

## **The complaint**

Mr W, through his representative, complains that Gain Credit LLC, trading as Drafty, lent to him when he 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 required. The credit was unsecured and had no fixed duration.

Briefly, Mr W applied for a credit facility of £200 in March 2017. Drafty approved a credit facility of £200 and it remained at that limit. Mr W had declared, when the facility was approved that his monthly income for his full time employment was £1,620 and his monthly expenditure was £750. 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 Mr W. On the assumption that Mr W drew down the full £200 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 £265.01. This would have equated to about £22 a month (Clause 5 in the agreement).

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Mr W'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 W's monthly salary date. Other ways of payment were made available.

Mr W, through his representative, complained to Drafty in April 2022 and received a final response letter (FRL) in June 2022 in which it did not uphold the complaint.

In October 2022, one of our adjudicators looked at the complaint and thought that Drafty's decision to approve the credit facility initially was right. And in relation to that part where Drafty ought to monitor the account, she thought that from 8 July 2018 Drafty ought to have recognised that Mr W was not managing and ceased to lend to him further.

Drafty agreed with our adjudicator on the date of 8 July 2018 as the uphold date but its offer in relation to the redress to pay to Mr W differed from what our adjudicator recommended.

Mr W's representative was informed of Drafty's planned offer and its reply was to say that it preferred the redress calculations recommended by our adjudicator and not the offer from Drafty. From that very clear response it seems that Mr W does not take issue with the first part of our adjudicator's view that the facility's original approval in March 2017 was satisfactory. So, I have not reviewed that part.

The outstanding issue was an unresolved detail surrounding the redress and that was the reason the complaint was passed to me. On 4 May 2023 I issued a provisional decision with a reply date of 18 May 2023.

I gave reasons why I considered the Drafty's planned redress calculations were the ones I thought fitted with the evidence I had. That provisional decision is duplicated here to provide ease of reference for the parties. It is in smaller type to differentiate it.

### ***What I've provisionally 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 Mr W or approving a credit limit a lender should take proportionate steps to understand whether Mr W 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.

### ***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 W'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 in Mr W's complaint was that the continual repayment of the minimum amounts each month ought to have prompted it to have done something rather than just allow that repayment pattern to continue.

Mr W had provided us with a copy of his bank account statements for May, June and July 2018 at my request.

Drafty has agreed with our adjudicator as to the 8 July 2018 date at which it ought to have done more and likely suspended the account for Mr W. And Mr W has only taken issue with that part relating to the redress calculations. So, as we are all 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***

Our adjudicator thought that Drafty needed to refund all interest charged on the facility – including on amounts Mr W had previously drawn down and about which there's no dispute. Whereas Drafty proposed that the redress calculations were on any new drawdowns from 8 July 2018 onwards.

However, I'd only direct Drafty to put things right in this way if I was satisfied that it ought to have realised that Mr W's financial position was so difficult as of 8 July 2018 that he couldn't afford any further borrowing. And that Mr W couldn't repay what he already owed. And so Drafty ought reasonably to have withdrawn the facility completely. I don't think Drafty checked Mr W's financial situation on 8 July 2018 and so I have asked to review his statements to see what Mr W's position was at the time.

I have been sent bank statements from Mr W recently covering May, June and July 2018 and these do not present a picture of someone in such a poor financial state he was unlikely able to repay the relatively modest outstanding balance of around £200 in July 2018.

Drafty's proposed redress, as outlined in response to the adjudicator would lead to a refund of interest on any new drawdowns from 8 July 2018. And bearing in mind the circumstances here, I consider that refund to be reasonable. So, I am intending to ask Drafty to pay that redress in resolution of the complaint. This differs to our adjudicator's view and hence the provisional 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.

No response has been received from Mr W or his representative.

Drafty has responded to say that it agrees. On 18 May 2023 Drafty has said:

*'Considering the points that have been raised in your provisional decision, we agree to refund the interest and charges paid towards all the drawdowns on the account [number] from July 8, 2018, amounting to £117.42 (£97.34 for Interest paid, £25.10 for 8% annual interest, minus £5.02 for 20% mandatory tax withholding in line with HMRC regulations). We will also remove any adverse information on the account from July 8, 2018 from [Mr W's] credit file.'*

In the circumstances and having no reason to alter my views expressed in the provisional decision, then I repeat all those findings here. For the reasons given, I uphold Mr W's complaint in part.

### **Putting things right**

Drafty has not clarified this recently but my understanding is that the current state of the account is that there's a sum outstanding. We understand that the debt has been assigned to another party and so I think that Drafty should buy that debt back and bring it back in-house if it can. Then Drafty needs to do as it has already offered to do and which I endorse which is as follows:

- re-work Mr W's credit facility balance so that all interest, fees and charges applied to new drawdowns from 8 July 2018 are removed; and
- if at any point Mr W would have been in credit on his account after considering the above, Drafty will need to refund any overpayments with 8% simple interest\* calculated on these payments, from the date they would have arisen, to the date the refund is made; and
- apply any refund due to Mr W to reduce the overall balance; and
- if there remains a balance after doing this then Drafty needs to arrange with Mr W a suitably agreeable payment plan; and
- remove any adverse information from Mr W's credit file from 8 July 2018 as Drafty has offered to do.

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

### **My final decision**

I uphold Mr W's complaint in part and I direct that Gain Credit LLC, trading as Drafty, should

put things right for Mr W as outlined in my decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 June 2023.

Rachael Williams  
**Ombudsman**