DRN-3709030

The complaint

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

What happened

Mr B approached Drafty for a running credit facility in October 2016. Mr B was initially given a facility with a £1,200 credit limit. In March 2018 Mr B's credit limit was increased to £1,350 and in around October 2018 it was further increased to £1,500.

Mr B has had some problems with repaying his facility and based on the statement of account provided by Drafty, an outstanding balance remains due (more detail about that is below) and he has been on various repayment plans since June 2019.

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

In Drafty's first final response letter which was sent in March 2022, it explained the information it gathered from Mr B before it approved the facility which included asking for details of his income and expenditure. It concluded, given the estimated monthly repayment, Mr B was likely to be able to afford his credit facility.

However, Drafty conceded that allowing Mr B to continue to use the facility after 21 November 2018 may not have been sustainable in the long run. It made an offer to put things right for him, which included refunding any interest fees and charges on any *new* drawdowns after this date. This led to a total refund of £5.99 which would be used to offset Mr B's balance, bringing his new outstanding balance to £1,553.83.

Mr B didn't accept this offer and instead referred his complaint to the Financial Ombudsman.

One of our adjudicators looked at Mr B's complaint. She thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty Mr B was likely to be able to afford the payment amount based on the hypothetical payment schedule in Mr B's credit agreement. So, she didn't think it was wrong to have initially approved the facility.

The adjudicator pointed out that Drafty also had an obligation to monitor the ongoing use of the facility. She though the credit limit increase which occurred around October 2018 shouldn't have been granted. In her view, had Drafty carried out what she considered to be proportionate checks it would've likely discovered Mr B wasn't working and was receiving benefits. Which meant he couldn't afford the credit limit increase or to continue to service the facility.

However, the adjudicator, said that as Mr B hadn't worked for a number of years, and there was little prospect in Mr B being able to repay what is owed, than Drafty should write off any remaining balance.

In order to put things right, in summary she said:

- All interest, fees and charges added to the facility after the October 2018 credit limit increase needs to be refunded
- rework Mr B's facility as if all payments made to it from the credit limit increase had been made towards the principal outstanding
- she also said, that to this new balance, given Mr B's current financial position that the remaining balance should be written off and
- finally, Drafty should remove any adverse payment information from Mr B's credit file

Mr B confirmed he accepted the adjudicator's outcome and he also told us he had had some health problems and had recently spent some time in hospital.

Drafty responded to the adjudicator and partly agreed with the assessment. It explained that Mr B's credit limit had actually been increased to £1,500 on 9 November 2018. Drafty accepted, that the 9 November 2018 was the date the complaint ought to be upheld from. But it had a different view on how any redress should be calculated. It explained that any drawdowns before 9 November 2018 were appropriate and so they ought to continue to have the contractual interest added to it. Drafty therefore feels it is unreasonable to refund interest, fees and charges on drawdowns that the Financial Ombudsman Service considers reasonable.

Had Drafty froze the interest, as the adjudicator requested, it would be required to put Mr B on a payment arrangement and then any adverse information would be recorded with the credit reference agencies. Drafty, then made a counteroffer where it would agree to refund the interest, fees and charges on *new* drawdowns from 9 November 2018. After tax and simple 8% interest, the refund amount would be £56.59.

It also agreed to remove any adverse information in reference to the credit facility from Mr B's credit file.

With this refund, it would reduce Mr B's outstanding balance to £1,188.71. However, should Mr B need a repayment plan to clear the balance, that information would be recorded with the credit reference agencies.

This offer was put to Mr B and he didn't accept it, instead he requested the complaint be considered by an ombudsman.

Later on, Mr B provided a copy of a default notice Drafty had sent to him in December 2022 and he provided some further information about his current financial position as well as his health.

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 B's Drafty facility.

As explained, Mr B was given an open-ended credit facility. Overall, I think that this means the checks Drafty carried out had to provide enough for it to be able to understand whether Mr B would be able to not only service but also repay his facility within a reasonable period of time. Draft also needed to monitor Mr B's repayment record for any signs that he may have been experiencing financial difficulties.

Both Drafty and Mr B agree with the point at which the adjudicator upheld the facility – the credit limit increase in November 2018. So, I no longer think there is any dispute about when this complaint should be upheld.

But for completeness, and in summary, I do agree with the adjudicator that by this credit limit increase Drafty ought to have carried out further checks. Had it done so, I think it would've likely discovered that Mr B wasn't working and was in receipt of benefits and thinking about the amount he received, he didn't have enough money to cover his living costs as well as repaying and servicing the facility.

Therefore, like Drafty, I'm going to be upholding the facility at the same point – the 9 November 2018 which is when Mr B's credit limit increased to £1,500.

Instead, the dispute is really about how Drafty should put things right for Mr B and so it is this that I have considered as part of this decision.

Drafty has made a number of submissions regarding why what it has offered to do addresses Mr B's loss in this case. However, I don't think it makes any difference in this case whether Drafty carries out the redress in line with what it thinks is fair or whether it carries out the redress in line with our typical approach. I say this because, I am intending to depart from our usual approach to putting things right in these types of cases and instead direct it to write off the balance that will remain whether it follows its approach or the approach of the Financial Ombudsman.

Mr B has provided evidence that he hasn't been in work since at least October 2018 – and it may even be before that date. This is likely reflected in the repayment arrangements that Drafty has previously agreed whereby he has mainly been paying £4 per month towards the balance since June 2019.

Mr B then provided further information after the adjudicator's assessment that in August 2022, he had spent time in hospital due to further health problems and in December 2022 these health problems were ongoing and he is currently '*signed off*' until January 2023.

What I would say, is that there appears to be no realistic prospect that Mr B's financial position is likely to change significantly in the near future. Indeed, his current position has been almost static for the past four years.

Assuming that Drafty would be happy to accept £4 per month – to be clear it hasn't agreed to this, and Mr B has said that he may only be able to afford £1 per month based on Drafty's offer and its calculations it would take him (based £4 per month repayments) it would take Mr B nearly 25 years to repay the balance. If Mr B was to pay less, it would obviously take longer to be repaid.

Therefore, given the length of time that Mr B has already been unable to work, the impact that this outstanding debt is likely to have on his health going forward and the fact that there doesn't appear to be any obvious change in his circumstance in the near to medium term future, I think it's fair, and reasonable, that in this case, taking the individual circumstances that the Mr B's facility is closed without any further payments being made by him to Drafty.

Of course, if there is a change in circumstances, then I don't think it would be reasonable for Drafty to recover the outstanding principal that it is being asked to write off. But as things stand, I don't think that collecting the remaining balance is either realistic or likely to benefit either party.

I've outlined below what Drafty needs to do in order to put things right.

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 9 November 2018, 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 9 November 2018
- Treat all payments Mr B has made towards his account since 9 November 2018 as though they had been repayments of outstanding principal.
- If at any point Mr B 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 write off what is owed and close the facility.
- Drafty can reflect that it has written off an amount owing on Mr B's credit file should it wish to do so.

*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

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 January 2023.

Robert Walker
Ombudsman