

The complaint

Mr B complains Gain Credit LLC (trading as Drafty) gave him a line of credit without carrying out sufficient affordability checks. Mr B says had better checks been carried out, Drafty would've realised he had several outstanding payday loans and so couldn't afford to repay his facilities.

What happened

Mr B approached Drafty for a running credit facility in September 2016. Mr B was given a facility with a £1,000 credit limit. Drafty then increased Mr B's credit limit on one occasion taking his credit limit to £1,400 in March 2017. Drafty has confirmed that as of March 2023, an outstanding balance remains due of around £1,689.

Mr B 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 B was not given a payday loan.

In Drafty's latest final response letter (from October 2022) it explained what had happened with Mr B's complaint including that a previous final response letter which was issued in 2019. However, Drafty explained that it took another look at his complaint and believed that it should refund any interest applied to *new* drawdowns from 11 October 2017.

Mr B referred his complaint to the Financial Ombudsman Service where one of our adjudicators reviewed it and partly upheld the complaint.

She thought the checks Drafty carried out before initially granting this facility were proportionate and showed it Mr B was likely to be able to afford the payment amount as outlined in the hypothetical payment schedule in Mr B's credit agreement. This was calculated on the full £1,000 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 B 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 B's ongoing use of the facility. The adjudicator thought, the manner in which Mr B had used and repaid the facility ought to have alerted Drafty that the facility was no longer sustainable for Mr B from 12 February 2018.

Overall, the adjudicator thought there were signs of financial difficulties, so not only should Drafty not have approved the credit limit increase, Drafty should've stepped in and should've frozen the interest on the facility.

In order to put things right, the adjudicator recommended all interest, fees and charged paid by Mr B from February 2018 should be refunded, along with additional interest of 8% simple.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time (12 February 2018) but it agreed to only refund the interest fees and charges applied to any new drawdowns from that date.

At the time the offer was made, Drafty explained this would lead to a new reduced outstanding balance of £1,536.77 and it also agreed to remove any adverse information from Mr B's credit file. It further commented that should Mr B need a repayment plan to pay down the outstanding balance, then details of that would be recorded with the credit reference agency.

However, Drafty didn't agree to refund all of the interest fees and charges applied from 12 February 2018. It said this was because:

"As the assessment is about whether our decision to continue lending the money was appropriate or not, your decision implies that any draws granted after February, 12 2018 were inappropriate, and we should refund any interest paid on them. However, it also implied that draws granted prior to the 'upheld date' were reasonable for us to grant..."

Drafty's offer was put to Mr B and he didn't accept it. Mr B said the agent confirmed his facility was unaffordable. He also said, the information Drafty is recording on his credit file is incorrect. 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 B 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 B would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr B's repayment record for any sign that he may have been experiencing financial difficulties.

Before the facility was approved, Drafty took details of Mr B's income and expenditure information as well as carrying out a credit search. In my view, given this was the start of the lending relationship Drafty's checks were entirely reasonable and proportionate and showed it that Mr B would be able to afford the repayments as outlined in the hypothetical scenario in the credit agreement. So, I don't uphold Mr B's complaint about Drafty approving the facility for him.

It is worth saying here that Drafty agrees with the uphold point the adjudicator reached, as it offered some redress from that date – 12 February 2018. Mr B rejected the settlement offer by Drafty, and he said he didn't think the facility was affordable – which I've addressed above.

I've looked at the way Mr B used the facility from inception until the point the adjudicator reached (and which Drafty agrees) it should pay some redress for. Having done so, I do think point the adjudicator upheld the complaint from was reasonable, given the relationship between the repayments and when Mr B returned for further credit. So, I'm also going to be concluding, the complaint ought to be upheld from 12 February 2018.

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 B's complaint.

So, I don't think that I need to speculate here about the actions Drafty may or may not have taken in February 2018. 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.

As I've said above, and as the adjudicator pointed out, Mr B wasn't repaying the facility in a sustainable manner because he would frequently make the minimum repayment and then drawdown any available credit which was regularly only around £28. So, Drafty ought to have realised, the current balance was unsustainable – and therefore Mr B ought to have been offered some assistance.

Therefore, I've set out below what I think Drafty needs to do in order to put things right for Mr B while explaining why I agree with the adjudicator's conclusions that *all* the interest charged after the 12 February 2018 needs to be refunded.

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 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.

So, I don't think that Drafty continuing to allow interest to be charged on Mr B's total balance, in circumstances where this increased the chances of him being unable to repay, 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 B at the time it was lent, once the point had been reached where Drafty accepted the facility was unsustainable, it ought to have exercised forbearance in order to allow Mr B 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 12 February 2018 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 follows that it isn't just the new drawdowns that weren't sustainable for Mr B. It also wasn't sustainable to repay what he already owed – so actions in failing to offer help to repay this as well as offering further drawdowns needs to be reflected in what it does to put things right going forward.

Thinking about this, and the fact 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 B.

Mr B says the information Drafty is reporting to the credit reference agencies is incorrect but he hasn't supplied his credit file so I don't know what, if anything it is reporting. However, as the complaint has been partly upheld, Drafty may have to make adjustments to the credit file.

Putting things right

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.

- Re-work Mr B's credit facility balance so that all additional interest, fees and charges applied from 12 February 2018 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 February 2018.

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.

Given what Drafty has told the Financial Ombudsman Service, it is likely, that even after carrying out the above redress an outstanding balance will remain due. I would remind Drafty has an obligation to treat Mr B fairly and with forbearance while working with him to collect any outstanding balance which may be due.

My final decision

For the reasons given above I partly uphold Mr B's complaint.

Gain Credit LLC trading as Drafty should put things right for Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 May 2023.

Robert Walker
Ombudsman