DRN-3734736

The complaint

Mr L took two credit facilities from Gain Credit LLC, trading as Drafty, and he complains 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

These credit facilities were not loans. 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.

Briefly, Mr L applied for the first credit facility of £1,000 in June 2018 and it was approved. The credit limit was increased twice, the last time being in October 2018 when it was increased to £1,440. The facility was used and then paid off and closed on 25 June 2019.

Mr L's second credit facility was for the same amount - £1,000 - and approved four months after the first one was closed. It started in October 2019 and there was an increase in the limit to £1,310 in January 2020. Mr L got into difficulties repaying this second facility and it was passed to a third party debt collection agency.

The credit agreements for each set out the total cost of the credit based on some assumptions to illustrate the likely cost to Mr L. On the assumption that Mr L drew down the full £1,000 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 over £1,352 for the first facility and just under £1,356 for the second. These worked out to be about £112 or £113 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 L'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 L's monthly salary date. Other ways of payment were made available. Using the information, I have from Drafty, there is an outstanding balance on the second facility. In August 2022 Drafty told us it was about £1,584.

Mr L complained to Drafty in December 2021 and received a final response letter (FRL) in February 2022 in which it said it did not think it had done anything wrong for either facility and did not uphold his complaint. Mr L referred it 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 first credit facility initially was right and overall, she did not think that there was anything for Drafty to put right about that first facility. Our adjudicator considered the account monitoring and account use over the year it was open and she did not think there was anything in the way Mr L used it which ought to have alerted Drafty to there being some financial issues.

The second facility was for the same amount - £1,000 – just four months after the closure of the first one, and our adjudicator did not consider that Drafty had done wrong to approve it for Mr L initially. However, in relation to that part where Drafty ought to monitor the account

during Mr L's use of it, she considered that Drafty ought to have ceased allowing him to use the second credit facility from 17 September 2020.

Drafty agreed with our adjudicator in relation to the view and that the second facility uphold date was 17 September 2020. But its method to put things right for Mr L was not in-line with our adjudicator's view. Mr L did not accept the outcome.

It's not entirely clear whether Mr L is content or not content about the first credit facility complaint outcome. And so, for completeness I have reviewed that as well as the outstanding issue on the unresolved detail surrounding the redress on the second credit facility.

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 first credit facility.

I need to explain to Mr L that upon first approaching Drafty in June 2018 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Mr L 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 L had enough disposable income to service a credit facility with a limit of £1,000.

Having looked at all that Mr L has given me and Drafty's information (including the credit check it carried out in June 2018) plus Drafty's 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.

Similarly with the monitoring of the account for that first credit facility. I've reviewed what I have and I do not think that the use pattern demonstrated by Mr L during 2018 and 2019 was such that Drafty ought to have been alerted to any potential financial concerns with Mr L.

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

Initial approval of the second credit facility.

Mr L had demonstrated a good repayment record with the first facility. I note that when he returned for the second facility four months later he declared a lower income figure to Drafty

as part of his application – but he also declared a lower set of expenditure figures. The result was that Mr L's disposable income figure was about the same – around £1,500 a month.

Drafty carried out a credit check and that showed an overall reduction in his total debt balance. So, the combination leads me to think that the initial approval of the second facility was not irresponsible.

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 L'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.

The rationale for our adjudicator's uphold 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.

Mr L had provided us with a copy of his bank statements from around this time and our adjudicator had reviewed them and could see that he was having difficulties managing his money.

And Drafty has agreed that for this second facility it ought to have been prompted to investigate and to then cease allowing Mr L from using the account from 17 September 2020. Instead, the account was suspended in or around November 2021.

Mr L appears to have accepted this part of the outcome – that the uphold date ought to be 17 September 2020 - and so as we are all agreed on this part then I'll consider the redress paragraphs which seem to be the sticking point between the parties.

The redress calculations issue

There were several actions Drafty could have taken in September 2020. 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 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 L'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 L'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 L at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mr L to repay what was owed, then it ought to have ceased charging interest on this balance from 17 September 2020 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 L.

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 L. And then Drafty ought to do the following:

- Re-work Mr L's credit facility balance so that all interest, fees and charges applied to it from 17 September 2020 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr L's credit file, it should backdate this to 17 September 2020.

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 L, 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 L's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 March 2023.

Rachael Williams
Ombudsman