DRN-3618454

The complaint

Mrs M, through her representative, complains that Gain Credit LLC, trading as Drafty, lent to her, and increased her credit limits, when she could not afford it.

What happened

This was not a loan. Drafty offered a credit facility which commenced with a limit being determined and then the customer was able to draw down the amounts he or she required. The credit was unsecured and had no fixed duration.

Briefly, Mrs M applied for a credit facility of £1,000 in April 2018. Drafty approved a credit facility of £700. The limit was increased once to £800 in August 2019.

The credit agreement set out the total cost of the credit based on some assumptions to illustrate the likely cost to Mrs M. On the assumption that Mrs M drew down the full £700 on the first day and then repaid it (plus interest and charges) over 12 months in equal instalments then the total amount payable would have been just under £950. This would have equated to about £79 a month (Clause 5 in the agreement).

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Mrs M's salary payment, and it gave the minimum payment required for that cycle. It had to be the higher of certain calculations which are in the agreement at clause 6 which I have not set out here.

A Continuous Payment Authority was used to take the minimum payments on or near Mrs M's monthly salary date. Other ways of payment were made available.

The account got into arrears, was suspended in May 2020 and the debt was then passed to a third-party debt collector in November 2020 and it remains with that party. Mrs M has been paying £29.91 each month since 7 November 2020 and I understand she may still be doing that.

Mrs M complained to Drafty in 2021 and received a final response letter (FRL) in September 2021 in which Drafty gave reasons why it did not uphold her complaint. Mrs M's representative referred the complaint to the Financial Ombudsman Service.

In July 2022, one of our adjudicators looked at the complaint and thought that Drafty's decision to approve the credit facility initially was right. But that from 23 November 2019 Drafty ought to have stopped Mrs M from using the facility, ceased adding interest and ought to have treated her with forbearance to allow her to repay the whole debt.

Drafty agreed in part - the uphold date being 23 November 2019 - and said it would do the following:

- to refund the interest and charges paid towards new drawdowns from 23 November 2019
- remove any adverse information in reference to the above-mentioned account from Mrs M's credit file from 23 November 2019.

But Drafty made the point that any amount given to the customer before this date was affordable and after this date was unaffordable so Drafty considered it was well within its rights to collect the principal as well as interest on any drawdowns prior to the uphold date.

Mrs M's representative's response to Drafty's resolution offer was to reject it which suggests that as well as rejecting the offer she also disagreed with the adjudicator's view

The unresolved complaint was passed to me to decide.

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 have considered the law, any relevant regulatory rules and good industry practice at the time the credit was offered.

Before lending money to a consumer or approving a credit limit a lender should take proportionate steps to understand whether the consumer will be able to repay what they are borrowing in a sustainable manner without it adversely impacting on their financial situation.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves did not set out compulsory checks, they did list several things a lender could consider before agreeing to lend. The key element was that any checks needed to be proportionate and had to consider several different things, including how much was being lent and when the sum being borrowed was due to be repaid.

Initial approval of the credit facility.

I need to explain to Mrs M that upon first approaching Drafty in April 2018 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Mrs M was a new customer. And bearing in mind the credit limit granted and the monthly payments required to repay the facility within a reasonable period, Drafty was entitled to rely on the information given to it which suggested that Mrs M had enough disposable income to service a credit facility with a limit of £700.

Mrs M applied for a £1,000 'loan' in April 2018 and said to Drafty she was employed full time and earned £1,400 a month after tax and had monthly expenditure of £975.

Having looked at all that Mrs M has given me, and Drafty's information and submissions then I think that the initial credit facility approval was carried out after checks I would have considered proportionate. And the limit approved was likely to have appeared serviceable and able to be repaid within a reasonable time.

Monitoring of the account

After the initial approval of the credit limit at the start of the account facility, Drafty did have to monitor Mrs M' account and it has been explained to us how it did that but very briefly. I refer to the Financial Conduct Authority Consumer Credit Sourcebook (CONC) chapter 6 which addresses the expected Business Practices in relation to the monitoring of an account. One indication of a risk of a customer being in financial difficulties is where it seems that the customer is borrowing to repay borrowing.

By 23 November 2019, I think Drafty had enough information to suggest that Mrs M was not going to repay what she owed within a reasonable period. Once Mrs M was approved a higher credit limit, she went on to withdraw the remaining credit available. Her borrowing history showed a pattern whereby she was making her repayments for a few months but would then need to request further credit shortly after. This would then return her to her original position - owing her full credit limit.

By 23 November 2019, Mrs M had held her facility for around 19 months, and she still owed the majority of what she had borrowed. At this point, I think Drafty should have permanently suspended the account, rather than allow Mrs M to continue using it in the same manner going forwards.

There were several actions Drafty could have taken. But as none of these were taken. Drafty agrees about the adjudicator's view of the uphold date of 23 November 2019 and I agree with that date too.

I don't think it's fair and reasonable for a lender to allow a customer to continue using a facility that has become demonstrably unsustainable – instead I think it's fair and reasonable to expect a lender to help the customer repay what they've already drawn down and what they already owe. Where Mrs M's repayment record suggested she was already struggling to repay the amount owed, I don't think that Drafty continuing to allow interest to be charged on Mrs M's balance is fair and reasonable.

So, although, I do accept that the balance up to the uphold point was legitimately lent and appeared affordable for Mrs M at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mrs M to repay what was owed, then it ought to have ceased charging interest on this balance from 23 November 2019.

I realise Drafty has said it does not agree, but that's my decision.

I've outlined below what Drafty needs to do to put things right for Mrs M.

Putting things right

My understanding is that the account was passed to a third party collector but the loan ownership remains with Drafty. And as of July 2022, the outstanding balance was £291.34. That account may have been paid off by now – February 2023- but I have drafted it to include the possibility there remains an outstanding balance.
Drafty should bring that debt (if there is one) back in-house, remove any of the third party charges allocated to the account and not pass them on to Mrs M. And Drafty should do as I have set out below.

- Re-work Mrs M's credit facility balance so that all interest, fees and charges applied to it from 23 November 2019 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mrs M to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mrs M's credit file, it should backdate this to 23 November 2019.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mrs M, along with 8% simple interest* on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Drafty should remove any adverse information from Mrs M's credit file.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Mrs M a certificate showing how much tax it has taken off if she asks for one.

My final decision

My final decision is that I uphold Mrs M's complaint in part and I direct that Gain Credit LLC,

trading as Drafty, should put things right for Mrs M as outlined in my decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 21 March 2023.

Rachael Williams
Ombudsman