agreed to do in order to put things right for Mr B.

Other considerations

Mr B made his contracted payments as expected up until July 2023 and no further payments have been since then. Mr B was due to make a payment on or around 31 August 2023, but this wasn't made. Mr B has said that after the payment wasn't made he didn't hear from Drafty.

Drafty has provide a spreadsheet showing when communication was sent to Mr B after he missed his payments and the type of the communication. I can see that after each missed payment Drafty sent a combination of text messages and emails to Mr B letting him know that payments were overdue.

The email address Drafty was using matches the one provided by Mr B when he referred his complaint here and the mobile number used by Drafty matches the one that he provided to Drafty when he applied for the facility.

On balance, I'm satisfied that Drafty made reasonable attempts to let him know he had missed payments in at least two different ways, the account was at risk of defaulting and then notified him on 1 November 2023 that the facility had been terminated.

Overall, I don't think Drafty made an error when it sent notifications to Mr B to let him know he had missed payments because it was required to do so.

Mr B's third complaint point was concerned with Drafty refusing to set up a payment plan for him. Drafty, says because the facility had been terminated on 1 November 2022. So, when Mr B approached it with a complaint, it was already too late to prevent the account from defaulting and then the termination of the facility. So while Mr B understandably felt that Drafty was refusing to assisting him, it does appear that a plan couldn't be set up at this time due to the termination of the agreement.

I've read the emails between Mr B and Drafty after the complaint was raised. Drafty, said it was going to pass the account to a third party who would deal with the collection of the balance – but Drafty said it would retain legal ownership of the debt. Drafty is entitled, if it wished, to ask a third party to assist with the collection of the debt.

I can understand given the response why Mr B thought Drafty was trying to avoid setting up a repayment plan, but it also seems that Drafty has taken a decision to outsource the collection activity – on closed accounts. Drafty let Mr B know this in the emails – that Mr B could set up a repayment plan with the third party that would be appointed. From the information presented by Drafty, it would seem that it would only agree or work out a

repayment plan up to the point before the account was defaulted and terminated. This was outlined in an email to Mr B on 8 December 2023.

So, Drafty, did tell Mr B it wasn't able to set up a repayment plan and this could be interpreted as Drafty refusing to set up a plan. But I there does appear to be reasons why Drafty wasn't – at the time Mr B requested able to put a plan in place such as the facility having been terminated.

After the account was passed to a third party – payment wasn't made. I accept, that may have been because there was a dispute about the lending decision and may explain why the account was passed 'back' to Drafty as Mr B says it was. However, there is still a balance that needed to be repaid and I can't say that Drafty made an error when it either passed the account to the third party or is now in the process of assigning legal ownership of the debt to another party.

Moving forward, Mr B has said he wants Drafty to retain ownership of the debt and be allowed to make payments directly to it. I can understand why he wants this, but the terms and conditions say that Drafty can assign the rights of the debt to a third party and it seems, from everything it has told us that it plans to do so. I don't think it would be appropriate in these circumstances to direct Drafty to not assign the account to a third party – this is a standard industry practice and so not something I would interfere with.

And even if a repayment plan had been agreed with Drafty (before the termination) or with the first third party that wouldn't have precluded Drafty from assigning the debt to another third party. Drafty has confirmed Mr B will be notified of who that third party is, and that is what I would've expected it to do.

I therefore make no further award against Drafty.

I realise that Mr B will be disappointed by this outcome. However, Drafty has already accepted that something went wrong during the time Mr B held the facility and it has made a fair and reasonable offer to correct this.

While there may have been some issues in Mr B trying to set up a repayment plan, I can't say that those issues had had any significant material effect on the outcome of the complaint. The offer made by Drafty puts him – as far as possible- into the position he would've been in had corrective action been taken at the time.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've set out below is fair compensation for Mr B in the circumstances of his) complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

In line with what Drafty has already agreed and as outlined in the final response letter, it should;

- Re-work Mr B's credit facility balance so that any additional interest, fees and charges applied to drawdowns from 18 April 2023 from are refund and Drafty has said to this sum it will add 8% simple interest*.
- Use this refund to reduce the outstanding balance that is owed.
- Drafty should also update the credit file as it agreed to do in the final response letter.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Mr B a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above Gain Credit LLC trading as Drafty has already made an offer to settle the complaint as it outlined in the final response letter, and I think this offer is fair in all the circumstances.

So, my decision is that Gain Credit LLC trading as Drafty should pay this offer to Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 August 2024.

Robert Walker
Ombudsman