

The complaint

Miss S complains that Gain Credit LLC, trading as Drafty, approved a credit facility for 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 S applied for a credit facility in August 2018 and Drafty approved one with a limit of £500. The limit was increased in November 2018 to £690, then in December 2018 to £860 and it remained at that. The account was paid off and closed on 1 August 2022 after Miss S had been in a repayment plan with Drafty from January 2020.

Miss S had declared, when the facility was approved that her monthly income for her full time employment was £1,345 and her monthly expenditure was £275. 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 S. On the assumption that Miss S drew down the full £500 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 £671.51. This would have equated to about £56 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 S'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 S's monthly salary date. Other ways of payment were made available.

Miss S complained to Drafty in July 2022 and received a final response letter (FRL) in August 2022 in which it said that it was content to put things right for Miss S from 6 August 2019. Miss S referred the complaint to the Financial Ombudsman Service.

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, our adjudicator considered that the uphold date ought to be a few weeks earlier – 15 July 2019. She gave reasons for that in her view.

And when she explained it to Miss S, our adjudicator did so succinctly and I have duplicated that here:

'I have essentially asked Drafty to rework your credit facility. By this I mean I've asked Drafty to put you back in the position you would've been in had Drafty withdrawn your credit facility as of 15 July 2019, and frozen the interest on your outstanding balance from this point as well.'

As you have now repaid your outstanding balance in full, this amount would've included both interest and the principal amount you've borrowed from Drafty.

If, as part of reworking your credit facility balance, Drafty finds that you have repaid more than the balance amount that was outstanding as of 15 July 2019, then I've said it 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.'*

The outstanding issue was an unresolved detail surrounding the redress as Drafty does not agree with that redress approach. Drafty believes it is reasonable to have collected the interest that accrued on drawdowns that occurred prior to 15 July 2019. Our adjudicator's view was that it was not fair for Drafty to have collected any interest on the overall outstanding balance from 15 July 2019 onwards.

Miss S said she did not want to go with Drafty's approach.

And that is the reason the complaint has been passed to me.

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.

Before lending money to a Miss S or approving a credit limit a lender should take proportionate steps to understand whether the Miss S 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 S that upon first approaching Drafty in August 2018 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Miss S 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 of time, Drafty was entitled to rely on the information given to it which suggested that Miss S had enough disposable income to service a credit facility with a limit of £500.

Having looked at all that Miss S 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 Consumer' account and it has explained to us how it did that but very briefly. I refer to the Financial Conduct Authority Miss S 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.

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 July 2019. But as none of these were taken and it agrees about that, 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 a customer's repayment record suggested he or she was already struggling to repay the amount owed, I don't think that Drafty continuing to allow interest to be charged on that customer's 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 S at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Miss S to repay what was owed, then it ought to have ceased charging interest on this balance. That date it has said was from 15 July 2019 onwards. And I agree.

Miss S has sent to me copies of each of her bank account statements for the period May to end July 2019, and I am satisfied that if Drafty had carried out further and deeper enquiries in July 2019 when it ought to have realised that Miss S may not have been managing its own account well, then it would have seen that Miss S was having serious money troubles. Miss S has explained that she even got a refund from the pension provider she'd been paying into to try to cover all her outstanding debts and other loans she was committed to as well as this facility.

I realise Drafty has said it does not agree with this redress approach, but that's my decision.

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

Putting things right

My understanding is that account has been paid off. So Drafty needs to do as follows:

- Re-work Miss S's credit facility balance so that all interest, fees and charges applied are removed.

AND

- 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 S, 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 her credit file from 19 July 2019.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Miss S 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 the complaint in part and I direct that Gain Credit LLC, trading as Drafty, should put things right for Miss S as outlined in my decision above.

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

Rachael Williams
Ombudsman