

## The complaint

Mr M complains Gain Credit LLC trading as Drafty (Drafty) gave him a line of credit without carrying out sufficient affordability checks. Mr M says had better checks been carried out, Drafty would've realised he had several outstanding payday loans and a poor credit score.

## What happened

Mr M 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 M was not given a payday loan.

Mr M approached Drafty for a running credit facility in August 2018. Mr M was given a facility with a £1,000 credit limit. Drafty increased Mr M's credit limit on two occasions taking his limit to £1,520 in October 2018.

Mr M has had some problems repaying his facility and the statement of account provided by Drafty shows the account is with recoveries and he has been making payments towards the facility balance of at least £39.12 per month since September 2019. Drafty has confirmed that as of October 2022, an outstanding balance remains due of around £461.51.

In Drafty's final response letter - from July 2022 it concluded,

*"Based on the above information, we conclude that proper and proportionate affordability checks were conducted at the initiation of the credit line. We also continued to check that the line of credit was affordable. However, we can see there is a possibility that allowing the continued use of the line beyond July 22, 2019 may not have been sustainable in the long term."*

But as Mr M hadn't taken any drawdowns after 22 July 2019 then there would be no refund due to him. Mr M then referred his complaint to the Financial Ombudsman Service where one of our adjudicators reviewed it and partly upheld it.

She thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty Mr M was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Mr M's credit agreement. This was calculated on the full £1,000 being drawn down at the outset and then being repaid over 12 months. So, she didn't think Drafty was wrong to have approved the facility.

However, the adjudicator, pointed out that as Drafty had provided Mr M 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 Mr M's ongoing use of the facility. The adjudicator thought, the way Mr M had used and repaid the facility (as well as Drafty suspending the facility due to a missed payment) ought to have alerted it that the facility was no longer sustainable for Mr M from 28 June 2019.

Overall, the adjudicator thought there were signs of financial difficulties (and perhaps ought to have carried out some further checks at this time), Drafty should've stepped in and froze the interest on the facility.

In order to put things right, the adjudicator recommended all interest, fees and charges paid by Mr M from 28 June 2019 should be refunded, along with additional interest of 8% simple.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time (28 June 2019) but it agreed to only refund the interest fees and charges applied to any new drawdowns from that date.

At the time the offer was made, Drafty explained this would still lead to no refund being provided as no new drawdowns were taken. An outstanding balance remained due of just over £461. However, Drafty also said, that should Mr M need a repayment plan to pay down the outstanding balance, then details of that would be recorded with the credit reference agency.

However, Drafty didn't agree to refund all of the interest fees and charges applied from 28 June 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 28<sup>th</sup> June 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 M and he didn't accept it. Instead, he asked for a final decision on the outcome of the complaint. 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 M was given an 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 M would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr M's repayment record for any sign that he may have been experiencing financial difficulties.

Before the facility was approved, Drafty took details of Mr M'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 Mr M would be able to afford the repayments as outlined in the hypothetical scenario in the credit agreement. So, I don't uphold Mr M's complaint about Drafty approving the facility. I also think, given the way that Mr M had used the facility that Drafty was reasonable to have increased the credit limits when it did.

It is worth saying here that Drafty agrees with the uphold point the adjudicator reached, as it offered some redress from that date – 28 June 2019. Mr M rejected the settlement offer by Drafty but he didn't disagree that the point the adjudicator had reached was unreasonable.

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 M's complaint.

So, I don't think that I need to speculate here about the actions Drafty may or may not have taken in June 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 – as it agrees. I've considered what Drafty ought to fairly and reasonably do in order to put things right sometime after the event. And the proposed redress is the clearest and fairest way of doing this.

As the adjudicator pointed out, Mr M wasn't repaying the facility in a sustainable manner because he would frequently make the minimum repayment and then drawdown any available credit which was regularly only around £30. And the new drawdowns would normally occur within hours of the minimum payment being made.

In addition, to the way Mr M had serviced the facility, the adjudicator also suggested that at the uphold point Drafty may have wanted to have made further enquires with Mr M into his financial situation.

Mr M has provided bank statements, and so I did consider what these showed and therefore what Drafty may have seen had it carried out further checks as the adjudicator suggested in her assessment. To be clear, it makes no difference to the outcome I am reaching but does reinforce what I am saying about the facility being unsustainable for Mr M.

Having looked at the bank statements for May and June 2019 I can see multiple returned direct debits for existing creditors such as a mobile phone provider and for a media subscription. And the industry regulator says regular returned payments could be a sign of financial difficulties.

More importantly, at the time Mr M had at least nine outstanding payday and instalment loans at a time. A clear indicator that Mr M wasn't in a financial stable position at the time due to the number of outstanding loans. To me, had Drafty taken steps to review Mr M's bank statements it would've realised – on top of his usage that the whole facility was unsustainable for him.

So, Drafty ought to have realised, the current balance was unsustainable – and therefore Mr M 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 M.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr M while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 28 June 2019 needs to be refunded.

What is 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 M's balance, in circumstances where this increased the chances of him being unable to repay, is fair and reasonable in the circumstances of the complaint.

So, although, I do accept that the balance up to the uphold point was legitimately provided and appeared affordable for Mr M 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 to allow Mr M 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 28 June 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 follows that it isn't just the new drawdowns that weren't sustainable for Mr M. It also wasn't sustainable 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 M.

### **Putting things right**

If Drafty has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Drafty isn't able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

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

- Re-work Mr M's credit facility balance so that all interest, fees and charges applied from 28 June 2019 onwards are removed.

AND

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

\*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Mr M 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 M's complaint.

Gain Credit LLC trading as Drafty should put things right for Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 June 2023.

Robert Walker  
**Ombudsman**