

The complaint

Miss W complains Gain Credit LLC trading as Drafty (Drafty) gave her a line of credit she couldn't afford to repay and without carrying out affordability checks. She also said she was unhappy Drafty couldn't increase her monthly repayment.

What happened

Miss W approached Drafty for a running credit facility in June 2018 and Miss W was given a facility with a £1,000 credit limit. The limit remained the same throughout the life of the credit facility. Drafty, after the complaint was considered by an adjudicator confirmed the outstanding balance had been repaid.

Miss W 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, Miss W was *not* given a payday loan.

In Drafty's first final response letter explained why it wasn't going to uphold her complaint. Unhappy with this outcome, Miss W referred the complaint to the Financial Ombudsman.

After the complaint was referred to the Financial Ombudsman, Drafty reviewed the complaint, and it made an offer to settle the complaint by refunding any interest added to new drawdowns on the facility from 22 January 2020.

One of our adjudicators looked at Miss W's complaint. She thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty Miss W was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Miss W's credit agreement. This was calculated on the full £1,000 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 that in addition to taking reasonable steps to ensure the facility was affordable at the outset, it also had an obligation to monitor Miss W's ongoing use of the facility. Having reviewed the way Miss W borrowed and repaid the facility, she thought by 1 October 2019 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 should've frozen the interest on the facility.

In order to put things right, the adjudicator recommended all interest, fees and charges paid by Miss W from 1 October 2019 should be refunded, along with additional interest of 8% simple. She also said any adverse information recorded on Miss W'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 (1 October 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 initially explained this would lead to a refund (with tax taken off and offsetting against

the outstanding balance) of £23.77 – it also agreed to remove any adverse information from Miss W's credit file.

However, Drafty didn't agree to refund all of the interest fees and charges applied from 1 October 2019. It said this was because:

Since you have decided 1st October 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 [sic] this, Drafty is well within their rights to collect the principle [sic] as well as interest on any drawdowns given prior to the upheld date. The above calculations has [sic] been done on the interest which is paid on the drawdowns which were taken by the customer after the upheld date..”

However, Miss W informed the Financial Ombudsman that she had repaid the facility in full and so Drafty shouldn't use any refund to offset a balance. Drafty later confirmed, the facility was repaid in July 2022. Drafty re-calculated the refund (based on its calculations) and it concluded a refund of £480.13 was due to Miss W.

Drafty's offer was put to Miss W 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, Miss W 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 Miss W would be able to both service and then repay her facility within a reasonable period of time. Drafty also needed to monitor Miss W'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 – 1 October 2019. And while, Miss W 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 1 October 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 Miss W's complaint.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Miss W while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 1 October 2019 needs to be refunded.

Drafty has accepted, that the facility had become unsustainable for Miss W by October 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 to Miss W. 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 sometime after the event.

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 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. I don't think that Drafty continuing to allow interest to be charged on Miss W's balance, in circumstances where this increased the chances of her being unable to repay what she owed. And her repayment record suggested she was already struggling to, 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 W 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 Miss W 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 1 October 2019 onwards.

Indeed, her borrowing pattern – or how she used the facility was clear, that Miss W would make the minimum repayment and then typically within a week or so she'd return for any available credit that she had. Typically, she made her minimum repayment of around £70 with new drawdowns of around £20. This pattern was apparent between August 2018 until June 2019.

In addition, and only briefly as it doesn't make any difference to the outcome that I've reached. But had Drafty taken steps to check Miss W's financial situation it would've further reinforced why all the interest added to the account from 1 October 2019 should be refunded.

So, even if Drafty had taken steps to build a complete picture of Miss W's financial position it would've likely realised the facility wasn't sustainable for her. Miss W has provided her September 2019 bank statements and these show, she was making payments to four different third-party debt collectors – for presumably historic debt. Miss W also had three outstanding loans to high-cost creditors with monthly repayments over around £300 and there was evidence of at least two returned direct debits due to insufficient funds being available in her account – further evidence in my view that she was having financial difficulties.

Therefore, given what Drafty said in response to the adjudicator's assessment, that the whole facility was unsustainable by 1 October 2019, it therefore follows that it isn't just the new drawdowns that Miss W couldn't afford. She also couldn't afford to repay what she

already owed – so its 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 Miss W.

Putting things right

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

- Refund all interest, fees and charges that Miss W paid from 1 October 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 Miss W's credit file from 1 October 2019 – as Drafty has already agreed to do.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Miss W 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 Miss W's complaint.

Gain Credit LLC should put things right for Miss W as set out above.

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

Robert Walker
Ombudsman