

## The complaint

Miss C complains that Gain Credit LLC, trading as Drafty, lent to her when she 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, Miss C applied for a credit facility of £1,000 in December 2018 and Drafty approved it. The limit was decreased in January 2021 to £750 after a period of poor payments.

Miss C had declared, when the facility was approved that her monthly income for her full time employment was £2,100 and her monthly expenditure was £950. 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 Miss C. On the assumption that Miss C 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 under £1,356. This would have equated to about £113 a month (Clause 5 in the agreement).

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Miss C'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 Miss C's monthly salary date. Other ways of payment were made available. Using the information I have from Drafty, there is an outstanding balance on it which in September 2022 was around £876.

Miss C asked for details of her account with a Subject Access Request (SAR) in December 2021. She received that information and then complained to Drafty that same month. Miss C received the final response letter from Drafty on 1 February 2022 in which it gave details of Miss C's application, her credit search results and other details. Drafty did think that it ought to put things right for Miss C from 18 November 2020.

Miss C disagreed with this and referred the complaint to the Financial Ombudsman Service in March 2022 after which one of our adjudicators looked at it and thought that Drafty's initial approval was satisfactory.

However, our adjudicator thought that Drafty ought to have realised more quickly that Miss C needed assistance and so she felt that the 'uphold date' ought to have been 31 October 2020.

Drafty agreed with this date. But its offer included a detail which meant that it was only willing to refund charges and interest on new drawdowns from that date. Our adjudicator had not outlined the redress to be that way and so there was a disagreement.

In addition, Miss C did not accept Drafty's response to our adjudicator's view and it seems that Miss C does not accept the proposed resolution to the complaint at all. So, the unresolved complaint has been passed to me and as there appears to have been no agreement at all I have reviewed the whole complaint afresh.

### **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 Miss C that upon first approaching Drafty in December 2019 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Miss C 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 Miss C had enough disposable income to service a credit facility with a limit of £1,000.

Having looked at all that Miss C 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 Miss C'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.

From Drafty's perspective, it had already had concerns about Miss C's repayment abilities as it had suspended the account in April 2020, just a few months after it had started, and gave Miss C a month's payment holiday. Then as Miss C paid less than the minimum amount in May 2020 the credit line remained suspended. I do not have details but the dates coincide with the early part of the national Covid pandemic which inevitably caused financial problems for many people, and Miss C may have been affected by that.

After that there followed a period of five months where Miss C paid down the minimum amount only. Drafty had thought it was prudent to suspend the account again in November 2020 and then it reduced her credit limit from £1,000 to £750 from

20 January 2021. So, I have enough evidence here for me to be reasonably confident that Drafty was aware of the situation and had been aware for some time.

Both our adjudicator and Drafty now agree that the suspension date ought to have been more permanent from 31 October 2020 and Miss C afforded a more permanent kind of assistance giving her time to repay the whole balance, I agree.

So, as we are agreed on this part then 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 October 2020. But as none of these were taken and it agrees about that, so 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 Miss C' 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 Miss C' 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 Miss C at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Miss C to repay what was owed, then it ought to have ceased charging interest on this balance. That date it has said was from 31 October 2020 onwards. And I agree.

Drafty had enough to appreciate that Miss C was having money troubles from April 2020 and had afforded Miss C a payment holiday up to May 2020. And so, as the situation deteriorated – up to the agreed suspension point of 31 October 2020 – then I think Miss C had continued to have trouble repaying. So, I think that the redress paragraphs I have outlined below are fair and reasonable.

I've outlined below what Drafty needs to do to put things right for Miss C.

#### **Putting things right**

My understanding is that the account was passed to a third party collector but the loan ownership remains with Drafty. So, it should bring that debt back in-house, remove any of the third party charges allocated to the account and not pass them on to Miss C. And Drafty should do as I have set out below.

- Re-work Miss C's credit facility balance so that all interest, fees and charges applied to it from 31 October 2020 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Miss C to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Miss C's credit file, it should backdate this to 31 October 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 Miss C, 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 Miss C's credit file.

\*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Miss C a certificate showing how much tax it has taken off if she asks for one.

**My final decision**

My final decision is that I uphold Miss C's complaint in part and I direct that Gain Credit LLC, trading as Drafty, does as I have outlined here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 29 March 2023.

Rachael Williams  
**Ombudsman**