

The complaint

Mrs J complains Gain Credit LLC trading as Drafty gave her two lines of credit she couldn't afford to repay because of her bad credit rating and her outstanding debts.

What happened

Mrs J first approached Drafty for a running credit facility in April 2018. Mrs J was given a facility with a £1,050 credit limit. The credit limit remained the same while Mrs J had it and she successfully repaid the facility in November 2019.

Mrs J then approached Drafty for a second credit facility in November 2021. This had a limit of £550. Mrs J has had some difficulties repaying this facility and she is currently on a plan – paying £22 per month. As of October 2022, she owed around £404.

Mrs J was given running credit accounts where she could either request funds up to her agreed credit limit in one go or could take multiple drawdowns up to her limit. She was also able to borrow further, up to her credit limit, as and when she repaid what she owed. To be clear, Mrs J was *not* given payday loans.

In Drafty's final response letter from May 2022 it explained the information it gathered from Mrs J before it approved the two credit facilities which showed she'd be able to afford them both. So, it didn't uphold the complaint. Mrs J then referred the complaint to the Financial Ombudsman Service.

The case was then considered by an adjudicator who partly upheld it. She thought the checks Drafty carried out before granting the first facility were proportionate. These showed Drafty that Mrs J was likely to be able to afford the payment amount as outlined in the hypothetical payment schedule within Mrs J's credit agreement. So, she didn't think it was wrong to have approved the facility.

However, the adjudicator, pointed out that as Drafty had provided Mrs J with a credit facility, in addition to taking reasonable steps to ensure the facility was affordable at the outset, it also had an obligation to monitor Mrs J's ongoing use of the first facility. The adjudicator thought, by 24 May 2019 the way Mrs J had used the facility showed she wasn't making headway into servicing it and it ought to have shown forbearance to Mrs J. The adjudicator thought Drafty should've stepped in and should've frozen the interest on the first facility.

The adjudicator also concluded Drafty carried out proportionate checks before the second facility was approved – which showed it to be affordable and so she didn't uphold the complaint about the second facility. She was also satisfied Drafty acted fairly by agreeing a repayment plan with Mrs J from May 2022.

In order to put things right, the adjudicator recommended all interest, fees and charges paid by Mrs J from 24 May 2019 should be refunded until the first facility was closed. Along with additional interest of 8% simple. She also said any adverse information recorded on Mrs J's credit file from the uphold date should be removed from her credit file.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time for the first facility (24 May 2019) but it agreed to only refund the interest fees and charges applied to any *new* drawdowns from that date rather than suspending interest on the whole balance. At the time the offer was made, after tax and 8% simple interest Mrs J would receive a refund of £27.83. But Drafty said this refund would be used to offset Mrs J's balance on the second facility reducing it to £376.90 (at the time).

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

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, Mrs J was given two open-ended credit facilities. So, overall, I think that this means the checks Drafty carried out had to provide enough for it to be able to understand whether Mrs J would be able to both service and then repay her facilities within a reasonable period of time. Drafty also needed to monitor Mrs J's repayment record for any sign that she may have been experiencing financial difficulties.

Before the two facilities were approved, Drafty took details of Mrs J's income and expenditure information as well as carrying out a credit search. In my view, given this was the start of the lending relationship Drafty's checks were entirely reasonable and proportionate and showed it that Mrs J would be able to afford the repayments as outlined in the hypothetical scenario in the credit agreement. So, I don't uphold Mrs J's complaint about Drafty approving either credit facility.

It is worth saying here that Drafty agrees with the uphold point reached on the first facility, as it offered some redress from this time – 24 May 2019. And while, Mrs J rejected the settlement offer by Drafty, she did agree with the outcome the adjudicator reached on her complaint about the two facilities.

So, it seems to me, that all parties to the complaint agree that the only part of Mrs J's complaint which can be upheld is on the first facility from 24 May 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 Mrs J's complaint.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mrs J while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 24 May 2019 needs to be refunded.

I don't think that I need to speculate here about the actions Drafty may or may not have taken in May 2019. There were several 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. 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.

As I've said above, and as the adjudicator pointed out, I do think the facility had likely become unsustainable for Mrs J by May 2019. Afterall, by now she had been repaying the facility for around a year and yet still owed Drafty her entire credit limit.

In addition, her repayment pattern up until this point, was generally, making at least the minimum payment and then Mrs J returned – normally within a matter of days to drawdown any available funds which was typically only around £20. In that situation, I think it is clear the facility had become unsustainable for Mrs J.

In any event, 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 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.

So, I don't think that Drafty continuing to allow interest to be charged on Mrs J's balance, in circumstances where this increased the chances of her being unable to repay, when the manner in which she was serving the facility indicated she was struggling.

So, although, I do accept that the balance on the first facility up to the uphold point was legitimately provided and appeared affordable for Mrs J 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 Mrs J to repay what she owed. In these circumstances, it isn't, in my view, fair and reasonable for Drafty to have continued charging interest on this balance from 24 May 2019 onwards.

Therefore, given what Drafty said in response to the adjudicator's assessment, that it agrees with the point that the complaint has been upheld, it therefore follows that it isn't just the new drawdowns that Mrs J couldn't afford. She also couldn't afford to repay what she 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 Mrs J.

Putting things right

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

- Re-work Mrs J's first credit facility balance so that all interest, fees and charges applied from 24 May 2019 until the first facility closed are removed.
- 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 Mrs J, along with 8% simple interest* on the overpayments from the date they were made until the date of settlement.
- Drafty should remove any adverse information from Mrs J's credit file in relation to the first facility.

- Drafty can also use any refund from the first facility to offset the outstanding balance due on the second facility. If after using this refund this clears the outstanding balance than any surplus should be paid directly to Mrs J. However, if after carrying out the above, an outstanding balance remains then Drafty should try and come to a mutually agreeable repayment plan with Mrs J to repay what is owed.

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

My final decision

For the reasons given above I partly uphold Mrs J's complaint.

Gain Credit LLC trading as Drafty should put things right for Mrs J as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 26 May 2023.

Robert Walker
Ombudsman