

The complaint

Mr B complains that Gain Credit LLC, trading as Drafty, lent to her and then raised the credit limit when she could not afford it.

What happened

Briefly, Miss T applied for a credit facility of £1,000 in January 2019. In April 2019 the credit limit was raised to £1,400 and then to £1,800 in April 2019 and remained at that for the remainder of the time Miss T held her credit facility.

Miss T complained to Drafty in December 2021 and received a final response letter (FRL) dated 1 February 2022 in which Drafty said it was not going to uphold her complaint. Miss T did not agree with this and so she referred her complaint to the Financial Ombudsman.

In August 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 the date the credit limit was raised to £1,800 (which at the time our adjudicator thought was in March 2019) Drafty ought to have ceased allowing Miss T from using the facility and offered Miss T forbearance instead.

Miss T accepted our adjudicator's view.

Drafty agreed to this but clarified that the £1,800 credit limit increase was on 10 April 2019. So, proceeding on the basis that the 10 April 2019 was the satisfactory date for our adjudicator (which it was) then it agreed to put things right for Miss T from that date. Drafty said it would refund the interest and charges paid towards all *new* the drawdowns from 10 April 2019 and it would remove any adverse payment information recorded on Miss T's credit file from 10 April 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 was well within its rights to collect the principal as well as interest on any drawdowns given prior to the uphold date

The outstanding issue was an unresolved detail surrounding the redress and that is the reason the complaint has been passed to me.

I will not be reviewing the merits of the complaint as that has been resolved, effectively, as both parties have agreed to the uphold date of 10 April 2019.

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.

As the merits part of the Drafty account complaint has been agreed between the parties, then I am looking only at the redress calculations formula.

The rationale for our adjudicator's uphold – as accepted by Drafty – was that the continual repayment of the minimum payments each month ought to have prompted it to have done something rather than allow that repayment pattern to continue.

Our adjudicator (and Drafty after its clarification) have agreed that 10 April 2019 was the right date. Drafty ought to have realised that even though Miss T was generally meeting her minimum monthly repayments as scheduled, these payments were only servicing the debt and not making any inroads into the outstanding balance.

There were several actions Drafty could have done. But seeing as none of these were taken and it agrees about that, it's been passed to me to decide what Drafty ought to do fairly and reasonably to put things right.

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 Miss T'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 Miss T'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 Miss T at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Miss T to repay what she owed, then it ought to have ceased charging interest on this balance from 10 April 2019 onwards.

I have reviewed the financial position Miss T was in around that time and it's clear she was not able to afford the credit limit with that increase to £1,800 from April 2019. The account was suspended between 18 June and 18 July 2019 as the July 2019 Drafty Statement of Account shows this. And after that Drafty wrote to Miss T to acknowledge the discussions it had had with her, that she was in financial difficulties and had agreed a repayment plan of £81 a month commencing 28 August 2019. So, I don't think that I need to demonstrate this point further as Drafty was aware of it already in 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 Miss T.

Putting things right

My understanding is that the account was passed to a third party collector but the loan ownership remains with Drafty. So, it should bring that debt back in-house, remove any of the third party charges allocated to the account and not pass them on to Miss T. And Drafty should do as I have set out below.

- Re-work Miss T's credit facility balance so that all interest, fees and charges applied to it from 10 April 2019 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Miss T to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Miss T's credit file, it should backdate this to 10 April 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 Miss T, 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 Miss T's credit file.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Miss T 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 Miss T's complaint in part and I direct that Gain Credit LLC, trading as Drafty, does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 22 March 2023.

Rachael Williams
Ombudsman