

## The complaint

Mr V says Gain Credit LLC (trading as Drafty) gave him a line of credit he couldn't afford to repay. Mr V went on to say that Drafty didn't carry out appropriate affordability checks and therefore failed to identify he was stuck in a cycle of borrowing.

## What happened

Mr V approached Drafty for a running credit facility in October 2021. Mr V was initially given a facility with a £1,000 credit limit. Mr V's credit limit was increased on two occasions and by February 2022 Mr V's credit limit stood at £1,900. Drafty has confirmed, that as of May 2022 Mr V still owed Drafty £2,051.

Mr V was given a running credit account where he could either request funds up to his agreed credit limit in one go or could take multiple drawdowns up to his limit. He was also able to borrow further, up to his credit limit, as and when he repaid what he owed. To be clear, Mr V was *not* given a payday loan.

In Drafty's first final response letter (in May 2022) it explained the information it gathered from Mr V before it approved the facility. It concluded, given the estimated monthly repayment of around £67, Mr V was likely to be able to afford his credit facility.

Drafty also provided details of the times it asked Mr V to check his income and expenditure with it in March 2022. And even when Mr V's disposable income remained the same and his expenditure had slightly increased, Drafty's opinion was he still had enough money to be able to afford the facility.

One of our adjudicators looked at Mr V's complaint. She thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty Mr V was likely to be able to afford the payment amount based on the hypothetical payment schedule in Mr V's credit agreement. 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, Drafty also had an obligation to monitor the ongoing use of the facility. Having reviewed, the way Mr V borrowed and repaid the facility, she thought, based on the checks Drafty carried out at the start of the facility as well as the way he had used the facility that it was reasonable for Drafty to have increased the credit limit to £1,450 in January 2022.

However, the adjudicator thought that it wasn't reasonable for Drafty to have increased the credit limit again in February 2022 to £1,900 without any further checks being carried out because of the way he had used the facility and the large increase in the limit. So, Drafty needed to have verified what Mr V's finances.

Mr V provided the adjudicator with copies of his bank statements from around this time. The adjudicator could see that Mr V, at the time of the second credit limit increase that he was

repaying at least four other high-cost short term loan providers. In addition, the adjudicator could see Mr V was spending significant sums each month on online betting websites.

The adjudicator concluded that had Drafty carried out further checks at the second credit limit increase it would've likely discovered that Mr V was likely having financial difficulties and so further lending wasn't sustainable to him. And so, from 19 February 2022 Drafty needed to treat Mr V with forbearance and due consideration which would've included not allowing Mr V to continue to drawdown on the facility. In addition – the interest on the facility ought to have been frozen at this point.

The adjudicator said she only had limited information but that it wouldn't be fair or reasonable (given Drafty's regulatory obligation) to refuse to enter negotiations with Mr V about setting up a repayment plan.

In order to put things right for Mr V, she asked Drafty to remove all the interest, fees and charges from the current outstanding balance that had been applied from 19 February 2022 onwards, rework the account as if payments from this date went towards the capital and finally Drafty needed to remove any adverse information reported on Mr V's credit file from 19 February 2022.

Drafty responded to the adjudicator and partly agreed with the assessment. Drafty accepted that the complaint should be upheld from 19 February 2022. However, it only offered to refund the interest, fees and charges added to any new drawdowns from this date (rather than the whole balance as the adjudicator had recommended).

This meant, Mr V would receive a refund of £21.24 (after tax), and information from Mr V's credit file would be removed. Once the deductions from the outstanding balance had taken place Mr V would still owe Drafty £2,075.26.

Drafty went on to say that as the agreed uphold point was 19 February 2022 it was its understanding that any credit advanced to Mr V before this date was deemed affordable. Therefore, the calculations are only based on any interest which was paid on drawdowns made after this date. Drafty says it is entitled to collect the principal as well as any interest on drawdowns made prior to the uphold date.

It also offered to set up a payment arrangement with Mr V to enable him to repay the outstanding balance. However, Drafty explained that if a repayment plan was set up that information will be recorded with the credit reference agencies and if he didn't keep to any plan that may be agreed this could lead to the account being passed to a third party collection agency.

This offer was put to Mr V but he didn't agree with the offer Drafty had made. He said;

*“£2412.78 is my balance as it stands today. The overall different (sic) between the final agreement is going to be nominal. Realistically I can pay no more than £50 a month which was where all this saga started.”*

The adjudicator went back to Mr V and let him know that even if Drafty had agreed with the compensation she had recommended it was likely a significant outstanding balance would remain.

Later on, Mr V told us that he had received a default notice from Drafty.

As no agreement has been reached, the case has been passed to me for a final 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.

In practice, before any lending was advanced, Drafty 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. I've kept all of this in mind when thinking about whether Drafty did what it needed to before agreeing to Mr V's Drafty facility.

As explained, Mr V 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 Mr V would be able to not only service but also repay his facility within a reasonable period of time. Draft also needed to monitor Mr V's repayment record for any signs that he may have been experiencing financial difficulties.

## **What happened when Drafty approved the facility**

Having carefully thought about everything provided, I do think Drafty's checks before providing this facility to Mr V were proportionate taking account of the circumstances.

Mr V was granted a facility with Drafty with a £1,000. In the credit agreement, a hypothetical repayment schedule assuming the full amount was borrowed, is laid out to show the potential cost of the facility to Mr V. This hypothetical situation assumed that Mr V did the following:

1. drew down his maximum credit limit on the first day of the facility being provided,
2. he kept to the terms of the agreement and
3. Mr V repaid what he owed in 12 monthly installments.

Had Mr V done that, he'd have repaid Drafty a total of £1,355.87 meaning a total monthly repayment of around £112.98.

So, in these circumstances, I think Drafty needed to carry out reasonable and proportionate checks to understand whether Mr V could make monthly repayments of around £113 at an absolute minimum.

The information provided does suggest that Mr V was asked to provide details of his declared income of £2,946.10 and declared expenditure of £1,150. This left Mr V with disposable income of just over £1,796 per month to service and repay the facility.

Drafty also carried out a credit check before the facility was granted, and it has provided the Financial Ombudsman with a summary of the results. Based on this, it was aware that Mr V

had one default recorded on his credit file, but this had been reported almost four years before the facility was granted. In my view that wouldn't have been a concern for Drafty and not enough to have prompted it to have carried out further checks before granting the facility.

I accept Mr V's actual financial position may not have been reflected either in the information provided, or the information Drafty obtained. But Drafty could only make its decision based on the information it had available at the time.

At this stage of the lending relationship between the parties i.e., being a new customer, I don't think proportionate checks would've extended into Drafty asking Mr V to evidence about what he was declaring, such as asking him for his bank statements. So overall I don't think that Drafty treated Mr V unfairly or unreasonably when it initially provided him with an open-ended credit facility in October 2021.

I've also thought about the first credit limit increase and given the way the facility had been managed up to this point in time, I think it was just about reasonable for Drafty to have believed that Mr V would be able to accommodate the minimum payment due under the new credit limit.

### **Why I think Drafty shouldn't have provided further funds after 19 February 2022**

Although I don't think Drafty was wrong to have initially provided the facility, that wasn't the end of its obligations to Mr V. As I've said above When the facility was approved, Drafty was regulated by the FCA, and it issued guidance on this type of lending and what it says should be expected from lenders when granting these types of loans.

Within the Consumer Credit Sourcebook (CONC) section 6.7.2R says:

*“(1) A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties*

But it's also worth saying at this point that CONC 1.3 provides a non-exhaustive list of some indicators, which when present in a consumer's circumstances, could be suggestive of potential financial difficulties.

In practice, CONC 6.7.2(1)R meant Drafty needed to be mindful of Mr V's repayment record and how he used the facility and also step in if and when he showed signs of possible repayment difficulties.

Our adjudicator thought Drafty should've stepped in and taken action in by 19 February 2022. By this point, our adjudicator thought that Mr V's borrowing history showed he was potentially reliant on the facility and as his credit limit was increased at this time, it would've been reasonable for Drafty to have taken additional steps to verify the information it had for Mr V to make sure the facility continued to be affordable for him.

As I said above, had Drafty carried out further checks it would've seen he had a number of outstanding high-cost credit loans and was spending significant amounts each month of gambling transactions.

Drafty, also accepted, in response to the assessment this this was the point where it was agreeing to pay compensation from.

So there doesn't appear to be any dispute as to when the facility likely became unsustainable for Mr V. Buy for the avoidance of doubt, I agree with both the adjudicator and

Drafty that at this point it was likely the facility was no longer sustainable for Mr V and at this point in time it would've been reasonable to have offered Mr V some forbearance.

I agree with the adjudicator's logic here and having looked at the same bank statements she did I've also seen a significant amount of gambling transactions in January 2022 – the month before the credit limit increase and I can also see a significant amount of outstanding credit being owned to a number of different high-cost credit companies. Indeed, at the end of January 2022, Mr V took out a loan for £3,000 from a high-cost credit provider. Had Drafty carried out a what I consider to be a proportionate check before increasing the credit limit it would've discovered Mr V couldn't take on any further lending.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr V while explaining why all the interest charged after the 19 February 2022 needs to be refunded.

### **Drafty's comments in response to the adjudicator's assessment**

In summary, the dispute here is about how Drafty needs to put things right and what, if any compensation may be due to Mr V. Drafty says following a review, it feels it should only have to refund any interest, fees and charges connected with any new drawdowns from 19 February 2022.

In this case, while there were a number of drawdowns after the credit limit was increased this would, according to Drafty's proposed calculations provide Mr C with a small refund, offset against the balance that is owed.

Whereas the adjudicator has reached the conclusion that all interest, fees and charges should have been stopped from 19 February 2022.

Drafty, in response to the adjudicator has said:

*Considering the points that have been raised in your assessment letter dated August 11, 2022, we would like to confirm that we agree to refund the interest and charges paid towards all drawdowns from February 19, 2022,*

To me, this is quite clear, Drafty accepts that from 19 February 2022 further drawdowns shouldn't have been allowed and I accept by February 2022, a balance existed that up to this point it was reasonable for Drafty to apply the contractual amount of interest.

However, as I've detailed above, further checks would've changed this position. This is because, in my view, proportionate checks would not only have shown that Mr V was not in a position to repay any additional funds advanced, but that his significant gambling and other use of high-cost credit meant that he was no longer in a position to sustainably repay what he already owed Drafty as a result of previous drawdowns.

I do struggle to understand that Drafty would consider it reasonable for it to have likely discovered that Mr V owned a significant amount of money elsewhere and was spending a not insignificant amount each month gambling. And had it discovered this, which it ought to have done by carrying out a proportionate check, it would've felt it reasonable to have continued to charge interest on the balance that already existed. The information it would've seen in February 2022, is clear to me that Mr V was having financial difficulties.

And only refunding the interest fees and charges on new drawdowns doesn't and wouldn't have assisted Mr V which the quite clear financial difficulties he was having. Indeed, this isn't

really in line with Drafty's obligation to treat Mr V with forbearance and due consideration in light of what it would more likely than not have discovered.

Therefore, while Drafty accepts that the complaint should be upheld from 19 February 2022, I do think given what it would've likely discovered all of Mr V's interest, fees and charges should have been frozen from that point. This is because, in the circumstances of this case, it was clear that he was having wider money management problems.

Moving forward, even with the redress that I'm going to be asking Drafty to pay, a significant outstanding balance will likely remain. I would remind Drafty of its obligation to treat Mr V fairly and with forbearance when discussing a way forward.

Mr V has told the Financial Ombudsman Service that previously he tried to set up a repayment with Drafty and he says that the amount Drafty wanted him to pay was unaffordable for him.

I'd remind Drafty that thinking about CONC 7, and its wider obligations I wouldn't consider it fair and reasonable to ask Mr V to pay a monthly sum each month towards the outstanding balance if the sum being asked for was unaffordable for him – in my view that wouldn't be treating him with forbearance and due consideration.

Thinking about this, and the reasons why Drafty has upheld the complaint, I've outlined below what Drafty needs to do in order to put things right for Mr V.

However, given what Mr V has told the Financial Ombudsman about his repayments, it is likely, that at the time, had Drafty offered the help I think is fair, there would've been some adverse information reported on his credit file, so I think the redress should reflect that.

### **Putting things right**

So having thought about everything Drafty has said, I still think it is fair and reasonable for it to refund all interest fees and charges after 19 February 2022, and I've outlined below what it needs to do in order to put things right Drafty should do the following:

- Remove all the unpaid interest, fees and charges from the account from 19 February 2022
- Treat all payments Mr V has made towards his account since 19 February 2022 as though they had been repayments of outstanding principal.
- If at any point Mr V would have been in credit on the account after considering the above, Drafty will need to refund any overpayments with 8% simple interest\* calculated on these payments, from the date they would have arisen, to the date the refund is made.
- If there is an outstanding principal balance, then Drafty can use any refunds calculated to repay this. If a balance remains after this, then Drafty should try to agree an affordable repayment plan with Mr V.
- If an outstanding balance remains on facility once these adjustments have been made Drafty should contact Mr V to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr V's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the facility in February 2022.

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

**My final decision**

For the reasons given above I partly uphold Mr V's complaint.

Gain Credit LLC should put things right for Mr V as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 22 December 2022.

Robert Walker  
**Ombudsman**