

## The complaint

Mr S, through his representative, complains that Gain Credit LLC, trading as Drafty, lent to him, and increased his credit limit, 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 requires. The credit was unsecured and had no fixed duration.

Briefly, Mr S applied for a credit facility of £1,200 in July 2018. Drafty approved a credit facility of £790. The limit was increased in January 2020 to £900 and it has remained at that. Mr S had declared, when the facility was approved that his monthly income for his full time employment was £2,025 and his monthly expenditure was £1,689. 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 S. On the assumption that Mr S drew down the full £790 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 £1,062.43. This would have equated to about £88 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 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 Mr S' monthly salary date. Other ways of payment were made available.

Mr S, through his representative, complained to Drafty in October 2021 and received a final response letter (FRL) in November 2021 in which it said that it was content to put things right for Mr S from 22 December 2020. The representative wrote back to ask why it had upheld the complaint from that date and the answer from Drafty was that Mr S' use of the account in the months up to that point demonstrated to it that:

*'...there is a possibility that allowing the continued use of the line beyond December 22, 2020 may not have been sustainable in the long term. So, we are partially agreeing to your complaint.*

*To put things right, we'd like to take the following steps. We will:*

- Refund all interest and fees incurred due to redraws after December 22, 2020*
- Pay an extra 8% simple interest on this amount. 20% of this will have to be withheld for tax, as Her Majesty's Revenue and Customs (HMRC) tell us we must do this*
- Adjust this refund amount against any outstanding balances you have with us*
- Give you a certificate of the tax we have withheld (for use in any discussions with HMRC)*

- *Contact credit reference agencies to remove any negative marks on your file as a result of using your credit line after December 22, 2020.'*

Mr S' representative asked for more information about the uphold date being chosen as 22 December 2020 and Drafty replied to add some detail.

Despite that response Mr S' representative referred the complaint to the Financial Ombudsman Service indicating to us that Drafty had not upheld Mr S' complaint. Which was not strictly correct.

In the meantime, Drafty had suspended the account on 5 October 2021 – soon after Mr S had complained to it – and recently we have been told that Mr S paid the account down, settled and closed it on 15 June 2022.

In June 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 agreed with the uphold date of 22 December 2020.

The outstanding issue is an unresolved detail surrounding the redress and that is the reason the complaint has been passed to me.

Mr S disagreed with the 22 December 2020 uphold date – as his representative rejected that when it referred the complaint to us on his behalf. And since then, I've not seen anything to suggest that Mr S accepted our adjudicator's view which was a similar outcome to that of Drafty.

Drafty has not agreed with our adjudicator's redress calculations and so the whole complaint remains unresolved and I have considered it all.

### **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 have considered the law, any relevant regulatory rules and good industry practice at the time the credit was offered.

Before lending money to a consumer or approving a credit limit a lender should take proportionate steps to understand whether the consumer 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 Mr S that upon first approaching Drafty in July 2018 it would not be expected, and would not be proportionate, for Drafty to carry out a full and comprehensive financial review. Mr 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 Mr S had enough disposable income to service a credit facility with a limit of £790. However I will say that its noticeable Mr S applied for a larger credit limit but having carried out its checks, the limit set by Drafty was £790, lower than Mr S had wanted. So I consider that a responsible approach after carrying out the right checks before approving the facility for Mr S.

Having looked at all that Mr 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 Mr 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 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.

Mr S had provided us with a copy of his credit file entries and some of those cover the period around December 2020, and our adjudicator had reviewed them and could see that he was having difficulties managing his money.

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*

There were several actions Drafty could have taken in December 2020. 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 Mr S' repayment record suggested he was already struggling to repay the amount owed, I don't think that Drafty continuing to allow interest to be charged on Mr 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 Mr S at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mr S to repay what was owed, then it ought to have ceased charging interest on this balance. That date it has said was from 22 December 2020 onwards. And I agree.

I realise Drafty has said it does not agree but that's my decision.

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

#### **Putting things right**

My understanding that the current state of the account is that it has been paid off. So Drafty needs to do as follows:

- Re-work Mr S' credit facility balance so that all interest, fees and charges applied to it from 22 December 2020 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr S to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr S' credit file, it should backdate this to 22 December 2020.

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 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 Mr S' credit file.

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

### **My final decision**

My final decision is that I uphold Mr S' complaint in part and I direct that Gain Credit LLC, trading as Drafty, should put things right for Mr S as outlined in my decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 March 2023.

Rachael Williams  
**Ombudsman**