

The complaint

Mr B complains Gain Credit LLC (trading as Drafty) gave him a line of credit he couldn't afford to repay.

Mr B was also unhappy with the lack of help he was given when he reached out to Drafty in April 2020 to ask for a payment arrangement.

What happened

Mr B approached Drafty for a running credit facility in August 2018. Mr B was given a facility with a £1,000 credit limit. Drafty increased Mr B's credit limit on four occasions taking his credit limit to £2,520 by October 2019. Drafty has confirmed that by August 2022, an outstanding balance remained due.

Mr B 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 B was *not* given a payday loan.

In Drafty's final response letter (September 2021) it explained the information it gathered from Mr B before it approved the facility, which showed he'd be able to afford it and then service the facility. So, it didn't uphold the complaint.

Mr B referred his complaint to the Financial Ombudsman Service where one of our adjudicators looked at it. In her latest assessment she partly upheld it. She thought the checks Drafty carried out before initially granting this 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. 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 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 the facility was affordable at the outset, it also had an obligation to monitor Mr B's ongoing use of the facility. The adjudicator thought, by the time of the third credit limit increase – (taking the limit to £2,300) in July 2019 Drafty ought to have done more to ensure that the new limit (and the whole facility) remained affordable for him.

The adjudicator said, that had Drafty carried out further checks at the time of the limit increase, which she thought was reasonable, it would've likely discovered that he had mortgage arrears, and was already committed to spending £1,800 of his £2,400 salary covering his living costs expect for his energy bills. In addition, each month Mr B would be making regular cash withdrawals and unfortunately, at this time Mr B was also in and out of hospital.

Overall, the adjudicator thought there were signs of financial difficulties, so not only should Drafty not approved the credit limit increase, Drafty should've stepped in and should've frozen the interest on the facility.

In order to put things right, the adjudicator recommended all interest, fees and charged paid by Mr B from July 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.

The adjudicator also said that Mr B reached out to Drafty for help in April 2020, and she could see he sent a number of emails that went unanswered. Due to the distress and inconvenience Mr B was put through by not engaging with him, the adjudicator recommended a payment be made to Mr B of £200.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time (but it confirmed the credit limit was increased from 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 lead to a new reduced outstanding balance of £2,305.40 and it also agreed to remove any adverse information from Mr B's credit file. But it also said, that should Mr B 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:

"... we take a different view on the way you have requested the calculations to be done.

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 28th 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 also agreed to pay £200 compensation for the distress and inconvenience that was caused.

Drafty's offer was put to Mr B and he 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, Mr B 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 B would be able to both service and then repay his facility 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 the adjudicator reached, as it offered some redress from this time – 28 June 2019. And while, Mr B rejected the settlement offer by Drafty, he didn't disagree that this is the point where the complaint ought to be upheld.

So, it seems to me, that all parties to the complaint agree the facility should be upheld from 28 June 2019 – when Mr B's credit limit was increased. 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.

In addition, Drafty has also accepted that it ought to pay – directly to Mr B £200 due to the distress and inconvenience caused by it after it failed to engage with him when he asked for a repayment plan in April 2020. I therefore, also won't make any further finding about this because it seems both parties agree this payment is fair and reasonable.

The adjudicator and Drafty (appears to) have agreed, that further checks ought to have been carried out before the third credit limit increase, and had further checks been carried out Drafty ought to have realised that the proposed credit limit and the current balance were unsustainable – 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 28 June 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 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 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 don't think at the third credit limit increase it was unreasonable for Drafty to have made further checks to ensure the new limit was affordable for him. And had further checks been carried out not only would Drafty have realised the new credit limit wasn't affordable for Mr B but the entire balance he held at the time was unsustainable for him.

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 further checks would've indicated he was already struggling, 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 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 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 update – 28 June 2019, 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

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 B's credit facility balance so that any additional 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 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 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 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.*

- Drafty should also pay Mr B directly, £200 compensation to reflect the distress and inconvenience that has been caused.

*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.

Given what Drafty has previously told the Financial Ombudsman Service, it is likely, that even after carrying out the above redress an outstanding balance will remain due. Mr B has given the Financial Ombudsman some details of his health and the types of medication he is needing to take. I do hope that Mr B's health is improving. But given this, I'd remind Drafty of its regulatory obligation to treat him fairly and with forbearance.

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 23 March 2023.

Robert Walker
Ombudsman