DRN-3630525

The complaint

Mr B complains Gain Credit LLC (trading as Drafty) gave him a line of credit he couldn't afford to repay because at the time Mr B was spending significant amounts of money gambling.

What happened

Mr B approached Drafty for a running credit facility in September 2018. Mr B was initially given a facility with a £500 credit limit. The limit was increased on two occasions with the most recent increase taking Mr B's credit limit to £1,080 in December 2018. Based on the most recent information from Drafty, an outstanding balance remains due.

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 his limit. He was also able to borrow further, up to his credit limit, as and when he repaid what he owed. To be clear, Mr B was *not* given a payday loan.

In Drafty's final response letter (sent in November 2021) it explained the information it gathered from Mr B before it approved the facility which Drafty says showed Mr B would be able to afford and then service the facility.

However, it did agree, that the facility may have been unsustainable for him from 14 August 2019 and so it offered to refund any interest and charges on new drawdowns from this date. After the refund and offsetting against the outstanding balance it left a balance to pay at the time of £522.17.

One of our adjudicators looked at Mr B's complaint. She thought the checks Drafty carried out before initially granting his facility were proportionate and showed it Mr B was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Mr B's credit agreement. This was calculated on the full £500 being drawn down at the outset and then being repaid over 12 months. So, she didn't think it was wrong for Drafty to have initially approved the facility.

However, the adjudicator, pointed out that, in addition to taking reasonable steps to ensure the facility was affordable, it also had an obligation to monitor Mr B's ongoing use of the facility.

Having reviewed the way Mr B borrowed and repaid the facility, she thought, like Drafty that by 14 August 2019 it ought to have realised that the facility had become unsustainable for him. Knowing this, in the adjudicator's view, Drafty should've stepped in and froze all the interest on the facility.

In order to put things right, the adjudicator recommended all interest, fees and charged paid by Mr B from 14 August 2019 should be refunded, along with additional interest of 8% simple. She also said any adverse information recorded on Mr B's credit file from the uphold date should be removed from his credit file.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point it had already agreed to (14 August 2019) but it agreed to only refund the interest fees and charges applied to any *new* drawdowns from that date. It also agreed to remove any adverse information from Mr B's credit file.

However, Drafty didn't agree to refund all the interest fees and charges applied from 14 August 2019. It said this was because:

> *Also, your decision implies that any draws granted after 14th August 2019, were inappropriate, so we should refund interest paid towards them. However, it also implicated that draws requested prior to 14th August 2019, were reasonable for us to have granted, so we aren't liable to refund any interest paid towards them despite that we collected it after 14th August 2019.*

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.

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.

As explained, Mr B was given an open-ended credit facility. So, overall, I think that this means 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 of time. Drafty also needed to monitor Mr B's repayment record for any sign that he may have been experiencing financial difficulties.

It is worth saying here that Drafty agrees with the uphold point the adjudicator reached, as it offered some redress from this time – 14 August 2019. And Mr B also didn't disagree that this is the point where the complaint ought to be upheld from.

So, it seems to me, that all parties to the complaint agree the facility should be upheld from 14 August 2019. However, what is in dispute, and therefore what this decision has focused on, is whether the redress proposed by Drafty is fair and reasonable considering the circumstances of Mr B's complaint.

Both the adjudicator and Drafty have agreed, that Mr B's borrowing history showed he was potentially reliant on the facility and so it had become unsustainable for him. So, there doesn't appear to be any dispute as to when the facility likely became unsustainable for Mr B.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr B while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 14 August 2019 needs to be refunded.

So, I don't think that I need to speculate here about the actions Drafty may or may not have taken in August 2019. There were a number of options which Drafty could have taken to assist Mr B. But seeing as none of these were taken and I'm satisfied that action ought to have been taken – as it agrees. I've considered what Drafty ought fairly and reasonably to do to put things right sometime after the event. And the proposed redress is the clearest and fairest way of doing this sometime after the event. But I have provided some commentary, about how Mr B used the facility.

Indeed, as the adjudicator pointed out, Mr B typically made his minimum payment each month (of around £70 - £80) and then he would return within the same month but sometimes within a matter of days to drawdown any or all of his available credit– which was usually around £21. This pattern was visible from the start of the facility but most apparent from February 2019 to the point that Drafty has now agreed the facility was unsustainable for him.

The usage, in this case is sufficient to show Drafty that it needed to step in and take some action. However, as I said above, I don't know what further help and support may have looked like, but I mention this here to reinforce why I think *all* the interest and charges should be refunded. So, had Drafty taken some further steps to establish what help was proportionate and perhaps verified some of the information it had it would've likely seen that Mr B was having financial difficulties.

Mr B has provided a copy of his bank statement from the time both parties agreed the complaint should be upheld - (August 2019). Had Drafty made some enquires with Mr B – which wouldn't have been unreasonable, it would've discovered that Mr B was already servicing and repaying a total of four payday loan accounts – on top of this Drafty facility. He also, in the days before the uphold date borrowed a further £350 from such lenders – to me, the number of payday loan accounts visible on his bank statements is an indication that Mr B was likely struggling to maintain his finances.

So, whether Drafty reviewed how Mr B used the facility or had taken some, unknown further steps in August 2019 it decided the facility was unstainable. However, 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.

I don't think Drafty continuing to allow interest to be charged on Mr B's balance, in circumstances where this increased the chances of him being unable to repay, what he already owed and what his repayment record suggested he was already struggling to repay. So, it is fair and reasonable in the circumstances of the complaint that all interest is refunded.

So, although, I do accept that the balance up to the uphold point was legitimately provided and appeared affordable for Mr B at the time it was lent, once the point had been reached where Drafty accepted the facility was unsustainable, it ought to have exercised forbearance in order to allow Mr B to repay what he owed. In these circumstances, it isn't, in my view, fair and reasonable for Drafty to have continued charging interest on this balance from 14 August 2019 onwards.

Therefore, given what Drafty said in response to the adjudicator's assessment, that the facility was unsustainable by 14 August 2019, it therefore follows that it isn't just the new drawdowns that Mr B couldn't afford. He also couldn't afford to repay what he already owed

– so actions in failing to offer help to repay this as well as offering further drawdowns needs to be reflected in what it does to put things right going forward.

Thinking about this, and the fact the reasons why Drafty has already agreed to uphold the complaint at the point the adjudicator recommended, I've outlined below what Drafty needs to do in order to put things right for Mr B.

Putting things right

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

In order to put things right Drafty should do the following:

- Remove any unpaid interest, fees and charges added to the balance from 14 August 2019.
- Treat all payments Mr B has made towards his facility since 14 August 2019 as though they had been repayments of outstanding principal. If at any point Mr B would have been in credit on the credit facility 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 complaint is settled.
- If there is an outstanding principal balance, then Drafty can use any refunds calculated as part of the above to repay this. If a balance remains after this, then Drafty should try to agree an affordable repayment plan with Mr B.
- remove any negative information about the facility from Mr B's credit file from 14 August 2019 – as Drafty has agreed to do.

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

My final decision

For the reasons given above I partly uphold Mr B's complaint.

Gain Credit LLC trading as Drafty should put things right for Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 March 2023.

Robert Walker
Ombudsman