

The complaint

Ms W complains that Gain Credit LLC, trading as Drafty, lent to her when she could not afford it.

What happened

Your text here Briefly, Ms W applied for a credit facility of £2,000 in April 2018. Drafty approved a credit facility of £1,210 on 2 May 2018.

The account got into arrears, was defaulted in January 2020 and then the debt was passed to a third party debt collector in February 2020 and it remains with that party. The outstanding sum due is around £1,400.

Ms W complained to Drafty in 2021 and received a final response letter (FRL) which Ms W did not agree with and so she referred her complaint to the Financial Ombudsman Service.

In June 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 12 August 2019 Drafty ought to have ceased allowing Mrs W from using the facility and offered Ms W forbearance.

Ms W accepted the adjudicators view.

Drafty agreed to do the following:

- to refund the interest and charges paid towards all new drawdowns from 12 August 2019
- remove any adverse information in reference to the above-mentioned account from Ms W's credit file from 12th August 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 given prior to the uphold date.

The outstanding issue is 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 12 August 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 thought 12 August 2019 was the right date from which to uphold the complaint and the reasons were that Ms W's overall outstanding balance was above the credit limit, at around £1,285. And Drafty ought to have realised that even though Ms W was generally meeting her minimum monthly repayments as scheduled, these payments were only servicing the debt and not making any inroads into her 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 Ms W'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 Ms W'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 Ms W at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Ms W to repay what she owed, then it ought to have ceased charging interest on this balance from 12 August 2019 onwards.

My reading of the statements of account leads me to think it was an additional four months or so between 12 August 2019 and January 2020 when Drafty chose to default the account. And the 19 November 2019 statement shows me the account was suspended then anyway. So, it's not a large amount of interest which was incurred after 12 August 2019 and I do not consider those unpaid charges being removed to be an unreasonable outcome for Drafty.

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 Ms W.

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 Ms W. And Drafty should do as I have set out below.

- Re-work Ms W's credit facility balance so that all interest, fees and charges applied to it from 12 August 2019 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Ms W to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Ms W's credit file, it should backdate this to 12 August 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 Ms W, 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 Ms W's credit file.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Ms W 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 the complaint in part and I direct that Gain Credit LLC trading as Drafty puts things right as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 17 March 2023.

Rachael Williams
Ombudsman