

The complaint

Your text here Mr M complains that Gain Credit LLC, trading as Drafty, lent to him, and increased his credit limits, when he could not afford it.

What happened

Briefly, Mr M applied for a credit facility of £200 in September 2016. Drafty approved a credit facility of £650. The limit was increased three times – 16 November 2016 to £800, on 16 August 2017 to £1,000 and on 17 January 2018 to £1,200.

The account got into arrears, was suspended in March 2019, defaulted in May 2019, and was terminated in June 2019. The debt was passed to a third party debt collector in June 2019 and it remains with that party. The outstanding sum in October 2021 was around £1,300. I do not have an up to date figure.

Mr M complained to Drafty in 2021 and received a final response letter (FRL) in April 2021 with which Mr M did not agree and so he referred the complaint to the Financial Ombudsman Service. Later he complained again after he had referred the complaint to us. Then on 23 November 2021 Drafty issued a new FRL in which it thought that allowing the line of credit to continue beyond 13 February 2019 was not the right thing to have done.

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 17 January 2018 Drafty ought to have stopped Mr M from using the facility and ought to have treated him with forbearance.

Mr M accepted the adjudicator's view.

Drafty agreed in part and said it would do the following:

- to refund the interest and charges paid towards new drawdowns from 17 January 2018
- remove any adverse information in reference to the above-mentioned account from Mr M's credit file from 17 January 2018.

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.

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 17 January 2018.

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. And that before the January 2018 credit limit was increased it ought to have carried out further checks.

Mr M had provided us with a copy of his bank statements from around that time and our adjudicator had reviewed them and could see that he was having difficulties managing his money.

I have reviewed the bank statements as well to see what Drafty would have discovered if it had made those additional checks in or around January 2018. He was paying out to other high-cost creditors. This was more than 65% of his monthly income even before taking into consideration any of his normal monthly living costs and regular financial commitments. Mr M had borrowed a further £600 from several high-cost creditors including another open-ended credit provider. And he consistently was using his overdraft facility for at least the last two months and by January 2018 it got to around £2,900.

There were several actions Drafty could have taken. But 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 had 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 Mr M's repayment record suggested he was already struggling to repay the amount owed, I don't think that Drafty continuing to allow interest to be charged on Mr 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 Mr M at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mr M to repay what was owed, then it ought to have ceased charging interest on this balance from 17 January 2018 onwards.

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 Mr M.

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 Mr M. And Drafty should do as I have set out below.

- Re-work Mr M's credit facility balance so that all interest, fees and charges applied to it from 17 January 2018 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr M to arrange a suitable repayment plan for this.

If it considers it appropriate to record negative information on Mr M's credit file, it should backdate this to 17 January 2018

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 Mr 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 Mr M's credit file.

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

My final decision

My final decision is that I uphold Mr M's complaint in part and I direct that Gain Credit LLC, trading as Drafty, should put things right for Mr M as outlined in my decision above.

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

Rachael Williams
Ombudsman