

The complaint

Mr M says Gain Credit LLC (trading as Drafty) gave him a line of credit he couldn't afford to repay. Mr M says at the time the facility was approved he had a lot of other debt including an overdraft.

What happened

Mr M approached Drafty for a running credit facility in October 2018. Mr M was given a facility with a £300 credit limit. The limit was increased on two occasions taking the facility limit to £440 by March 2019. Drafty has confirmed the facility was fully repaid and closed by April 2021.

Mr M 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 M was not given a payday loan.

In Drafty's final response letter it explained the information it gathered from Mr M before it approved the facility which included carrying out an income and expenditure assessment. Drafty concluded Mr M was likely to be able to afford his credit facility. Drafty didn't uphold the complaint.

Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman. One of our adjudicators looked at Mr M's complaint. She thought the checks Drafty carried out before initially granting this facility were proportionate and showed Drafty Mr M was likely to be able to afford the payment amounts as outlined in the hypothetical payment schedule which is detailed in Mr M's credit agreement. So, she didn't think it was wrong to have initially approved the facility.

However, the adjudicator, pointed out that in addition to taking reasonable steps to ensure the facility was affordable at the outset, Drafty also had an obligation to monitor Mr M's use of the facility. Having reviewed, the way Mr M borrowed and repaid the facility, she thought by 21 January 2020 the facility had become unsustainable for him. Knowing this, in the adjudicator's view Drafty should've stepped in and offered assistance to Mr M.

The adjudicator recommended Drafty refund all interest, fees and charges added to the facility after 21 January 2020. She also asked Drafty to pay 8% simple interest on the refund amount.

Drafty didn't fully agree with the adjudicator's assessment. Drafty did agree to refund the interest fees and charges applied to new drawdowns from 21 January 2020. After applying 8% simple interest and deducting tax the refund calculated at the time the offer was made was £39.94. Drafty also agreed to remove any adverse information recorded on Mr M's credit file about this facility from 21 January 2020. However, Drafty said.

"... we've looked carefully at the points you have made in your findings. While we are aligned with your view about deciding the upheld date as 21st January 2020, we take

a different view on the way you have requested the calculations to be done.

Since you have decided 21st January 2020 as the upheld date our understanding is that any amount given to the customer before this date was affordable and after this date is unaffordable”

But Drafty made the following offer to resolve the complaint.

“...we would like to confirm that we agree to refund the interest and charges paid towards all the draw downs from 21st January 2020, amounting to £39.94 (£35.83 for Interest paid, £5.14 for 8% annual interest, minus £1.03 for 20% mandatory tax withholding in line with HMRC regulations). Additionally, we will remove any adverse payment information recorded on Mr. M [full name removed]’s credit file from 21st January 2020.”

The offer was put to Mr M, but he rejected it. As no agreement had been reached, the case was passed to me for a decision.

I then issued my provisional decision explaining the reasons why I was intending to uphold Mr M’s complaint in part and why I thought the settlement Drafty had proposed was fair and reasonable in the circumstances of this complaint. A copy of provisional findings follows this in italics as well as smaller font and it forms part of this final decision.

Both Mr M and Drafty were asked to provide anything further for consideration as soon as possible, but in any event, no later than 1 March 2023.

Drafty responded and agreed with the proposed redress and provided up to date redress calculations.

Mr M hasn’t responded to the provisional decision.

As the deadline has passed, and no new information has been provided I see no reason to delay the issuing of the final decision.

What I said in my provisional decision:

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 M 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 M would be able to both service and then repay his facility within a reasonable

period of time. Drafty also needed to monitor Mr M'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 – 21 January 2020. And while, Mr M rejected the settlement offer by Drafty, he didn't disagree that this is the point where the complaint ought to be upheld.

So, it seems to me, that all parties to the complaint agree the facility should be upheld from 21 January 2020. 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 M's complaint.

Both the adjudicator and Drafty have agreed, that Mr M's borrowing history showed he was potentially reliant on the facility and so any further advances of credit were likely to increase his overall indebtedness in a way that was unsustainable or otherwise harmful. So, there doesn't appear to be any dispute as to when Drafty ought reasonably to have realised that it shouldn't have allowed Mr M to make any further drawdowns on his facility.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr M while explaining why I disagree with the adjudicator's conclusions that all the interest charged after the 21 January 2020 needs to be refunded.

Drafty has accepted, that the pattern of borrowing on the facility by January 2020 demonstrated that Mr M shouldn't have been allowed to drawdown any further funds. So, I don't think that I need to speculate here about the actions Drafty may or may not have taken in relation to any help and support it needed to offer Mr M.

Our adjudicator thought that Drafty needed to refund all interest charged on the facility – including any on the amount Mr M had previously drawn down and which there's no dispute were affordable, prior to January 2020.

However, I'd only direct Drafty to put things right in this way if I was satisfied that it was aware, or ought to have realised that Mr M's position was so precarious that it ought to have realised that not only was it the case Mr M couldn't afford any further borrowing, but that he was also in a position where he couldn't repay what he already owed. So, Drafty ought reasonably to have withdrawn the facility completely. But I don't have anything from Mr M which demonstrates to me that he was in such a precarious position.

Furthermore, looking at Mr M's repayment record, I have considered that Mr M only took one further drawdown (albeit Drafty weren't to know that at the time). And there were times such as between September and November 2019 and after June 2020 where Mr M didn't take any new drawdowns on the facility. Given this, I think it is difficult to argue that it was clearly demonstrable that Mr M was drawing further funds to cover the financial hole that was being created by making his minimum payments.

Drafty's proposed redress, as outlined in response to the adjudicator would lead to a refund of interest on new drawdowns. And bearing in mind the circumstances here, in particular the lack of evidence from Mr M indicating that he wasn't in a position to repay the funds he'd already drawn down as well as his borrowing pattern, I consider that refund to be reasonable. So, I am intending to ask Drafty to pay that redress in resolution of the complaint.

Therefore, based on what I've seen, including reviewing the drawdown history, I think Drafty's offer to put things right for Mr M is fair and reasonable given it considers the facility was unsustainable for Mr M from the given date and has proposed a way to enable any new drawdowns to be, in effect, interest free.

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 no new information has been received from either Mr M or his representative and Drafty has agreed with the proposed outcome, I see no reason to depart from the findings I previously made, and I still think Drafty was wrong to have applied interest on *new* drawdowns from 21 January 2020, as Drafty already agreed the facility was unsustainable for Mr M.

In response to the provisional decision, Drafty provided new calculations for the refund due to Mr M – it explained that the refund due to Mr M (which included 8% simple interest as well as a tax deduction) would amount to £52.63.

It also said that it would remove any adverse credit file data recorded from 21 January 2020.

Finally, it said that the refund will be applied to Mr M's bank account ending *7469 – this is likely the account that payments were taken from when Mr M held his facility. Should Mr M like to receive the funds into a different account he will need to contact Drafty.

For completeness, I've outlined below what Drafty has already agreed to do to put things right for Mr M.

Putting things right

To put things right Drafty needs to do the following, which is what it has already agreed to do:

- Refund interest, fees and charges that Mr M paid on new drawdowns from 21 January 2020;
- Then add 8% simple interest a year from the date of the payment to the date of settlement*;
- remove any negative information about the facility from Mr M's credit file from 21 January 2020.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 March 2023.

Robert Walker
Ombudsman