

The complaint

Ms G says Gain Credit LLC (trading as Drafty) had a running credit facility that was unaffordable for her. She also says, when she told Drafty that she had a negative disposable income each month it wouldn't freeze the interest on the facility unless she entered into a repayment plan. She feels she has been treated unfairly.

What happened

Ms G approached Drafty for a running credit facility in September 2021 and she was given a facility with a £830 credit limit. In March 2022, this limit was increased to £1,130.

Ms G has had some problems repaying the outstanding balance and Drafty has explained the account has been passed to a third-party collection agency, although ownership of the debt remains with it.

Ms G made a complaint to Drafty on 8 May 2022 about irresponsible lending, with Drafty issuing its final response on the matter on 25 May 2022. Drafty didn't uphold the complaint as it deemed that it had carried out proportionate affordability checks both when the facility was granted and while Ms G held the facility.

Unhappy with this response, Ms G referred the matter to the Financial Ombudsman Service. One of our adjudicators looked at Ms G's complaint and she partly upheld it. Firstly, she thought the checks Drafty carried out before the facility was proportionate and the income, expenditure and credit check data showed the facility to be affordable.

Secondly, the adjudicator considered whether it was reasonable for Drafty to have increased the credit limit in March 2022. The adjudicator reviewed how Ms G had used the facility and there were no signs of likely financial difficulties – as Ms G had paid more than the minimum monthly repayment due. So, the adjudicator didn't uphold Ms G's complaint about the approval of the facility or the credit limit increase.

However, once Drafty knew about Ms G's financial difficulties, the adjudicator concluded that it was reasonable of it to offer her a repayment plan. On 29 June 2022, Ms G completed an income and expenditure form, which showed, she had no disposable income each month. However, despite knowing Ms G couldn't afford the repayments Drafty said it couldn't stop the interest, fees or charges from being added until a suitable repayment plan was agreed.

Given industry regulations, the adjudicator thought, at this time, it would've been reasonable and proportionate to have frozen the interest on the account. So, she concluded, that Drafty hadn't treated Ms G fairly or with forbearance.

In order to put things right, she recommended Drafty remove from the outstanding balance any interest charged after 29 June 2022 and pay Ms G £150 compensation for the distress and inconvenience caused.

Ms G appears to have agreed with the proposed outcome by the adjudicator.

Drafty didn't fully agree, and I've summarised its response below;

- A repayment plan wasn't put in place because it was clear one wasn't affordable to Ms G and could've put her into further financial difficulties.
- It was reasonable for Drafty to have accepted the information provided to it by Ms G as part of her income and expenditure information when she requested a repayment plan.
- Drafty sign-posted her to seek third party debt advice.
- Interest can only be stopped on the facility if an alternate payment arrangement is made.
- The facility would've terminated once a certain level of arrears were met. Drafty says on 10 July 2022, it sent a default notice to Ms G and the facility was terminated on 30 July 2022. After this date, no further interest was charged.
- Had Drafty sent a default notice on or before 29 June 2022, then Ms G would've been treated differently to other customers. The same could be said, if the account was terminated before 30 July 2022.

However, as a matter of "*discretion*" Drafty offered to remove the interest added to the facility from 29 June 2022 until the account was defaulted on 30 July 2022. Drafty said, this will reduce Ms G's outstanding balance by £55.80. However, Drafty declined to make the distress and inconvenience payment because "*We did precisely what we should have done in this case.*"

The offer was put to Ms G and the adjudicator explained the refund Drafty had offered. She also explained the information about the default, and why she thought, given what Drafty knew it wasn't unreasonable for the default to have been applied.

Ms G didn't accept the offer and asked for the case to be escalated. She also explained she'd recently obtained a new loan from Drafty's parent company. But I say no more about that here as this complaint is solely to do with Drafty's actions or inactions.

As no agreement could be reached the complaint has been passed to me to issue 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.

In practice, before any lending was advanced, Drafty 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.

Ms G was given an open-ended credit facility. Overall, I think that this means the checks Drafty carried out had to provide enough for it to be able to understand whether Ms G would be able to not only service but also repay her facility within a reasonable period of time.

Drafty also needed to monitor Ms G's repayment record for any signs that she may have been experiencing financial difficulties.

But for completeness, and in summary, I do agree given the income and expenditure information Ms G provided when she applied for the facility along with the credit check results which Drafty obtained, it could've been confident she'd be able to afford the repayments that she was committed to making in order to repay the facility within a reasonable period of time.

I also don't think Drafty was wrong to have increased the credit limit in March 2022, as there were no signs of financial difficulties. So, I do not uphold Ms G's complaint about the approval of the facility as well or the credit limit increase.

I've also considered what Drafty says about why it doesn't consider it made an error after finding out that Ms G didn't have any disposable income to either afford her monthly repayments or enough for her to be put on a payment plan that would've stopped further interest fees and charges.

However, Drafty has now offered to refund any extra interest added to the balance from 29 June 2022, I therefore, no longer need to make a formal finding on this, but I have included, at the end of the decision, the offer in the 'putting things right section'.

Instead, this decision will focus on whether Drafty should or should not – given the circumstances of the complaint, make a payment for the distress and inconvenience caused to Ms G.

Below, I've provided a timeline of key events in this case, which is useful in understanding what has happened.

On 29 May, Ms G emailed Drafty asking to pay £50 per month towards her balance – presumably as part of an agreed repayment plan. On 30 May 2022, Drafty responded outlining that before it would agree a repayment plan it would need to see Ms G's income and expenditure details.

On 1 June 2022, Ms G emailed asking Drafty to stop the interest on the account. Clearly, from this email, Ms G was aware of the situation with regards to the interest and was trying her best to prevent the account balance from increasing any further.

Drafty responded on 7 June 2022, reminded her that she needed to return the income and expenditure information to set up a payment arrangement. At this point, I agree that Drafty had treated Ms G fairly and with forbearance.

On 29 June 2022, Ms G must have spoken to someone on the phone, because it is referenced in an email on the same day. Ms G said:

I have called up and done my income and expenditure. The woman on the phone said they were unable to freeze the interest on the account even though I am at -£5 on my income and expenditure and I am in financial hardship so this seems very irresponsible. To be seen to be placing more debt on someone who is already showing that I am getting snowed under isn't right. Can I request any information you hold on my account to be sent to myself.

Drafty responded on 4 July 2022, outlining why it couldn't freeze the account, but it did signpost Ms G to a third-party money advice service. Which isn't necessarily an incorrect course of action to take – but it still left Ms G knowing she had a sizeable balance with

Drafty, and that balance was continuing to increase even though she knew she had no money to service it.

I do think it's unlikely, at this point that Drafty did all it could've done. After all, it knew Ms G was in financial difficulties following a review of her income and expenditure information, and its response to that, was it couldn't freeze the interest because a plan couldn't be set up. There were of course other options available to it.

Drafty then defaulted the account from 30 July 2022, which meant Ms G's balance wouldn't increase any further. However, I have had to consider, whether because of what happened had Ms G been caused distress and inconvenience after in effect being told that there wasn't anything Drafty could do to assist her at the time to prevent the balance from increasing, given what it knew of her situation.

I do think it's debatable, at this time, whether Drafty was really treating Ms G fairly. But, as I've said above, I don't need to make a finding about this because although Drafty has explained why it doesn't consider an error has been made, none the less it has offered redress in line with what the adjudicator recommended.

Clearly, Ms G knew that she was having financial difficulties – because she raised a complaint. She was also clear, at least from the start of June 2022 that she wanted the interest to be stopped on the facility. Presumably, because she didn't want to get any further into debt with Drafty than what she already was. Indeed, this was reinforced by the contents of the above email.

She gave Drafty the income and expenditure information as requested, and the response to this was that it couldn't stop the interest. So, Ms G, knew she was in difficulties, asked for help and assistance and was in effect told, that the balance will carry on going up. I have no doubt, after being told this, that she would've likely been worried about her ever increasing balance that she owed Drafty and compounded her situation.

I accept Drafty has provided a full explanation as to why it took the steps it did, but ultimately, none of this was conveyed to Ms G at the time, and she clearly has been left worried about her balance and why the interest couldn't be stopped.

So, by the end of June 2022, Ms G has approached Drafty for assistance to limit her indebtedness and to stop the debt from growing and instead, Drafty said she could seek independent help and explained why it couldn't freeze the account at this time.

The adjudicator suggested a payment of £150 in recognition of the distress and I consider the suggested sum to be fair and reasonable. So, I will be directing Drafty to make that payment to Ms G.

Putting things right

In order to put things right, Drafty should carry out the below:

- As it has already agreed to do, Drafty should reduce Ms G's outstanding balance by removing the interest that was added after 29 June 2022. Drafty says this amount is £55.80.
- In the individual circumstance of the case, pay Ms G directly £150 for the distress and inconvenience that was caused.

I would remind both parties that an outstanding balance remains due and Drafty has an obligation to treat Ms G fairly and with forbearance moving forward.

My final decision

For the reasons I've explained above, I'm upholding Ms G's complaint in part.

Gain Credit LLC should put things right for Ms G as directed

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 24 February 2023.

Robert Walker
Ombudsman