DRN-3901810

The complaint

Mr P complains that he withdrew from the credit agreement he had with Gain Credit LLC, trading as Drafty. Mr P says that this credit facility record should be removed from his credit report according to law.

Mr P says that this complaint should not have gone on as long as it has and is affecting his credit file record. It's causing him distress and exacerbating a pre-existing medical condition.

What happened

Mr P took out a credit facility with Drafty on 17 July 2022. The credit limit approved was £1,200. Mr P withdrew the whole amount available to him - £1,200 – on 17 July 2022.

On 31 July 2022 Mr W requested that he withdrew from it by emailing Drafty on Sunday 31 July 2022. Drafty said it received the notification on the fifteenth day (Monday) when it should have been received on the fourteenth day of the credit agreement. Mr P says that the important date is the date he sent it which was on the fourteenth day. Either way, Drafty responded to say it was going to treat the email from Mr P as notice to withdraw and give Mr P instructions on what to do next.

Mr P's response was that he was not content with that and this was treated as a complaint. Drafty's final response letter (FRL) to that complaint was issued by email on 9 August 2022 and in summary it apologised for the confusion the Drafty customer service team may have caused. Drafty did require the outstanding balance to be repaid to it, to process account closure and then it would remove the line of credit from his credit report. At that point the full balance was £1,251.84. Drafty explained that interest would be added each day. It gave precise instructions how to pay off the sums owed. It gave full referral rights to the Financial Ombudsman Service.

Mr P's response to the FRL was to challenge the correctness of it in law and to stipulate that in his view if he failed to pay back the sum then Drafty was to pursue it as a debt not under the credit agreement. His rationale was because he'd withdrawn from that credit agreement and so in his view it did not exist. Mr P also confirmed he was planning to pay the sum owed back.

I do not plan to set out each email exchange between the parties. But correspondence continued and I have reviewed it all. On 22 August 2022 Mr P instructed/informed Drafty that he wanted to cancel the Continuous Payment Authority (CPA) he had on the account. Drafty confirmed it had done that on the same day.

Drafty's position is this - that it did treat Mr P's notice as a withdrawal but even then Mr P was required to repay the full amount within 30 days of that date.

The facts Drafty has laid out are as follows:

- the payment that needed to be made within 30 days of the withdrawal request— which for Mr P was 31 July 2022 — and it is still outstanding.
- Drafty gave Mr P a settlement amount and told him that it would not charge interest on his account after 9 August 2022. Mr P said he'd pay the full amount by 25 September 2022.

- Drafty reconfirmed that it would remove the account from his credit report providing payment had been made by 25th September 2022.
- Mr P did not make any payment by 25 September 2022.
- On 18th October 2022 Mr P informed Drafty that he intended to pay the settlement amount in two instalments - £100 on 25 October 2022 and the remaining balance on 25 November 2022.
- Mr P asked for the credit facility record to be removed from his credit file, including the overdue payments and any default reported.

Drafty's opinion is that it gave Mr P more than the required 30 days to complete the payment and confirmed that it would remove the record of his account from his credit file if it received payment in that time. Drafty says that it did not have to, but it accepted Mr P's request to extend the payment date from 30 August 2022 to 25 September 2022.

The continued non-payment meant that by the end of October 2022 Drafty considered it was justified to cancel Mr P's credit facility, reinstate the normal processing rules and its standard practice for pursuing for non-payment. Drafty said its reporting of the account to the CRAs was accurate because Mr P hadn't taken any steps to repay the amount owing irrespective of his notification of withdrawal. Drafty in the later correspondence explained all this to Mr P and referred to its original FRL dated 9 August 2022.

On 3 November 2022, learning that Mr P had referred the matter to the Financial Ombudsman Service, Drafty succinctly summarised its position -

> *'The important fact here is that although you told us that it was your intention to withdraw from the agreement, you did not make payment in the prescribed time period. Consequently, you did not fulfil all the criteria necessary for the withdrawal to be executed. Your opportunity to withdraw from the agreement therefore ended and the agreement continued to be in force under the terms that you signed.*
>
> *A customer does not have a right to withdraw for an unlimited period of time after the start of the credit agreement or to withhold payment for an unlimited period after the declaration of an intention to withdraw.'*

Mr P cites legislation to support his complaint – Consumer Credit Act 1974 (as amended) (CCA) ss 66A (7) to (10). And Mr P has sent to us copies of the Financial Conduct Authority (FCA) Consumer Credit Sourcebook (CONC) paragraphs 11.1.14.

Mr P says that according to CCA s 66A(7)(b) the credit reference agencies (CRAs) fall into the definition of '*third parties'* and as such should have been notified that he had withdrawn from the loan agreement. Drafty's failure to do that is wrong and had caused him distress and inconvenience.

Mr P says that the loan agreement is *'void by law'* and even though he had not repaid the debt, still it was void and so it should be removed from his credit report. Mr P maintains that Drafty has been mis-reporting the loan status to the CRAs to his detriment.

Mr P says that he wants

> *'…some serious compensation here as you reporting negative information on my credit file is causing me distress and preventing me from getting things that I need during these hard times.'*

The account balance on 24 November 2022 was £1,420.32. Mr P wants it reduced to £400 to compensate him for all of this. Mr P wants the account removed from his credit report.

In Mr P's complaint form sent to us he has conceded that despite asking for an extension of time to pay and being granted it when the date came he couldn't repay it.

> *'I am required to pay back within 30 days and if I don't they can recover the debt in court as a simple debt but they* [sic] *does not mean the credit agreement stands'*

In any event the debt was unpaid and so Drafty defaulted his account which Mr P says was wrong.

Mr P has alleged that this is deliberate on Drafty's part and that the Drafty personnel are trained to deceive customers.

One of our adjudicators considered the complaint and on 10 January 2023 she issued her letter of opinion to Mr P and to Drafty. In it she said

- she agreed with Mr P that he did request to withdraw from the agreement within the 14 days stipulated and Drafty got it wrong when it said it was not a withdrawal request.
- she cited the relevant provisions in the agreement and described those provisions as one which echo what the CCA provides for about having to make repayment within 30 days.
- she thought that part of the withdrawal stipulations was that Mr P needed to repay what was owed and she considered that Mr P knew that requirement
- so, for Drafty to ask for repayment was not unreasonable and not outside the provisions of the agreement and in line with the FCA guidance and what we would expect
- our adjudicator agreed that the Default Notice was compliant in that it told Mr P what he needed to do to avoid a Default being applied
- our adjudicator thought that Drafty had acted fairly in the way that it did after it had been informed by Mr P that he was not going to pay by the extended deadline it had been content to agree earlier - 25 September 2022.

Our adjudicator summarised her position and her opinion as follows:

> *'It doesn't seem fair to me to allow someone to enter into an agreement, drawdown funds – not repay them and then not have any consequences of such.'*

Our adjudicator considered Mr P's health issues but had noted that Drafty did not know of these until 3 November 2022 after which it showed forbearance and consideration by suspending debt collection activity for 30 days.

Mr P raised some specific points in response to our adjudicator's view:

- CCA s 66A(7)(b) which relates to notification of third parties which Mr P says includes CRAs
- he conceded that he planned to repay it within 30 days but he did not and *'…the actions and implications of not paying within 30 days is what I'm disputing.'*

The unresolved complaint was 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.

Most of Mr P's points are requests to know about interpretations of the CCA and specific legal provisions when applied to his circumstances. Which reads to me that Mr P requires legal advice on these points and not necessarily resolution of a complaint. We are the organisation to resolve financial complaints and that is how I have approached it. And any independent legal advice Mr P requires on the legal interpretation of legislation he needs to seek elsewhere.

Mr P has raised the application of 'fairness' and within the Financial Services and Markets Act 2000 (FSMA) that is exactly the foundation of our resolution service offered to complainants.

Withdrawal and repayment

I have seen the email from Mr P to Drafty dated Sunday 31 July 2022 saying that he wished to exercise his right to withdraw from the agreement taken out on 17 July 2022. He acknowledged that he had to repay within 30 days and asked Drafty to tell him the exact amount he was required to pay. Mr P also asked that any searches and accounts relating to Drafty be removed from his credit file.

Drafty's email reply to Mr P on Monday 1 August 2022 said that his notice to withdraw was read on the fifteenth day of the agreement, but still it was content to proceed as if it had been withdrawn. It also agreed to remove the line of credit from his credit report. It asked for the repayment '*upfront'* and then when closed the request to remove it from his credit file would be made to the CRAs.

I consider this to be a reaction from Drafty which, in practical terms, presented to Mr P exactly what he was looking for.

But Mr P's immediate reply on 1 August 2022 took exception to the Drafty use of the word *'gesture of goodwill'* and Mr P was of the view he had correctly and rightfully withdrawn and so he had 30 days to repay. He immediately escalated the issue to the Drafty complaints team and copied in a Financial Ombudsman email address.

Mr P cited the specific provisions of the CCA 1974 and still Drafty was content (as of 9 and 12 August 2022) for the credit facility record to be removed from his credit file, but he needed to repay the amount owed. So, apart from the strict legal interpretation of the situation, Drafty had been agreeing to do as Mr P wanted, conditional on him repaying which Mr P had said he'd do right from the start.

So, I consider that even on 12 August 2022, the practical effect of proceeding to repay and to do it within 30 days and to have the account removed from his credit file presented to Mr P exactly what he was looking for.

I do find that Mr P gave notice that he wanted to withdraw on 31 July 2022. I do think that Drafty was wrong to think that because it read his withdrawal email on 1 August 2022 (the fifteenth day of the agreement) that it did not count. But – be that as it may – Drafty immediately proceeded as if it was a withdrawal process and agreed to do all Mr P had wanted.

Mr P knew (and had agreed) to repay what he owed and so there was solid common ground between the parties. And so, I don't find that Drafty is responsible for any distress Mr P says that he experienced at this point (12 August 2022). And I certainly do not accept any suggestion that Drafty was doing this deliberately or in some deceitful way.

Mistakes can occur. And individuals reading his email on 1 August 2022 may not have been as familiar with the intricacies of the CCA s 66A as Mr P clearly was. So, I do not find in favour of Mr P on this part of his complaint.

In the meantime, having demonstrated that he was aware of the rules surrounding withdrawal, Mr P failed to repay within the 30 days which he knew he had to do.

And I'll go further, I doubt that a holder of a credit facility, knowing that there was a minimum monthly repayment expected by the lender would withdraw from a facility unless he or she had the means to repay the whole amount owed. And withdrawal usually means that the person has the money advanced to him or her and wishes to return it and reverse out of the credit agreement. But here Mr P has not done that.

Applying this scenario to Mr P, who has demonstrated from the beginning clear understanding of his agreement terms and the legislation surrounding withdrawal, I do not consider that Mr P withdrew when he was lacking in funds. As Mr P has always said – he was going to repay it and knew of the 30 day time limit.

In addition, I've thought about Mr P's explanations that he was not able to repay the advanced funds. I have reviewed the details Drafty has sent us about the original approval of the credit facility in July 2022. Mr P declared to Drafty that he was employed full time and earned £5,103.72 each month. Drafty carried out a credit search and the results showed that there was nothing with which Drafty was likely to have been concerned. This would have been the background financial information Drafty has known about since the summer of last year when he applied for the credit facility.

And so, it seems that Mr P likely had the funds and therefore I find it unusual why Mr P did not repay the monies owed and if he did not have the funds, why he withdrew from the credit facility agreement in the first place. And it is this failure to repay what is owed to Drafty which is the root of all the subsequent concerns he has described. Some explanation is provided when reading a recent email from Mr P where he says

> *'My credit rating is getting further ruined as I don't know what to do about paying the lender back. As I mentioned previously , the only reason I haven't done it yet is because they refused to honour my withdrawal from the agreement. Its showing as an unpaid default on my credit file for the last year and is ruining my credit rating.'*

Mr P had been told from the start how to repay it and so I do not accept the explanation that he did not know how to. Failing which it was very easy to find out.

And this recent email does give me an indication hat Mr P's non-payment may not be due to lack of funds but due to this complaint issue – the refusal to honour Mr P's withdrawal.

As I have already demonstrated, Mr P is wrong on this as Drafty treated it as a withdrawal from the first day – 1 August 2022 – nearly a year ago. Then it accepted quickly that it may well have been a withdrawal (sent on 14th day albeit read on 15th day) and continued to explain to Mr P how to take matters forward – repay and then it would remove the account from the CRAs. But still no payment was forthcoming resulting in Mr P's account being defaulted.

Reporting to Credit Reference Agencies (CRAs)

Mr P argues that reporting to CRAs is an ancillary service relating to an agreement provided by the creditor and all reference to his loan should be removed from his credit file immediately as the CCA s66A(7)(b) requires that the contract be treated as if it had never been entered into in the event a consumer withdraws from an agreement.

But CCA s 66A(7)(b) relates to providers of a service paid for as a result of the credit agreement withdrawn from. And I'm satisfied that this does not cover CRAs.

In fact, s66A CCA is completely silent on how withdrawn credit agreements should be treated for the purposes of credit file reporting. The only reference to how such agreements should be reported is found in paragraph 11.21 of the Department for Business Innovation & Skills ("BIS") guidance on the implementing of the *Consumer Credit (EU Directive) Regulations 2010/1010.* The requirement to implement this directive was the reason CCA s66A came into being.

Paragraph 11.21 of the BIS guidance states:

> ***"11.21** Section 66A(7)(a) is intended to be binding on the parties to the agreement rather than more generally. CRAs could have regard to section 66A(7)(a) and treat agreements where the borrower has exercised the right of withdrawal as never having existed, removing the agreement from their database. However, they could also record the agreement as having been repaid. The important thing is that the consumer should not be disadvantaged in any way by having withdrawn from and repaid a credit agreement."*

The guidance states that a consumer should not be disadvantaged as a result of having withdrawn from and repaid a credit agreement. So, in the first instance it seems as though the need to ensure that a customer isn't disadvantaged by how a loan is reported only applies where the credit is repaid. And, in this case, Mr P has not repaid the credit in question.

In any event, it's also debatable whether Mr P is being disadvantaged here. Mr P says the loan should be removed from his credit file and Drafty should instead go to court to recover any debt. But there doesn't appear to be any dispute at all that this amount is owing. And Drafty pursuing Mr P for a debt in this way will increase the amount owing (due to court fees etc being added) and will likely result in County Court Judgment being obtained. I think this is likely to have a greater adverse impact on Mr P's credit file than what Drafty is currently reporting. So, I'm not necessarily persuaded that Mr P is being disadvantaged.

Distress and inconvenience

Considering Mr P has persistently not repaid and appears to have used the technical incorrectness from Drafty's first email on 1 August 2022 to raise the complaint and then delay paying the debt, does not persuade me that any compensation is due. So, the claim that Mr P has been the victim of distress and inconvenience is not made out.

fining

Mr P has referred this matter to the Financial Ombudsman as a sort of request for this to be investigated and for Drafty to be educated and/or penalised in some way. That is not what the Financial Ombudsman Service is for and it is not within my remit. If Mr P feels that there is some sort of regulatory breach it's a matter for the FCA and not for us. And to demonstrate this point and explain why I have come to this view on this part, I have seen the email dated 3 November 2022 addressed to several recipients including Drafty and to one of our email addresses. It says:

> *'Just to be clear I've now raised an official complaint with the FOS as your complaints team have no idea about regulation and how to understand the FCA handbook even though I've explained it in clear English to them and pasted the relevant details from the FCA handbook. You are clearly training your staff to bully customers who don't understand the handbook which is very unethical and you should be fined for this.'*

The Financial Ombudsman Service does not approach complaints with a view to 'fining' a party – we have no power to do that and it is not our approach. The Financial Ombudsman Service was created to resolve financial complaints in a fair and reasonable way brought by complainants (strictly defined) and to do it informally.

Mr P's health

For understandable privacy reasons, I do not go into details of the information Mr P has sent to us about his health. But I do note that Mr P first informed Drafty of these issues in early November 2022. Its response was to say it was not clear if the health issues would have any bearing on Mr P's ability to repay what was owed to it.

Mr P did respond to say that it affected his ability to make decisions. And after consideration, on 15 November 2022, Drafty wrote to Mr P to say that the medical evidence he had sent to it did demonstrate, sadly, that he was unwell, but did not give it reason to conclude that Mr P was unable to either deal with the withdrawal process or to repay the amount owed.

I have kept this in mind when I have been considering the complaint.

I do note that Mr P was concerned at the elongation of all this matter and the poor effect it was having on him. I've thought about this carefully. Mr P has always had the opportunity to neatly draw this to a close by repaying the sums due on time and/or on the later dates he suggested to Drafty and were agreed by Drafty.

None of the parties knew of Mr P's health issues until 3 November 2022 which was after all the details causing Mr P concern had occurred. So, we are understanding and aware of his health issues as is Drafty. Any further pursuit of the debt will have to be carried out by Drafty with this in mind as demonstrated by its late 2022 correspondence with him which I have seen.

Outcome

I uphold Mr P's complaint on the limited grounds that he did give notice to withdraw correctly and within fourteen days and that Drafty got that wrong. But its FRL in August 2022 noted that and so really my decision is that there's no change from that FRL and so the outcome to this complaint is a non-uphold. The consequences of that are that the interest calculation should have been in accordance with clause 2 in the Agreement.

Considering that there is no dispute that Mr P does have an overdue debt with Drafty, I don't think that Drafty reporting this to credit reference agencies is unfair and I'm not directing it to take any action in relation to this matter.

I award no compensation for distress and inconvenience as, if Mr P had proceeded as originally outlined in the 1 August 2022 email from Drafty and as repeated in the FRL and on 12 August 2022, then there would not have been any distress and inconvenience.

I make no direction on any amendment to Mr P's credit file.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 August 2023.

Rachael Williams
Ombudsman