

The complaint

Mr R complains Gain Credit LLC (trading as Drafty) gave him a line of credit he couldn't afford to repay.

Mr R was also unhappy that in March 2021, Drafty wrote to him to increase his minimum repayment each month – by in effect doubling the repayments he had previously making. Mr R says he notified Drafty of his intention to close the facility but this wasn't done and instead he was threatened with debt collection letters.

What happened

Mr R approached Drafty for a running credit facility in October 2018. Mr R was given a facility with a £1,050 credit limit. The limit remained the same throughout the life of the credit facility. Drafty has confirmed that by August 2022, an outstanding balance remained due of £487.87.

Mr R 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 R was *not* given a payday loan.

In Drafty's most recent final response letter (in October 2021) it explained the information it gathered from Mr R before it approved the facility showed he'd be able to afford it and then service the facility.

However, it did agree, that the facility may have been unsustainable for him from 18 September 2019 and so it offered to refund any interest charged on new drawdowns from this date. After the refunding and offsetting against the outstanding balance – at the time, it left a balance of £762.98.

One of our adjudicators looked at Mr R's complaint. She thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty Mr R was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Mr R's credit agreement. This was calculated on the full £1,050 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 Mr R's ongoing use of the facility. Having reviewed the way Mr R borrowed and repaid the facility, she thought by 30 August 2019 Drafty ought to have realised that the facility had become unsustainable for him. Knowing this, in the adjudicator's view Drafty should've stepped in and froze the interest on the facility.

The adjudicator also said in relation to the second part of Mr R's complaint:

So, taking everything into consideration I do think Mr R [full name removed] has been caused undue distress and inconvenience in the way you've gone about handling and addressing Mr R [full name removed]'s overall questions and concerns regarding the changes to his credit facility repayments from March 2021 onwards, as well as the time it took to reasonably engage with him about an affordable repayment plan.

Therefore, I think you should pay Mr R [full name removed] £150 to compensate him for any unnecessary frustrations and inconvenience he has been caused as a result.

In order to put things right, the adjudicator recommended all interest, fees and charges paid by Mr R from 30 August 2019 should be refunded, along with additional interest of 8% simple. She also said any adverse information recorded on Mr R's credit file from the uphold date should be removed from his credit file.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time (30 August 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 new reduced outstanding balance of £213.45 and it also agreed to remove any adverse information from Mr R's credit file.

However, Drafty didn't agree to refund all of the interest fees and charges applied from 30 August 2019. It said this was because:

"As the assessment is about whether our decision to continue lending the money was appropriate or not, your decision implies that any draws granted after 30th August 2019 were inappropriate, and we should refund any interest paid on them. However, it also implied that draws granted prior to the 'upheld date' were reasonable for us to grant."

Drafty also agreed to pay £150 compensation for the distress and inconvenience that was caused.

Drafty's offer was put to Mr R and he didn't accept it. As no agreement has been reached, the case has been passed to me for a final decision.

After the complaint was referred for an ombudsman's decision, Mr R told the adjudicator about a new issue he had with Drafty. Mr R had been making manual repayments to pay down the balance but Drafty, in October 2022 had reactivated the continuous payment authority (CPA) that was previously held on the facility. Mr R has said a new complaint has been lodged with Drafty. To be clear, this issue will not be commented on in this decision and instead will be subject to a separate complaint.

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, Mr R 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 R would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr R's repayment record for any sign that he 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 – 30 August 2019. And while, Mr R rejected the settlement offer by Drafty, he 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 30 August 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 Mr R's complaint.

In addition, Drafty has also accepted that it ought to pay – directly to Mr R £150 due to the distress and inconvenient caused by it from March 2021, when it tried to increase his monthly repayment. I therefore, also won't make any further finding about this because it seems both parties agree this payment is fair and reasonable.

Both the adjudicator and Drafty have agreed, that Mr R's borrowing history showed he was potentially reliant on the facility and so it had become unsustainable for him. So, there doesn't appear to be any dispute as to when the facility likely became unsustainable for Mr R.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr R while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 30 August 2019 needs to be refunded.

So, I don't think that I need to speculate here about the actions Drafty may or may not have taken in August 2019. 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. But I have provided some commentary, about how Mr R used the facility.

Indeed, as the adjudicator pointed out, Mr R made his minimum payment each month (of around £70 - £80) and then he would typically return within the same month but sometimes within a matter of days to drawdown any available credit he had – which was around £21. This pattern was visible from the start of the facility to the point that Drafty has now agreed the facility was unsustainable for him.

The usage, in this case is in my view sufficient to show Drafty that it needed to step in and take some action. However, as I said above, I don't know what further help and support may have looked like. I mention this here to reinforce why I think all the interest and charges should be refunded, if at the end of August 2019 Drafty had taken some further steps to

establish what help was proportionate and perhaps verified some of Mr R's information. Had it done so, it would've likely seen that Mr R was having financial difficulties.

Mr R has provided a copy of his credit file, which contains details of credit he had at the time (August 2019). Mr R had three credit cards he was servicing, five high-cost credit facilities with balances totalling nearly £4,000. In addition, since May 2019, four credit accounts had missed payment markers – indicating Mr R was struggling to manage his existing credit facilities. Finally, from January 2019, Mr R had repaid a total of 15 payday loans – further evidence that Mr R was likely having financial difficulties.

So whether from a review of how Mr R used the facility or had Drafty taken some, unknown further steps in August 2019, 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 – 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 Mr R's balance, in circumstances where this increased the chances of him being unable to repay, what his repayment record suggests he was already struggling to, 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 provided and appeared affordable for Mr R 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 Mr R to repay what he owed. In these circumstances, it isn't, in my view, fair and reasonable for Drafty to have continued charging interest on this balance from August 2019 onwards.

Therefore, given what Drafty said in response to the adjudicator's assessment, that the whole facility was unsustainable by 30 August 2019, it therefore follows that it isn't just the new drawdowns that Mr R couldn't afford. He also couldn't afford to repay what he 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, I've outlined below what Drafty needs to do in order to put things right for Mr R.

Putting things right

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

- Remove any unpaid interest, fees and charges added to the balance from 30 August 2019.
- Treat all payments Mr R has made towards his facility since 30 August 2019 as though they had been repayments of outstanding principal. If at any point Mr R would have been in credit on the credit facility 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 complaint is settled.
- If there is an outstanding principal balance, then Drafty can use any refunds calculated as part of the above to repay this. If a balance remains after this then Drafty should try to agree an affordable repayment plan with Mr R.
- Pay Mr R directly £150 for the distress and inconvenience caused by Drafty.
- remove any negative information about the facility from Mr R's credit file from 30 August 2019 – as Drafty has agreed to do.

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

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

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

Robert Walker
Ombudsman