

The complaint

Mr H, through his representative, complains he took a credit facility from Gain Credit LLC, trading as Drafty, and that it lent to him when he was in financial difficulties. Better checks would have led Drafty to know that and not to have lent to him.

What happened

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 required. The credit was unsecured and had no fixed duration. The credit facility was not a loan.

Briefly, Mr H applied for the credit facility of £500 in August 2020 and it was approved. The credit limit was increased twice, the last time being in February 2022 when it was increased to £740. The facility was used by Mr H and there's currently an outstanding balance. In April 2022 that was £763.78.

The credit agreement set out the total cost of the credit based on some assumptions to illustrate the likely cost to Mr H. On the assumption that Mr H drew down the full £500 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 £668. These worked out to be about £55 per month (Clause 5 in the agreement).

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Mr H'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 H's monthly salary date. Other ways of payment were made available.

Mr H complained to Drafty in April 2022 and received a final response letter (FRL) in May 2022 in which it said that it did not consider it had done anything wrong offering the facility with a £500 limit. However, it had also come to the view that from 22 March 2022 it ought to have stopped Mr H's continued use of the facility. And so, it said in the FRL that it would be content to put things right for Mr H. But it was only offering to refund interest and charges on new drawdowns from 22 March 2022.

Mr H's representative referred his complaint to the Financial Ombudsman Service.

In August 2022, one of our adjudicators looked at the complaint and thought that Drafty's decision to approve the credit facility was right and overall, she did not think that there was anything for Drafty to put right initially.

However, in relation to that part where Drafty ought to monitor the account during Mr H's use of it, she considered that Drafty ought to have ceased allowing him to use the credit facility from 15 March 2022 – a very similar date to that decided by Drafty in its FRL.

Drafty agreed with our adjudicator in relation to the view and that the facility uphold date was 15 March 2022. But its suggested way to calculate how it puts things right for Mr H has been rejected by his representative.

For completeness I have reviewed the credit facility complaint outcome relating to the initial approval in 2020 as well as the outstanding issue on the unresolved detail surrounding the redress.

Drafty has not agreed with our adjudicator's redress calculations and so the whole complaint remains unresolved as neither party is content 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.

From Mr H's application to Drafty I note he declared his monthly income as £1,600 and his monthly expenditure as £475. The Drafty FRL said it had verified that income figure and it further itemised Mr H's declared monthly expenditure as £25 for rent, £25 for food, £275 for transport costs and £25 for 'other'. Mr H told Drafty he spent £125 on other credit commitments.

Some of these declared costs are wholly unreasonable, for instance £25 for food in a month. And the rent figure is so low I would have expected Drafty to have checked that. But even if Drafty had doubled his expenditure figure, then its likely still it would have concluded that Mr H could afford the £500 credit facility.

The brief credit search results I have been provided with, carried out by Drafty in August 2020, shows that Mr H had total debt of around £15,000 and an £800 default had been registered just nine months before this application. The results also showed a delinquent account from nine months before but I think its likely to have been reference to the same account.

I need to explain to Mr H that upon first approaching Drafty in August 2020 it would not usually be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Mr H was a new customer. And bearing in mind the £500 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 H had enough disposable income to service a credit facility with a limit of £500. And I say this even if it had increased his expenditure figure to something more realistic.

I've thought carefully about that default from nine months before Mr H applied to Drafty and that has prompted me to investigate what further checks might have shown Drafty if it had taken it a stage further.

And what I have are some copy bank account statements from Mr H for May, June and July 2020. They show that Mr H was earning about £1,700 a month for May and June 2020 – it was higher in July 2020. And from those bank statements I've seen that Mr H was paying for one other high cost loan and to a car company and was regularly drawing down on a credit

facility similar in nature to Drafty but provided by another company. He was also using his overdraft facility.

Having looked at all that Mr H 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.

And so, I agree with our adjudicator in relation to the initial approval of that credit facility – I do not uphold that part of Mr H's complaint.

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 H's account and it has explained to us how it did that but very briefly. Also, it said it had written to Mr H and asked him to confirm his income and expenses. It did this in June 2021 and December 2021. Both times Mr H had replied to confirm his income was £1,700 a month and his expenditure remained the same at £475 a month.

In light of my view about the particularly low and unreasonable figures for some of Mr H's expenditure then I consider that these were two additional points when Drafty missed the chance to check the expenditure figures.

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 of this part of Mr H's complaint was that the continual repayment of the minimum payments each month ought to have prompted Drafty to have done something rather than allow that repayment pattern to continue.

And in its FRL Drafty had come to a similar view. There was a slight difference in date – our adjudicator said the uphold date ought to have been 15 March 2022 whereas Drafty originally had said 22 March 2022. Drafty had altered its view to agree with the adjudicator - 15 March 2022.

Mr H, recently, has provided us with a copy of his bank statements from around that time – January to April 2022 - and I have reviewed them. Mr H's salary seemed to have increased to around £2,130 a month. He was using his overdraft and it seems he was bumping along the underside of the limit of the overdraft as he was regularly taking credits from more than one lender to keep it under £2,100 which I think may have been the limit.

Mr H was paying £295 by Direct Debit to a car company – likely a HP agreement of some kind. He was paying £550 to another person regularly.

Mr H was regularly paying towards four high cost loans and was paying off a debt collection agent at £20 a month.

So, in March 2022, if Drafty had chosen to look into the situation more closely I think it would have been clear that Mr H was struggling to repay the Drafty sums loaned to him. Plus, I think that he was borrowing to repay other borrowing, whether that was the other high cost loans, his overdraft or the Drafty account.

The redress calculations issue

There were several actions Drafty could have taken in March 2022. But as none of these were taken and it agrees about that. This complaint also has 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 H'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 H's balance was fair and reasonable.

So, although, I do accept that the balance up to the uphold point was legitimately lent and appeared affordable for Mr H at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mr H to repay what was owed, then it ought to have ceased charging interest on this balance from 15 March 2022 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 H.

Putting things right

My understanding that the current state of the account is that the debt was passed to a third party collector but the ownership of the debt remains with Drafty.

So, I think it ought to bring that debt back 'in-house' and remove any third party charges so these are not passed on to Mr H. And then Drafty ought to do the following:

- Re-work Mr H's credit facility balance so that all interest, fees and charges applied to it from 15 March 2022 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr H to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr H's credit file, it should backdate this to 15 March 2022.

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 H, 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 H's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2023.

Rachael Williams
Ombudsman