

## The complaint

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

## What happened

Mr K approached Drafty for a running credit facility in April 2019. Mr K was given a facility with a £550 credit limit. Drafty increased Mr K's credit limit on two occasions taking his credit limit to £1,380 by August 2021. Drafty has confirmed that by April 2022, an outstanding balance remained due of around £1,066.

Mr K 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 K was *not* given a payday loan.

In Drafty's final response letter (in December 2021) it explained the information it gathered from Mr K 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 K from 20 May 2020. To put things right for Mr K, Drafty offered to.

- Refund all interest and fees incurred on new drawdowns from 20 May 2020.
- 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 K's current outstanding balance.
- Remove any negative markers from Mr K's credit file from 20 May 2020.

Mr K didn't agree with the offer and instead referred his complaint to the Financial Ombudsman Service where one of our adjudicators looked at it 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 Mr K was likely to be able to afford the payment amount as outlined by the hypothetical payment schedule in Mr K's credit agreement. This was calculated on the full £550 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 K 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 K's ongoing use of the facility. And she agreed with the point that Drafty had upheld the complaint in the final response letter.

Later on, she said had Drafty carried out further checks in May 2020 it would've likely discovered that he was already servicing a significant amount of payday debt. And so, by May 2020 Drafty ought to have offered forbearance to Mr K and it ought to have frozen the interest at this time.

Drafty didn't fully agree with the adjudicator's assessment. It agreed to uphold the complaint from the same point in time May 2020. But it reiterated that it takes a different view on how the redress should be calculated. In summary it said;

*“Your decision implies that any draws granted after 20<sup>th</sup> May 2020 were inappropriate, so we should refund interest paid towards them. However, it is also implicated that draws requested prior to 20<sup>th</sup> May 2020, were reasonable for us to have granted.”*

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 K 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 K would be able to both service and then repay his facility within a reasonable period of time. Drafty also needed to monitor Mr K'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. And while, Mr K 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 to the complaint agree the facility should be upheld from 20 May 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 K's complaint.

The adjudicator explained why she agreed with Drafty's uphold date given the way Mr K had used the facility. But she also went on to say that had further checks been carried out – such as reviewing his bank statements then it would've realised that not just the new drawdowns but the whole facility was unsustainable and therefore Mr K 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 K while explaining why I agree with the adjudicator's conclusions that all the interest charged on the facility after the 20 May 2020 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 May 2020. 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.

As I've said above, and as the adjudicator pointed out, by May 2020 it wasn't unreasonable for Drafty to have made further checks to ensure the facility was still sustainable for Mr K. And had further checks been carried out not only would Drafty have realised any new drawdowns weren't sustainable for Mr K but the whole facility was as well.

I say this because at the time Mr K was servicing another flexible credit facility with another provider – costing at least £300 per month. On top of this, Mr K was also servicing and repaying at least two other payday lenders as well a high-cost credit provider.

In addition, there were times where direct debits were being returned as unpaid and the regulator says that can be a sign of financial difficulties. So, I do think, that had further checks been carried out by Drafty at this time, it would've likely concluded that the facility was now unsustainable for him.

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 K's 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 K, once the point had been reached where Drafty accepted the facility was unsustainable, it ought to have exercised forbearance to allow Mr K 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 20 May 2020 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 K 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 needs 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 K.

### **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.

In order to put things right Drafty should do the following:

- Re-work Mr K's credit facility balance so that any interest, fees and charges applied from 20 May 2020 onwards are removed.

AND

- If an outstanding balance remains on the credit facility once these adjustments have been made Drafty should contact Mr K to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr K's credit file, it should backdate this to May 2020.

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 K, 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 K's credit file.\*

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

Given the most recent information from Drafty, it could be, that even after carrying out the above redress an outstanding balance will remain due. So I remind Drafty of its regulatory obligation to treat Mr K fairly and with forbearance.

### **My final decision**

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 May 2023.

Robert Walker  
**Ombudsman**