

The complaint

Mr T complains Gain Credit LLC trading as Drafty (Drafty) gave him a line of credit he couldn't afford to repay.

What happened

Mr T approached Drafty for a running credit facility in September 2018. Mr T was given a facility with a £500 credit limit. Drafty increased Mr T's credit limit on two occasions taking his credit limit to £1,040 by the January 2019 statement. Drafty has confirmed that by February 2023, an outstanding balance remained due of around £1,702.63.

Mr T was given a running credit account where he could either request funds up to his agreed credit limit in one go or could take multiple drawdowns up to his limit. He was also able to borrow further, up to his credit limit, as and when he repaid what he owed. To be clear, Mr T was *not* given a payday loan.

In Drafty's final response letter (August 2022) it explained the information it gathered from Mr T before it approved the facility which showed he'd be able to afford it. However, it did accept, that the facility was likely unsustainable for Mr T from 21 August 2019. To put things right for Mr T, Drafty offered to.

- Refund all interest and fees incurred on new drawdowns from 21 August 2019.
- Pay 8% simple interest on this refund, and then take tax off of this at a rate of 20%.
- Use this refund to offset against Mr T's current outstanding balance.
- Remove any negative markers from Mr T's credit file from 21 August 2019.

Mr T didn't agree with the offer and instead referred his complaint to the Financial Ombudsman Service where one of our adjudicators looked at Mr T's complaint and, in her latest assessment, she partly upheld it.

The adjudicator thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty that Mr T was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in the credit agreement. This was calculated on the full £500 being drawn down at the outset and then being repaid over 12 months. So, she didn't think it was wrong to have initially approved the facility.

However, the adjudicator, pointed out that as Drafty had provided Mr T with a credit facility, in addition to taking reasonable steps to ensure the facility was affordable at the outset, it also had an obligation to monitor Mr T's ongoing use of the facility. And the adjudicator thought, that when Drafty increased Mr T's credit limit a second time to £1,040 than it needed to have carried out further checks. At the time the view was sent, the adjudicator believed the credit limit increase occurred in December 2018.

The adjudicator reviewed Mr T's bank statements from November and December 2018, and she concluded, that not only was the new proposed credit limit unaffordable for Mr T but Drafty would've seen – by carrying out further checks that the whole facility was unaffordable

for him. This was because, his outgoings exceeded his income, and the adjudicator could see that Mr T appeared to be taking payday loans to cover his living costs such as his rent.

Drafty didn't fully agree with the adjudicator's assessment, but it did clarify that Mr T's credit limit was increased to £1,040 on 8 January 2019. It agreed to uphold the complaint from the same point in time 8 January 2019. But it reiterated that it takes a different view on how the redress should be calculated. It thought it should only refund the interest applied to new drawdowns from this date, rather than stopping all of the interest which would've included the current outstanding balance.

At this time, Drafty explained the refund that would be owed to Mr T (after 8% simple interest and tax deductions) would be £394.95. However, as part of this Drafty didn't offer to use this to offset the balance that it had told us about only a matter of weeks before.

This offer was put to Mr T and the adjudicator explained, that if an outstanding balance remained it wouldn't be unreasonable for Drafty to use this refund to offset any outstanding balance. Later, the adjudicator clarified with Mr T her thoughts about what may happen with his credit file.

Mr T responded, saying he disagreed with Drafty's offer to put things right and instead he asked for his case to go further. As no agreement has been reached, the case has been passed to me for a final 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.

A lender 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. Any checks had to take into account a number of different things, such as how much was being lent and when what was being borrowed was due to be repaid.

As explained, Mr T was given an open-ended credit facility. So, overall, I think that this means the checks Drafty carried out had to provide enough for it to be able to understand whether Mr T would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr T's repayment record for any sign that he may have been experiencing financial difficulties.

It is worth saying here that Drafty agrees with the uphold point the adjudicator reached, as it offered some redress from this time – so when it increased Mr T's credit limit to £1,040 on 8 January 2019. And while, Mr T rejected the settlement offer by Drafty, he hasn't disagreed that this is the point where the complaint ought to be upheld.

So, it seems to me, that all parties agree the complaint about the facility should be upheld from 8 January 2019. However, what is in dispute, and therefore what this decision has

focused on, is whether the redress proposed by Drafty is fair and reasonable considering the circumstances of Mr T's complaint.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr T while explaining why I agree with the adjudicator's conclusions that all the interest charged on the facility after the 8 January 2019 needs to be refunded.

So, I don't think that I need to speculate here about the actions Drafty may or may not have taken in January 2019 when it ought to have realised Mr T couldn't afford the facility. There were a number of options which Drafty could have taken. But seeing as none of these were taken and I'm satisfied that action ought to have been taken – as it agrees. I've considered what Drafty ought to fairly and reasonably do to put things right sometime after the event. And the proposed redress is the clearest and fairest way of doing this sometime after the event.

Mr T's credit limit was proposing to have been doubled in a matter of months then it would've been reasonable for Drafty to have made further checks to ensure that Mr T could afford the limit increase. And had further checks been carried out not only would Drafty have realised the new credit limit was unaffordable for Mr T but the whole facility was as well.

I say this because at the time Mr T was serving another payday loan for £700 – which he seems to have taken out to pay his rent in December 2018. And only a couple of weeks before this, he had borrowed £200 from the same lender. To me this is a clear indicator that Mr T was having difficulties, as he was using expensive, short-term credit to cover his priority bills. On top of this, Mr T was serving a guarantor loan which was costing him almost £400 per month.

So, by the end of December 2018, Mr T owed £900 to a payday lender, already had a monthly commitment of £400 to a guarantor loan and a rent payment of £700. Clearly, with his other costs that I can see such as food, TV subscriptions, utilities and a catalogue shopping account, Mr T couldn't afford the credit limit increase. But actually he also couldn't afford to continue to service this facility in a sustainable manner.

In any event, what's most important here is that 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 unaffordable – 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.

So, I don't think that Drafty continuing to allow interest to be charged on Mr T's total balance, in circumstances where this increased the chances of him being unable to repay, when further checks would've indicated he was already struggling, is fair and reasonable in the circumstances of the complaint.

So, although, I do accept that the balance up to the uphold point was legitimately provided and appeared affordable for Mr T, once the point had been reached where Drafty accepted the facility was unaffordable, it ought to have exercised forbearance to allow Mr T to repay what he owed. In these circumstances, it isn't, in my view, fair and reasonable for Drafty to have continued charging interest on this balance from 8 January 2019 onwards.

Therefore, given what Drafty said in response to the adjudicator's assessment, that it agrees with the point that the complaint has been upheld, it therefore follows that it isn't just the new drawdowns that Mr T couldn't afford. He also couldn't afford to repay what he already owed – so actions in failing to offer help to repay this as well as offering further drawdowns need to be reflected in what it does to put things right going forward.

Thinking about this, and the reasons why Drafty has already agreed to uphold the complaint at the point the adjudicator recommended, I've outlined below what Drafty needs to do in order to put things right for Mr T.

Putting things right

In February 2023, Drafty confirmed an outstanding balance remained due, so this redress is based on there still being a balance still outstanding.

If Drafty has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Drafty isn't able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below. In order to put things right Drafty should do the following:

- Re-work Mr T's credit facility balance so that all interest, fees and charges applied from 8 January 2019 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr T to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr T's credit file, it should backdate this to January 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 T, 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 T's credit file.*

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

My final decision

For the reasons given above I uphold Mr T's complaint in part.

Gain Credit LLC trading as Drafty should put things right for Mr T as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 July 2023.

Robert Walker
Ombudsman