

The complaint

Miss T complains that Gain Credit LLC trading as Drafty ("Drafty") has unfairly recorded missed payment markers on her credit file in April and September 2023.

What happened

The issues Miss T has experienced with her repayments stems from a flexible credit facility granted by Drafty on 17 June 2022 which at inception had a credit limit of £300.

Miss T was due to make her contractual repayment by 25 April 2023. However, Drafty says it held her card details - but the payment request was declined by Miss T's bank. Following contact from Drafty, Miss T made her payment on 27 April 2023.

In September 2023 a similar situation arose. Drafty attempted to take her contracted payment on both 25 and 26 September 2023. The payment request again failed. Following contact, Miss T manually made her repayment on 28 September 2023.

Both times Miss T was late with her payments, and she says that Drafty has recorded adverse payment information on her credit file despite her having sufficient funds in her bank account to cover the cost of the payments. Unhappy with this she raised a complaint with Drafty.

Drafty responded with its final response letter on 24 October 2023. Drafty explained why it didn't uphold the complaint because it was entitled to record the missed payments with the credit reference agencies. Unhappy with this response, Miss T referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator, and she didn't uphold it. She explained payments were collected on the facility using the card details rather than a sort code and account number. As Miss T had changed her card details Drafty wasn't able to collect the payment. Therefore, the recording of the late payment markers was accurate because it reflected how Miss T had managed her account.

Miss T didn't agree with the investigator's outcome saying these markers will stay on her credit file for six years and these markers could impact her ability to obtain a mortgage. Miss T said the markers are a disproportionate response for incorrect card details.

As no agreement could be reached the complaint has been passed to me to decide.

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 firstly looked at what the credit agreement and terms and conditions say about how Drafty will collect the payment and what the possible consequences are for payments not being collected.

The first relevant section in the agreement is 6.3 which in effect says that payments must be made by the payment date and this will be collected by Continuous Payment Authority (CPA). This is important, because for a CPA to be collected, Drafty needs the card number for the account where payments are to be made from. Unlike a direct debit, Drafty doesn't use the sort code and account number to collect the payment. In those circumstances it is vital that Drafty holds the correct card information. Section 6 of the credit agreement outlines how the payment will be collected.

6.3 The Minimum Payment must reach your Account by the Payment Date shown on your statement, which will be the same as your monthly salary payment date unless otherwise requested by you. To make this easier for you, we will use the Continuous Payment Authority ("CPA") that you have given to us to collect your Minimum Payment on the Payment Date each month. For more information about how your CPA works, see the Terms and Conditions below.

I'm satisfied the credit agreement sets out how the payment will be collected and so Drafty hasn't made an error by taking payments by CPA and then Section 1 reinforces the need for Drafty to have up to date card information.

1 Continuous Payment Authority (CPA)

1.1 You must inform us immediately of any changes to the bank account and debit card details that relate to your CPA.

The credit agreement also deals with what happens if payments aren't made as expected, and that can be found in section 8.

8 Late Payments

8.1 You are required to make your payments on time as specified in your statement. If you make a late payment, we may add details of your late payment or default to your records with the credit reference agencies.

Drafty has the authority to record missed payments or defaults with the credit reference agencies if payments aren't made as expected. This approach is also endorsed by the Information Commissioner's Office in its paper "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*". The ICO is the body set up to deal with issues surrounding personal data and how it's used. Principle two of the paper says;

If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported to the CRAs as being in arrears.

Miss T's payments were late and even though she brought the account up to date within a few days she hadn't made the payments by the contracted due date. There is no requirement, as far as I can see, for a lender to wait a certain number of days before it reports the information to the credit reference agencies. Once the payment is late, then this can be reported.

Having set out the background to what Drafty can do and how payments are collected I've considered the individual circumstances of this complaint. Up to April 2023 Drafty had been collecting payments from a card which ended in 8207. However, in April 2023 when the payment was requested from Miss T's card it didn't go through. Although Miss T has provided evidence that she had sufficient funds in her account the card that Drafty was using was no longer valid and so the payment couldn't go through.

After the payment couldn't be made Drafty let Miss T know – which it was required to do. Although she brought the account up to date shortly afterwards –her April 2023 payment was made late because it wasn't made by the payment due date which was outlined in her statement.

Payments were then made as expected until September 2023, when a further problem occurred. Drafty says the payment was requested and declined by Miss T's bank. It then emailed Miss T to let her know that the payment hadn't gone through. Miss T appears to not have seen the first email and only saw the second email Drafty sent on 28 September 2023 at which point she logged in, cleared her old cards from the account, updated her new card details and made the payment. By the 28 September 2023, Miss T's account was up to date.

However, as with the April 2023 payment, this September payment was also late and although Miss T had enough money in her account to cover the payment the funds weren't received by Drafty by the payment due date. As a result, it can, and has, recorded that information with the credit reference agencies.

I appreciate, Miss T says the reporting of a late payment marker here is disproportionate, but the guidance issued by the ICO and what is contained within Drafty's credit agreement says that missed payments markers can be reported. And so, the fact late payment markers have been reported, isn't in these circumstances an error.

I know Miss T will be disappointed by the decision I have made, but Drafty hasn't made an error by reporting the two payments as being late with the credit reference agencies because this was an accurate reflection of how the account was repaid. I therefore make no award against Drafty.

My final decision

For the reasons I've outlined above, I am not upholding Miss T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 22 April 2024.

Robert Walker
Ombudsman