

## The complaint

Ms H, through her representative, complains Gain Credit LLC trading as Drafty (Drafty) gave her a line of credit she couldn't afford to repay and during the time Ms H had the facility Drafty continued to offer larger limits without checking her income and expenditure details.

## What happened

Ms H approached Drafty for a running credit facility on 14 September 2018. Ms H was given a facility with a £200 credit limit. The limit incrementally increased on four occasions until Ms H's limit reached £920 in January 2020. Drafty has confirmed the facility still had an outstanding balance by February 2022, but this appears to have been repaid by the time the adjudicator assessed the complaint.

Ms H was given a running credit account where she could either request funds up to her agreed credit limit in one go or could take multiple drawdowns up to the limit. She was also able to borrow further, up to the credit limit, as and when she repaid what she owed. To be clear, Ms H was *not* given a payday loan.

In Drafty's final response letter it explained why it wasn't going to uphold her complaint because it had carried out proportionate checks. Unhappy with this outcome, Ms H's representative referred the complaint to the Financial Ombudsman.

One of our adjudicators looked at Ms H's complaint. She thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty Ms H was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Ms H's credit agreement. This was calculated on the full £200 being drawn down at the outset and then being repaid over 12 months. So, she didn't think it was wrong to have initially approved the facility.

However, the adjudicator, pointed out in addition to taking reasonable steps to ensure the facility was affordable at the outset, it also had an obligation to monitor Ms H's ongoing use of the facility. She thought by 18 September 2019 when Ms H's credit limit was increased to £710 Drafty ought to have stepped in and perhaps have carried out further checks. Had it done so and having reviewed Ms H's credit file which showed a number of defaulted accounts in the months the adjudicator felt the complaint should've been upheld.

Overall, given the usage and what extra checks would've likely shown, Drafty ought to have realised that the facility had become unsustainable for her. Knowing this, in the adjudicator's view Drafty should've stepped in and froze the interest on the facility.

In order to put things right, the adjudicator recommended all interest, fees and charges paid by Ms H from 18 September 2019 should be refunded, along with additional simple interest of 8%. She also said any adverse information recorded on Ms H's credit file from the uphold date should be removed from her credit file.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time (18 September 2019) but it agreed to only refund the interest

fees and charges applied to any *new* drawdowns from that date. At the time the offer was made, Drafty explained this would lead to a refund (with tax taken off) of £527.34 – it also agreed to remove any adverse information from Ms H's credit file.

However, Drafty didn't agree to refund all of the interest fees and charges applied from 18 September 2019. It said this was because:

*“Since you have decided 18th September 2019 as the upheld date our understanding is that any amount given to the customer before this date was affordable and after this date is unaffordable.*

*Basis this, Drafty is well within their rights to collect the principle as well as interest on any drawdowns given prior to the upheld date. The above calculations has been done on the interest which is paid on the drawdowns which were taken by the customer after the upheld date.”*

Drafty's offer was put to Ms H and she rejected it. As no agreement has been reached, the case has been passed to me for a 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, Ms H 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 Ms H would be able to both service and then repay her facility within a reasonable period of time. Drafty also needed to monitor Ms H's repayment record for any sign that she 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 – 18 September 2019. And while, Ms H rejected the settlement offer by Drafty, she didn't disagree that this is the point where the complaint ought to be upheld.

So, it seems to me, that all parties to the complaint agree the facility should be upheld from 18 September 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 Ms H's complaint.

I've set out below what I think Drafty needs to do in order to put things right for Ms H while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 18 September 2019 needs to be refunded.

Drafty has accepted, that the facility had become unsustainable for Ms H by September 2019. So, I don't think that I need to speculate here about the actions Drafty may or may not have taken had it stepped in at this time to provide assistance. There were a number of options which Drafty could have taken. 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 to fairly and reasonably do to put things right sometime after the event. And the proposed redress is the clearest and fairest way of doing this.

In any event, what's most important here is that 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 (in light of Ms H's usage and credit file) – 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 that Drafty continuing to allow interest to be charged on Ms H's balance, in circumstances where this increased the chances of her being unable to repay what she owed is fair and reasonable in the circumstances of the complaint.

So, although, I do accept that the balance up to the uphold point was legitimately lent and appeared affordable for Ms H at the time, once the point had been reached where Drafty accepted the facility was unsustainable, it ought to have exercised forbearance to allow Ms H to repay what she owed. In these circumstances, it isn't, in my view, fair and reasonable for Drafty to have continued charging interest on this balance from 18 September 2019 onwards.

Therefore, given what Drafty said in response to the adjudicator's assessment, that the whole facility was unsustainable by 18 September 2019, it therefore follows that it isn't just the new drawdowns that Ms H couldn't afford. She also couldn't afford to repay what she 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 and why, I've outlined below what Drafty needs to do in order to put things right for Ms H.

### **Putting things right**

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

- Refund all interest, fees and charges that Ms H paid from 18 September 2019;
- Then refund any interest fees and charges from the above date and then add 8% simple interest a year from the date of the payment to the date of settlement\*;
- remove any negative information about the facility from Ms H's credit file from 18 September 2019 – as Drafty has already agreed to do.

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

### **My final decision**

For the reasons given above I partly uphold Ms H's complaint.

Gain Credit LLC trading as Drafty should put things right for Ms H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 22 March 2023.

Robert Walker  
**Ombudsman**