

The complaint

Miss O complains Gain Credit LLC trading as Drafty (Drafty) gave her a line of credit she couldn't afford to repay. She also says Drafty increased her credit limit without checking her financial circumstances at the time.

What happened

Miss O approached Drafty for a running credit facility on 19 July 2017. Miss O was given a facility with a £300 credit limit. The limit was incrementally increased on three occasions until Miss O's limit reached £1,800 in November 2018. Drafty has confirmed the facility still had an outstanding balance by November 2022.

Miss O was given a running credit account where she could either request funds up to her agreed credit limit in one go or could take multiple drawdowns up to the limit. She was also able to borrow further up to the credit limit, as and when she repaid what she owed. To be clear, Miss O was *not* given a payday loan.

In Drafty's final response letter it explained why it wasn't going to uphold Miss O's complaint because it had carried out proportionate checks. But it did offer to arrange a repayment plan for Miss O – if she needed one. Unhappy with this outcome, Miss O referred the complaint to the Financial Ombudsman.

One of our adjudicators looked at Miss O's complaint. She thought the checks Drafty carried out before granting this facility were proportionate. The checks showed Drafty Miss O was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Miss O's credit agreement. This was calculated on the full £300 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 Miss O with a credit facility, it also had an obligation to monitor Miss O's ongoing use of the facility. She thought by 16 October 2018 when Miss O's credit limit was increased to £1,650 Drafty ought to have carried out further checks to ensure that the limit and the facility remained affordable for Miss O. This was because Miss O's limit was now five times that Miss O initially started with.

The adjudicator had a copy of Miss O's credit file which contained details of outstanding credit at the time the limit increased occurred. And had Drafty considered this it ought to have concluded that Miss O was having financial difficulties. This was because at the time Miss O had recently borrowed around £7,000 from other lenders in a short period of time and had at least five outstanding short-term loans which needed to be repaid.

Overall, given the usage and what extra checks would've likely shown, Drafty ought to have realised that the facility had become unsustainable for her. Knowing this, in the adjudicator's view Drafty should've stepped in and Drafty should've frozen the interest on the facility.

In order to put things right, the adjudicator recommended all interest, fees and charged paid by Miss O from 16 October 2018 should be refunded, along with additional simple interest of

8%. She also said any adverse information recorded on Miss O's credit file from the uphold date should be removed from her credit file.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time (16 October 2018) 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 refund (with tax taken off) of £2,821.17 – it also agreed to remove any adverse information from Miss O's credit file.

However, Drafty didn't agree to refund all of the interest fees and charges applied from 16 October 2018. It said this was because:

"... your decision implies that any draws granted after 16th October 2018 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 Miss O and she accepted it, and the adjudicator closed the complaint. However, after a week after the complaint closed, Drafty contacted the Financial Ombudsman Service to explain why the offer it made in response to the adjudicator's assessment was incomplete. Drafty explained:

"... we would like to confirm that we agree to refund the interest and charges paid towards all the drawdowns on the account [number removed] from October 16, 2018, amounting to 2821.17 GBP [2452.94 GBP for Interest she paid and 460.21 GBP for 8% annual interest on the interest paid net of 20% mandatory tax withholding (amounts to 91.98 GBP) per HMRC regulation]."

Furthermore, we will remove any adverse information in reference to the above-mentioned account from October 16, 2018 from Miss O [full name removed] credit file.

We can see that there is an outstanding balance of £1036.48 with us. When we subtract this from the amount we're offering to pay, this results in a final refund of £1784.69."

Drafty asked the Financial Ombudsman to put this new offer to Miss O. The adjudicator explained to Miss O why Drafty had made a new offer and why she thought it was fair and reasonable for it to use the refund to offset against the outstanding balance that was owed.

Miss O didn't accept the offer because she didn't think the figures provided by Drafty matched her own calculations. Miss O provided further details of her own calculations. Following further enquires with Drafty, it provided a breakdown of its refund offer and it also explained that in November 2022 it had passed Miss O's debt to a third-party collection agency.

The adjudicator then contacted Miss O with details of her complaint, the offer that Drafty was making and why in her view, the amount Drafty wanted to use to offset the outstanding balance was correct. Taking Drafty's offer, 8% simple interest, then making deductions for tax and the outstanding balance it was due to pay Miss O £1,784.69. But the adjudicator made it clear that this offer wasn't in line with what she had recommended in her original assessment.

Miss O didn't accept the offer and instead asked for the complaint to be passed to an ombudsman. Therefore, as no agreement has been reached, the case has been passed to me for a 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, Miss O 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 Miss O would be able to both service and then repay her facility within a reasonable period of time. Drafty also needed to monitor Miss O's repayment record for any sign that she 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 – 16 October 2018. And while, Miss O rejected the second, settlement offer by Drafty (to include using the refund to pay the outstanding balance), she didn't and hasn't appeared to 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 16 October 2018. 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 Miss O's complaint including whether it ought to offset the outstanding balance.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Miss O while explaining why I agree with the adjudicator's conclusions that all the interest charged after the 16 October 2018 needs to be refunded.

Drafty has accepted, that the facility had become unsustainable for Miss O by October 2018. So, I don't think that I need to speculate here about the actions Drafty may or may not have taken had it stepped in at this time to provide assistance to Miss O. 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.

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.

I don't think that Drafty continuing to allow interest to be charged on Miss O's outstanding balance, in circumstances where this increased the chances of her 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 lent and appeared affordable for Miss O at the time it was lent, once the point had been reached where Drafty ought to have carried out further checks before increasing Miss O's credit limit.

These further checks would've shown it that Miss O was already overextended through at least 5 payday loans and 2 high cost credit loans and had in the months leading up to the credit limit increase in October 2018 already borrowed a significant sum of money. This is information Drafty would've had to hand had it carried out what I consider to be a proportionate check.

In my view, these checks would've shown it that not only was the new proposed new credit was unaffordable but actually the whole facility was unsustainable, it ought to have exercised forbearance to allow Miss O to repay what she owed. In these circumstances, it isn't, in my view, fair and reasonable for Drafty to have continued charging interest on this balance from 16 October 2018 onwards.

Therefore, given what Drafty said in response to the adjudicator's assessment, that the facility was unsustainable by 16 October 2018 as well as thinking about what I've seen in Miss O's credit file had further checks been carried out. It therefore follows that it isn't just the new credit limit or the new drawdowns that Miss O couldn't afford. She also couldn't afford to repay what she 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 Miss O.

Putting things right

I've thought about the calculations provided by Miss O and Drafty. But I'm persuaded, the spreadsheet provided by Drafty is an accurate reflection of the total amount Miss O has borrowed, the total amount of interest charged and the total – to date of Miss O's repayments.

Therefore, as things stand now, and before any redress is taken into account, I'm satisfied that there is an outstanding balance that needs to be repaid.

I also don't think, given that Drafty will need to pay compensation to Miss O that it uses what it needs from any refund to offset any principal balance that is outstanding. This is a well-established approach the Financial Ombudsman follows and so I don't think it is unreasonable for Drafty to recover the outstanding balance.

If Drafty has sold the outstanding debt it should buy it back if Drafty is able to and then take the following steps. If Drafty is unable to buy the debt back it should liaise with the new debt owner to achieve the results outlined below.

- Remove all unpaid, interest fees and charges levied on the credit facility from 18 October 2018.
- Treat any repayments Miss O has made on the facility since 18 October 2018 as though they were payments towards the outstanding balance.
- If at any point Miss O would've been in credit on the facility, considering the above, then Drafty should refund these overpayments with 8% simple interest* calculated from the day the overpayment became due to the date of settlement.
- If there is still an outstanding principal balance due, then Drafty can use any refund calculated above to repay this. If after doing this a balance remains due then Drafty ought to try and agree an affordable repayment plan with Miss O.
- remove any negative information about the facility from Miss O's credit file from 16 October 2018 – as Drafty has already agreed to do.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Miss O a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons given above I partly uphold Miss O's complaint.

Gain Credit LLC trading as Drafty should put things right for Miss O as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 29 March 2023.

Robert Walker
Ombudsman