

The complaint

Mr B complains that Gain Credit LLC, trading as Drafty, lent to him and then raised the credit limit when he could not afford it.

What happened

Briefly, Mr B applied for a credit facility of £100 in April 2018. Drafty approved a credit facility of £200 on 2 May 2018. In July 2018 the credit limit was raised to £600 and remained at that. Mr B complained to Drafty in 2021 and received a final response letter (FRL) which Mr B did not agree with and so he referred her complaint to the Financial Ombudsman Service. A second FRL was received by Mr B dated 23 November 2021 in which it explained it had altered its view. Drafty said that having reviewed the account and the way Mr B had been using it, then that may not have been sustainable in the long term and so it was content to put things right for Mr B from 11 December 2019.

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. But that from 11 July 2019 Drafty ought to have ceased allowing Mr B from using the facility and offered Mr B forbearance.

Mr B accepted our adjudicator's view.

Drafty agreed to this uphold date stipulated by our adjudicator and said it would refund the interest and charges paid towards all the drawdowns from 11th July 2019, amounting to £525.39 (£488.51 for interest paid, £46.10 for 8% annual interest, minus £9.22 for 20% mandatory tax withholding in line with HMRC regulations). Additionally, Drafty said it would remove any adverse payment information recorded on Mr B's credit file from 11th July 2019.

These figures are July 2022 calculations and so are out of date. The fact that in July 2022 Drafty could make these assertions and calculations suggests to me that it still owns and/or has some level control over the debt.

But Drafty made the point that any amount given to Mr B before this date was affordable and after this date was unaffordable so Drafty was well within its rights to collect the principal as well as interest on any drawdowns given prior to the uphold date.

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

I will not be reviewing the merits of the complaint as that has been resolved, effectively, as both parties have agreed to the uphold date of 11 July 2019.

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 the merits part of the Drafty account complaint has been agreed between the parties, then I am looking only at the redress calculations formula.

The rationale for our adjudicator's uphold – as accepted by Drafty – was that the continual repayment of the minimum payments each month ought to have prompted it to have done something rather than allow that repayment pattern to continue.

Our adjudicator thought 11 July 2019 was the right date. Drafty ought to have realised that even though Mr B was generally meeting his minimum monthly repayments as scheduled, these payments were only servicing the debt and not making any inroads into the outstanding balance.

There were several actions Drafty could have taken. But seeing 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 B'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 B'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 B at the time it was lent, once the point had been reached where Drafty accepted it ought to have exercised forbearance to allow Mr B to repay what he owed, then it ought to have ceased charging interest on this total balance from 11 July 2019 onwards.

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 B.

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 B. And Drafty should do as I have set out below.

- Re-work Mr B's credit facility balance so that all interest, fees and charges applied to it from 11 July 2019 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr B to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr B's credit file, it should backdate this to 11 July 2019

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 B, 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 B's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 March 2023.

Rachael Williams
Ombudsman