

The complaint

Mr K complains that Gain Credit LLC, trading as Drafty, approved a credit facility for him 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 required. The credit was unsecured and had no fixed duration.

Briefly, Drafty approved a credit facility for Mr K of £500 in May 2021, and it remained at that. Mr K had declared, when the facility was approved that his monthly income for his full time employment was £1,360 and his monthly expenditure was £650. 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 K. On the assumption that Mr K 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 £677.94. This would have equated to about £56.50 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 K'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 K's monthly salary date. Other ways of payment were made available. Using information I have from Drafty, the outstanding balance in October 2022 was just over £345 and in January 2023 it was just over £239. That may have reduced further since then.

Mr K complained to Drafty in August 2022 and received a final response letter (FRL) in September 2022 in which it said that it was content to put things right for Mr K from 23 February 2022. Drafty said:

'... we can see there is a possibility that allowing the continued use of the line beyond February 23, 2022 may not have been sustainable in the long term.'

With the refund Drafty was proposing, plus the interest less the tax and after offsetting the refund with Mr K's outstanding balance, then Mr K would have been left with around £255 to repay to Drafty.

Mr K referred his complaint to the Financial Ombudsman Service and one of our adjudicators looked at it.

She agreed with Drafty that the initial approval of the facility had been fair and reasonable and that when monitoring the account, it ought to have realised that Mr K was having difficulties from 23 February 2022.

But where Drafty and our adjudicator's opinions diverged was the redress calculation which I address in the main part of the decision.

The view was sent to both parties. Mr K acknowledged it and added no further comments so it seems he agreed with that part of the adjudicator's view where the initial approval of the facility in May 2021 was fine.

Then when Drafty's disagreement with the adjudicator's redress calculations was communicated to Mr K he asked that an ombudsman review the complaint.

So, the partially unresolved complaint was passed to me to decide.

The outstanding issue is an unresolved detail surrounding the redress 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.

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

Before lending money to Mr K or approving a credit limit a lender should take proportionate steps to understand whether Mr K will be able to repay what he was borrowing in a sustainable manner without it adversely impacting on his 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.

Mr K does not seem to be challenging our adjudicator's view about the initial approval and his reaction is focussed on the disagreement with the Drafty offer following our adjudicator's view and the application of interest. So that is what I have focussed on.

The redress calculations issue

To summarise, using our adjudicator's words, the issue is:

'The lender believes the original balance up until 22 February 2022 was fair to lend. Therefore, they believe it is fair to just repay the interest on any future drawdowns from this point.'

In my opinion letter... I explained the reasons why I think Drafty should have repaid all of your interest from 22 February 2022, and my opinion has not changed.'

There were several actions Drafty could have taken in February 2022. 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 K'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 K'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 K at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mr K to repay what was

owed, then it ought to have ceased charging interest on this balance. That date it has said was from 23 February 2022 onwards. And I agree.

I have reviewed some bank account statements sent to us by Mr K covering two months leading up to 23 February 2022 – December 2021 and January 2022.

I've done that to satisfy myself as to what Drafty would have found if it had done some more investigation into Mr K's financial situation in February 2022. My research shows that Mr K was earning about £340 a week and in December 2021 he was paying £305 a month to a debt management company.

Mr K appeared to have another high cost credit facility attached to his bank account. And I say that because I can see the credits from that other lender followed swiftly by the payment to it, or the other way around. Each time he paid it off he then took another amount about the same amount as that which he'd just repaid.

In January 2022 Mr K was doing this with the other lender as well as Drafty every week.

Really, Mr K was having to borrow constantly either from the other lender or from Drafty to repay one or the other. This was a clear sign of unsustainability and so if Drafty had done the research I would have expected it to have done in February 2022 then I think it would have realised that Mr K was not going to be able to repay the facility without being in difficulties.

So, it ought to have suspended the account and it ought to repay all the interest on the account from that date. That would allow Mr K to repay the capital he owed.

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

Putting things right

Mr K may still owe Drafty some money. If the debt is still with Drafty then it can do as follows. If the debt has been sold then it needs to bring it back in-house and do as follows. Drafty needs to do as follows:

- Re-work Mr K's credit facility balance so that all interest, fees and charges applied to it from 23 February 2022 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr K to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr K's credit file, it should backdate this to 23 February 2022

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 K, 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 K's credit file.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Mr K 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 K's complaint in part and I direct that Gain Credit LLC trading as Drafty does as I have outlined in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 July 2023.

Rachael Williams
Ombudsman