

## **The complaint**

Mr B, through his representative, complains that Gain Credit LLC, trading as Drafty, lent to him when he could not afford it.

## **What happened**

This was not a loan. Drafty offered a credit facility which commenced with a limit being determined and then the customer was able to draw down the amounts he or she requires. The credit was unsecured and had no fixed duration.

Briefly, Mr B applied for a credit facility of £1,500 in December 2018. Drafty approved a credit facility of £1,430. Mr B had declared, when the facility was approved that his monthly income for his full time employment was £2,200 and his monthly expenditure was £675. Drafty says that it carried out credit checks.

The credit agreement set out the total cost of the credit based on some assumptions to illustrate the likely cost to Mr B. On the assumption that Mr B drew down the full £1,430 on the first day and then repaid it (plus interest and charges) over 12 months in equal instalments then the total amount payable would have been just under £1,910.36. This would have equated to about ££159.20 a month (Clause 5 in the agreement).

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Mr B's salary payment, and it gave the minimum payment required for that cycle. It had to be the higher of certain calculations which are in the agreement at clause 6 which I have not set out here.

A Continuous Payment Authority was used to take the minimum payments on or near Mr B's monthly salary date. Other ways of payment were made available. The account was paid off over 2020 incrementally and closed 22 December 2020.

Mr B, through his representative, complained to Drafty in April 2022 and received a final response letter (FRL) dated 22 April 2022 in which it said that it was content to put things right for Mr B from 17 November 2019. It offered to refund all interest and charges on the new drawdowns from that date and amend Mr B's credit file.

Mr B's representative referred the complaint to the Financial Ombudsman Service indicating to us that Drafty had not upheld Mr B's complaint. Which was not strictly correct.

In August 2022, one of our adjudicators looked at the complaint and thought that Drafty's decision to approve the credit facility initially was right. And in relation to that part where Drafty ought to monitor the account, she was virtually in agreement with the uphold date of November 2019 but thought the 8 November 2019 was the better date. Drafty agreed but stuck to its original computation of redress. .

Mr B had disagreed with Drafty's FRL and I know this as his representative rejected that when it referred the complaint to us on his behalf. And since then, I've not seen anything to suggest that Mr B accepted our adjudicator's view which was a similar outcome to that of Drafty.

Drafty has not agreed with our adjudicator's redress calculations and so the whole complaint remains unresolved and I have considered it all.

## **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 have considered the law, any relevant regulatory rules and good industry practice at the time the credit was offered.

Before lending money to a consumer or approving a credit limit a lender should take proportionate steps to understand whether the consumer will be able to repay what they are borrowing in a sustainable manner without it adversely impacting on their financial situation.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves did not set out compulsory checks, they did list several things a lender could consider before agreeing to lend. The key element was that any checks needed to be proportionate and had to consider several different things, including how much was being lent and when the sum being borrowed was due to be repaid.

### *Initial approval of the credit facility.*

I need to explain to Mr B that upon first approaching Drafty in December 2018 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Mr B was a new customer. And bearing in mind the credit limit granted and the monthly payments required to repay the facility within a reasonable period, Drafty was entitled to rely on the information given to it which suggested that Mr B had enough disposable income to service a credit facility with a limit of £1,430.

Having looked at all that Mr B has given me and Drafty's information and submissions then I think that the initial credit facility approval was carried out after checks I would have considered proportionate. And the limit approved was likely to have appeared serviceable and able to be repaid within a reasonable time.

### *Monitoring of the account*

After the initial approval of the credit limit at the start of the account facility, Drafty did have to monitor Mr B's account and it has explained to us how it did that but very briefly. I refer to the Financial Conduct Authority Consumer Credit Sourcebook (CONC) chapter 6 which addresses the expected Business Practices in relation to the monitoring of an account. One indication of a risk of a customer being in financial difficulties is where it seems that the customer is borrowing to repay borrowing.

The rationale for our adjudicator's uphold was the same as that used by Drafty and that was that the continual repayment of the minimum payments each month ought to have prompted it to have done something rather than just allow that repayment pattern to continue. The uphold date was 17 November 2019 for Drafty at first then 8 November 2019 from our adjudicator and Drafty agreed to that uphold point in the account.

So, as Drafty has agreed to that and Mr B's representative has made no additional submissions to explain why that date may be wrong, then I consider that 8 November 2019 was the correct date at which Drafty ought to have altered its approach to Mr B's credit account. So, I'll consider the redress paragraphs which seems to be the sticking point between the parties.

### *The redress calculations issue*

There were several actions Drafty could have taken in November 2019. 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 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 Mr B'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 B'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 B at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mr B to repay what was owed, then it ought to have ceased charging interest on this balance. That date it has said was from 8 November 2019 onwards. And I agree.

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 B.

### **Putting things right**

My understanding that the current state of the account is that it has been paid off. So Drafty needs to do as follows:

- Re-work Mr B's credit facility balance so that all interest, fees and charges applied to it from 8 November 2019 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr B to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr B's credit file, it should backdate this to 8 November 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 Mr B, 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 B's credit file.

\*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Mr B 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 B's complaint in part and I direct that Gain Credit LLC, trading as Drafty, should put things right for Mr B as outlined in my decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 March 2023.

Rachael Williams  
**Ombudsman**