

The complaint

Mr W complains that Gain Credit LLC, trading as Drafty, approved for him lines of credit he could not afford.

What happened

Drafty offered its customers 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.

Drafty's records show that in February 2019 Mr W applied for a credit facility of £1,000. Mr W declared a monthly income from a full time job of £1,560 with outgoings of £725. Drafty's records show it calculated that using those declared figures, Mr W's disposable income was £835.

The credit agreement set out the total cost of the credit based on some assumptions to illustrate the likely cost to Mr W (clause 5). On the assumption that Mr W drew down the full £1,000 on the first day and then repaid it over 12 months in equal instalments then the total amount payable would have been just under £1,363.15. This would have equated to repayments of just under £114 a month.

The arrangement did include a 'Billing Cycle' which meant that a statement was produced ten days before Mr W's salary payment date, and it gave the minimum payment required for that cycle. It had to be the higher of certain calculations 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 W's monthly salary date. Other ways of payment were made available.

Mr W complained to Drafty in April 2021. His original letter of complaint has been sent to us. In that letter Mr W explained that he ought never to have been given the original £1,000 line of credit in March 2019. And after he had borrowed from another lender to pay it off in early 2020, Drafty ought to have done more checking about his financial circumstances and realised that he'd had trouble managing the account and then ought to have suspended or closed his account.

Mr W says that Drafty was wrong not to do this and instead allowed the line of credit to continue but at a reduced credit limit of £750. Since drawing that full £750 he's only made the minimum payments into the account and drawn down funds when available.

Mr W had used an on-line resolution service to commence the complaint and then used that on-line portal to refer his complaint to the Financial Ombudsman Service in June 2021.

In that letter he has told the Financial Ombudsman that he wants a resolution which is for Drafty *'...to calculate what interest/charges i have incurred due to your irresponsible lending decision and reimburse this to me (minus the balance i currently owe)'*

Drafty tells us that after June 2021 he stopped repaying the account and so it was in default from September 2021 and a Notice of Termination was sent to Mr W on 25 September 2021. The account was transferred to a third party for collections from 22 October 2021. The account remains with that third party, but my understanding is that Drafty retains ownership of the debt.

On Mr W's complaint form when referring his complaint to us, he reiterated most of the above and added

'I have an outstanding balance with Drafty which I am paying the minimum amount back each month, by my rough calculation about 90% is interest, at this current rate I believe it will take me 6 years to pay of [sic] in which time I would of payed [sic] over 500% of the original 'credit'.'

Mr W received more than one final response letter from Drafty – some of which likely were follow up letters in the FRL format. A significant change occurred with the issue of the FRL dated 23 November 2021 in which Drafty had altered its decision on the complaint. It explained to Mr W that it was going to uphold his complaint in part. It set out some of the details it had received from Mr W at the time of the initial application and indicated that it considered the initial approval of the credit facility had been correct.

However, Drafty went on to conclude from information Mr W gave it during the life of the facility that there was a possibility that

'continued use of the line beyond August 16,2020 may not have been sustainable in the long term.'

Drafty put forward its resolution redress offer made then which I do not set out here as circumstances changed.

One of our adjudicators considered the complaint and thought that the initial approval of the credit facility was fine. Drafty's review of the complaint had led to it altering its view and partially upholding from 16 August 2020. However, our adjudicator considered that the uphold should be from 11 December 2019.

Our adjudicator thought that Drafty ought to have withdrawn Mr W's credit facility by 11 December 2019 and frozen the interest on his outstanding balance at that point as well. Our adjudicator gave details as to how she felt that the redress ought to be calculated. Drafty agreed to the uphold date. It said:

'While we are aligned with your view about deciding the upheld date as 11th December 2019, we take a different view on the way you have requested the calculations to be done.'

Its calculations, followed by the offset of the debt owed by Mr W to Drafty meant that the outstanding debt was extinguished and Mr W was to receive a refund of £22.68.

Mr W has said that he agreed with the calculation formula set out by our adjudicator and did not accept the calculations set out by Drafty. So that seems Mr W accepts the overall outcome and by that I mean it seems that Mr W accepts our adjudicator's view that the credit facility being approved initially was the right lending decision by Drafty. But that the facility credit limit change later was not right.

That part of the complaint which remained unresolved – the redress calculations –

was passed to me to decide. And in doing that review of the complaint I chose to issue a provisional decision as I had provisionally decided to alter the uphold date to 6 January 2020. That was issued on 15 February 2023 with a reply date of 1 March 2023. Mr W has replied to agree and Drafty has responded with an acceptance of the provisional decision and new calculations. My Provisional decision is set out here and in smaller type to differentiate it.

What I've provisionally 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 reviewed that part relating to the redress calculations formula. In doing that I have provisionally decided to alter the uphold date to 6 January 2020. And I say that because the original premise for the uphold remains the same – that Drafty ought not to have allowed the facility to continue after December 2019.

I have reviewed the financial circumstances Mr W has shown us through his credit file and some limited number of bank account statements. And I have seen that something significant occurred around that time such that Mr W's credit file recorded a series of accounts being more than three months in arrears and accounts which had been defaulted. These included credit cards and payday loans. Our adjudicator has already used this evidence to persuade Drafty to accept that line of argument. And I endorse it. Drafty was concerned enough to drop the credit limit to £750 and this ought to have prompted further checks which would've highlighted the poor financial state Mr W had found himself in around that time. And as I demonstrate below I think that date was early January 2020 and not 11 December 2019. I think the fairest and correct uphold date is 6 January 2020 and I explain here.

I endorse the merits outcome which all parties seem to have agreed on subject to this clarification from me – hence me deciding to issue a provisional decision. The Statements of Account for Mr W's credit facility show that his balance on 11 November 2019 was £1,111.51 which was made up of £1,055.71 from the previous month, plus interest charged of £55.80. But as Mr W had not paid the minimum payment the account was suspended. The credit limit was £1,000 still but Mr W had no credit left and the new minimum payment of £131.51 was due on 21 November 2019.

The next statement of account dated 10 December 2019 shows that Mr W failed to make that minimum payment before 21 November 2019 and the new minimum amount to pay before 20 December 2019 was £183.71. So, the new overall debt total was £1,163.71. Mr W paid that off and the records I have - duplicated here (the pound signs are deliberately absent) – show me that was on 6 January 2020. The right hand column details the drawdowns Mr W made and the one to the left of that details the payments made by Mr W to the account.

Wed, 29 Jan 2020 14:41:28 GMT	Additional Draw	0	100
Mon, 06 Jan 2020 19:35:03 GMT	Online	1212.31	0
Mon, 23 Sep 2019 13:12:53 GMT	Additional Draw	0	20
Fri, 20 Sep 2019 07:03:31 GMT	Automated Payment System	73.75	0

Mr W's total amount he paid off was a further £48.60 more = £1,212.31. So, it seems that further interest had been added between the due date of 20 December 2019 and the 6 January 2020.

After that Mr W's balance was zero and the next statement which covered the period 11 December 2019 to 11 January 2020 showed that his balance was zero, his credit limit was £750 and his account was no longer suspended.

So, one of the reasons for this provisional decision is to correct what I think may be a point of detail in our adjudicator's view where she said:

Mr W missed his monthly payment for a second time in November 2019 and the credit facility remained suspended. However, it appears that Mr W went on to repay his outstanding balance in full between 22 November and 10 December 2019.

However, I have seen that the closing balance on 10 December 2019 was £1,163.71. And the account was taken to zero between 11 December 2019 and 11 January 2020 which, from the duplicated payment records I've included above, seems to have been done on 6 January 2020.

The Drafty statements date showing this and the new credit limit of £750 was on the Statement of Account which was dated 11 January 2020. I doubt that Drafty would have reduced the credit limit and un-suspended the account until 6 January 2020 when the balance was paid off. So, I think that the uphold date ought to be 6 January 2020.

The significance is that whichever way the redress paragraphs are worded, Mr W did not owe anything from 6 January 2020 and I think it's fair and reasonable that he repaid what he owed on the initial credit limit and use of the account which was done on 6 January 2020. After that there were new drawdowns which ought not to have occurred as the account ought to have been suspended permanently from the new credit limit date.

So, I have set out the redress paragraphs below which I consider to be fair and reasonable in Mr W's case.

The repayment issue as part of Mr W's complaint

As I outlined earlier, Mr W included this in his complaint form.

'I have an outstanding balance with Drafty which I am paying the minimum amount back each month, by my rough calculation about 90% is interest, at this current rate I believe it will take me 6 years to pay of [sic] in which time I would of payed [sic] over 500% of the original 'credit'.'

As the redress set out below extinguishes what he owes to Drafty – or is very likely to do that – then I consider this part of Mr W's complaint irrelevant going forward. And so, I say no more about it.

This is the end of that duplicated provisional 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.

As I indicated earlier, Mr W had some queries with our adjudicator upon receipt of the provisional decision. But Mr W has accepted the outcome.

Drafty has responded by agreeing to the provisional decision and has submitted new calculations. I am grateful for its positive response.

So, I have issued my final decision today and as both parties agreed to my provisional findings and the redress calculations then I have no reason to depart from the provisional findings.

So, for the same reasons given in my provisional decision, I uphold Mr W's complaint in part.

Putting things right

My understanding is that the account was passed to a third party collector but the loan ownership remains with Drafty. So, it should bring that debt back in-house, remove any of the third party charges allocated to the account and not pass them on to Mr W.

This is subject to the figures being re-calculated to the decision acceptance date, assuming Mr W accepts the decision.

- Re-work Mr W's credit facility balance so that all interest, fees and charges applied to it from 6 January 2020 onwards are removed and payments made to the account are accounted for to reduce the balance

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr W to arrange a suitable repayment plan for this.

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 W, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement.

Drafty had confirmed that it would be willing to remove any adverse payment information recorded about the credit facility from Mr W's credit file from the 11 December 2019 onwards. But I now make that 6 January 2020. Drafty has confirmed this too.

*HM Revenue & Customs requires Drafty to take off tax from this interest. Drafty must give Mr W a certificate showing how much tax it's taken off if they ask for one.

My final decision

My final decision is that I uphold Mr W's complaint in part and I direct that Gain Credit LLC does as I have outlined above.

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

Rachael Williams
Ombudsman