

The complaint

Mr B complains through a representative that Gain Credit LLC (trading as Drafty) gave him two lines of credit which he couldn't afford to repay.

What happened

Mr B first approached Drafty for a running credit facility in November 2018. Mr B was given a facility with a £1,850 credit limit. The credit limit remained the same while Mr B had it and he successfully repaid the facility in January 2020.

Mr B then approached Drafty for a second credit facility in April 2022 this had a limit of £1,300 and Mr B repaid the facility in July 2022.

Mr B was given running credit accounts where he could either request funds up to his agreed credit limits in one go or could take multiple drawdowns up to his limits. 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 payday loans.

In Drafty's final response letter from May 2022 it explained the information it gathered from Mr B before it approved the two credit facilities which showed he'd be able to afford them. So, it didn't uphold the complaint. Mr B's representative referred his 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 and showed Drafty Mr B was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Mr B's credit agreement. So, she didn't think it was wrong to have initially approved the facility.

However, the adjudicator, pointed out that as Drafty had provided Mr B with a credit facility, in addition to taking reasonable steps to ensure it was affordable at the outset, it also had an obligation to monitor Mr B's ongoing use of the facility.

The adjudicator thought, by 15 November 2019 the way Mr B had used the facility showed he wasn't making headway into servicing it and it ought to have shown forbearance to Mr B. Mr B had also held the facility for around a year and yet he owed Drafty more than the credit limit of £1,850. Overall, the adjudicator thought Drafty should've stepped in and should've frozen the interest on the first facility at this time.

The adjudicator also concluded Drafty carried out proportionate checks before the second facility was approved – which showed it to be affordable and as Mr B only held the facility for a few months there wasn't any indicators of financial difficulties. The adjudicator didn't uphold Mr B's complaint about the second facility.

In order to put things right, the adjudicator recommended all interest, fees and charges paid by Mr B from 15 November 2019 should be refunded, along with additional interest of 8%

simple. She also said any adverse information recorded on Mr B'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 for the first facility (15 November 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 Mr B would receive a refund of £26.11. Drafty it also agreed to remove any adverse information from Mr B's credit file.

However, Drafty didn't agree to refund all of the interest fees and charges applied from 15 November 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 15th November 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's offer was put to Mr B's representative, and it wasn't accepted. 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, Mr B was given two 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 B would be able to both service and then repay his facilities within a reasonable period of time. Drafty also needed to monitor Mr B'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 reached on the first facility, as it offered some redress from this time – 15 November 2019. And while, Mr B rejected the settlement offer by Drafty, neither he or his representative didn't disagree that this is the point where the complaint ought to be upheld nor that Drafty hadn't done anything wrong in relation to the second facility.

So, it seems to me, that all parties to the complaint agree that the only part of Mr B's complaint which can be upheld is on the first facility from 15 November 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 B's complaint.

Both the adjudicator and Drafty have agreed, that by November 2019 the facility had likely become unsustainable for Mr B and therefore Mr B ought to have been offered some assistance. So, there doesn't appear to be any dispute as to when the facility likely became unsustainable for Mr B.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr B while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 15 November 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 November 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. 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 Mr B by November 2019. Afterall, by now he had been repaying the facility for around a year and yet still owed Drafty his entire credit limit. In addition, his repayment pattern up until this point, was generally, at least the minimum payment being made and then Mr B returned – normally within a matter of hours to drawdown any available funds.

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 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.

So, I don't think that Drafty continuing to allow interest to be charged on Mr B's balance, in circumstances where this increased the chances of him being unable to repay, when the manner in which he was serving the facility indicated he was struggling, and this would've been reinforced with further checks.

So, although, I do accept that the balance up to the uphold point was legitimately provided and appeared affordable for Mr B 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 B 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 15 November 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 Mr B 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 B.

Putting things right

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

- Re-work Mr B's first credit facility balance so that all interest, fees and charges applied from 15 November 2019 until the first facility was closed are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr B to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr B's credit file, it should backdate this to November 2019.

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 B, 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 B's credit file.*

*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 trading as Drafty 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 17 May 2023.

Robert Walker
Ombudsman