

The complaint

Mr W says Gain Credit LLC trading as Drafty lent to him irresponsibly. He says his financial situation was poor at the time of sale and a reasonable credit check would've shown this. He says if Drafty had made better checks then it wouldn't have lent to him.

What happened

This complaint is about one running credit account Drafty provided to Mr W in May 2017. Mr W made 11 withdrawals when this account was running. I've detailed these in the table below.

withdrawal number	date	amount withdrawn	credit limit balance
1	22/05/2017	£500	£500
2	24/05/2017	£90	£590
3	25/05/2017	£300	£296
4	26/05/2017	£300	£596
5	30/05/2017	£50	£646
6	31/05/2017	£50	£696
7	01/06/2017	£150	£846
8	01/06/2017	£350	£1,196
9	22/06/2017	£24	£1,200
10	20/07/2017	£24	£1,200
11	21/08/2017	£24	£1,200
12	22/09/2017	£20	£1,196

On 24 October 2017 Mr W informed Drafty that he was having problems making the loan repayments and he had been in contact with a debt management provider.

According to Drafty's records Mr W was charged interest in October 2017 and November 2017. It's not clear when (or if) the debt was fully repaid

Our adjudicator partially upheld the complaint. She didn't think Drafty was wrong to approve the arrangement and any of the subsequent withdrawals. But she thought that it shouldn't have continued to charge interest after the time Mr W told it that he was entering into a debt management plan.

Drafty didn't respond or provide any further comment about the adjudicator's opinion. And Mr W didn't disagree with it. But as no agreement has been reached the complaint has been passed to me.

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.

We've set out our general approach to complaints about irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Drafty needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr W could repay what he borrowed in a reasonable period of time. And it had a responsibility to treat Mr W fairly and reasonably throughout the term of the agreement.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr W's complaint. I've decided to uphold Mr W's complaint in part and I've explained why below.

Mr W didn't disagree with our adjudicator's opinion that Drafty was right to approve the lending and the drawdowns. Because of this, I don't think there is any ongoing disagreement about this aspect of Mr W's complaint. And I agree that Drafty wasn't wrong to approve any of the lending. I won't consider this aspect of Mr W's complaint further.

But as our adjudicator noted, Mr W did inform Drafty that he was in financial difficulty. He said he was seeking advice about his debt problems and he requested that Drafty stop charging interest on his loans. Drafty didn't do this.

Drafty had a responsibility to treat Mr W fairly and with forbearance when it became aware of his financial problems. And part of this should've been, in this case, ceasing to charge interest on his outstanding debts while he sought debt management advice. So I agree that Drafty should've stopped charging Mr W interest after 24 October 2017 and I'm upholding his complaint on this basis.

Putting things right

Drafty shouldn't have charged interest on Mr W's account after 24 October 2017.

If Drafty has sold the outstanding debts Drafty should buy these back if it is able to do so and then take the following steps. If Drafty is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

A) Remove all interest, fees and charges from the account after 24 October 2017.

B) Treat all payments Mr W has made towards his account after 24 October 2017 as though they had been repayments of outstanding balance.

C) If at any point Mr W would have been in credit on his account after considering the above, Drafty will need to refund any overpayments with 8% simple interest* calculated on these payments, from the date they would have arisen, to the date the refund is made.

D) If there is an outstanding principal balance, then Drafty can use any refunds calculated as part of "C" to repay this. If a balance still remains after this then Drafty should try to agree an affordable repayment plan with Mr W. If Drafty has previously written-off any principal, then Drafty shouldn't pursue outstanding balances made up only of principal Drafty has already written-off.

E) Drafty should remove any adverse payment information recorded on Mr W's credit file – after 24 October 2017.

*HM Revenue & Customs requires Drafty to deduct tax from this interest. Drafty should give Mr W a certificate showing how much tax Drafty've deducted, if he asks for one.

My final decision

For the reasons I've explained, I partly uphold Mr W's complaint.

Gain Credit LLC should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 August 2020.

Andy Burlinson
Ombudsman