DRN-4248579

The complaint

Mr R complains that Gain Credit LLC, trading as Drafty, did not treat him fairly in relation to the debt arising from the credit facility he applied for and used.

What happened

Using records and information from both parties here is a summary of what happened. This final decision follows my provisional decision dated 14 August 2023 and as it was detailed what follows here is a summary. A duplicate of my provisional decision is incorporated so that all parties have it easy to hand.

I preface the whole decision by saying I am aware of Mr R's health issues he's told us about.

Mr R applied for a £3,000 'loan' from Drafty but it offers a credit facility – not loans. Mr R said to Drafty when he applied that he worked full time and earned £4,000 a month and his expenses were £65 each month. The credit facility Drafty approved had a limit of £1,620 which started in August 2022. The credit was unsecured and had no fixed duration.

The statement of account for the facility showed that Mr R drew down the full £1,620 on the first day and repaid the required sums in August 2022 and September 2022. He drew down a further £180 in October 2022. Mr R did not repay anything until 2 February 2023. There are records of small amounts being paid through a debt collection agency - £1 each month. Mr R has explained that he stopped working in March 2023 and he is supported by his wife. He has other debts.

I understand that the facility was terminated by Drafty in December 2022 and the debt was passed to a third party agent to make the collections on the outstanding balance.

The issues surrounding the basis of this complaint commenced on 25 October 2022 when Mr R called Drafty and spoke to one of its representatives. During that call Mr R wanted to set up a repayment plan. Mr R has said to us subsequently that the reason was due to his reduced working hours, his mental health, and the increase in the cost of living.

The call did not go well according to Mr R, and he says that Drafty did not let him set up the repayment plan. Mr R raised a complaint during that telephone call on 25 October 2022. Mr R received the final response letter (FRL) from Drafty on 3 November 2022.

Mr R referred his complaint to the Financial Ombudsman Service. One of our adjudicators looked at it and considered that Mr R's complaint should be upheld in part. Her opinions are summarised here.
Where she refers to 'CONC' this is the Financial Conduct Authority (FCA) Consumer Credit Sourcebook:

- it was not unreasonable for Drafty to have asked for medical evidence and/or a Debt and Mental Health Evidence Form (DMHE) form;
- it was reasonable of it to signpost Mr R to other agencies to obtain assistance;
- Mr R called on 25 October 2022, Drafty discovered that he was not able to meet the

repayments needed to repay his balance within a reasonable period;
- CONC is clear, forbearance and help must be offered. Instead, knowing of Mr R's difficulties, Drafty had increased the debt and put him further into difficulties by taking no action at all - which our adjudicator did not consider to be treating him fairly and with forbearance.
- She thought that it should have ceased adding interest from 25 October 2022. She awarded Mr R £300 compensation for distress and inconvenience. Later this was reduced to £200 in our adjudicator's second view.
- She did not think that the correspondence Mr R continued to receive about the arrears was wrong.

The unresolved complaint plus the additional information was passed to me to decide. I have duplicated here – in smaller type – my provisional decision.

The provisional decision dated 14 August 2023.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have listened to the recorded call dated 25 October 2022 and two on the 1 November 2022. I have considered all the new evidence.

The 25 October 2022 offer of repayment plan.

Mr R says that he had done his own budget and repayment plan and that Drafty 'refused to deal directly with him'. And Mr R has said to us:

> *'I have been told that I need to go to a third party in order to set up a payment plan. None of this is compliant in accordance with the FOS guidelines. Because I can't afford to cover the full balance within a 24 month period, a payment plan was rejected. This would mean my other priority bills would not get paid.'*

Drafty says it did an income and expenditure (I&E) assessment and Mr R did not have enough disposable income to start what it considered was a reasonable repayment plan. Now I've listened to the call Mr R was very detailed about his income and his expenditure and had started the call prepared with his figures and finances. Mr R ended up offering £1 a month and explained that was what he could afford until circumstances changed. And he was asking for the account to be defaulted. He wanted to pay £1 a month from that date for 1 year and 11 months and then speak to Drafty again at that point.

The Drafty representative explained that it was not able to accept that £1 a month payment plan and the reason he gave was that he'd need to ask Mr R for around £70 a month to cover the outstanding balance which, on 25 October 2022, was just over £1,708. And the reason for that was that Drafty needed the debt paid down within two years. Around £70 a month would have achieved that.

Recently Drafty has explained to me the following to clarify matters and it said it wanted to provide context as to why things were done the way they were with Mr R.

> *'As a matter of practice, we ask that any reduced payment arrangement set up for one of our lines of credit (where interest will have been suspended and for which no further draws are permitted) and then is sufficient to repay the balance within 24 months. We believe this is reasonable forbearance. …*
>
> *it is the appropriate thing to signpost the customer to additional, independent sources of support. We always signpost to [third party money advice centre] who will be able to take a rounded view of the financial life of their client and recommend appropriate next steps. …*
>
> *If is it* [sic] *plain that the customer cannot afford to make repayments within a*

reasonable period, then it would not be a good outcome to permit the agreement to persist indefinitely. The appropriate thing to do is to permit the line of credit to default and record these facts at the Credit Reference Agency.'

I've read all the correspondence, account notes, listened to three calls and formulated my own view having applied the CONC guidelines and what I consider a fair and reasonable outcome. I note that Drafty has conceded to an extent – but not completely – and has agreed to pay £200 compensation. But as that figure was originally £300 and then reduced to £200 and Mr R has asked for me to review it all, then I am starting again in relation to the whole complaint.

I've listened to the October 2022 call and a third person was involved during a large part on Mr R's behalf and I have chosen to say nothing about the way that conversation proceeded between that third person and the Drafty representative. But I noted the tone.

A good starting point is that the Financial Conduct Authority Consumer Credit Sourcebook (CONC) has rules which apply to regulated firms and CONC 1.2.2R makes it clear:

'A firm must:
(1) ensure that its employees and agents comply with CONC; and
(2) take reasonable steps to ensure that other persons acting on its behalf comply with CONC.'

So Drafty's employees taking calls from customers need to be compliant and ready to receive questions and issues on the subjects that may arise. This is duplicated in the chapter in CONC 7.

Further, what follows are some of the rules in CONC 7, I consider having been directly relevant to Mr R's situation on 25 October 2022 and since.

CONC 7.2.1 R

'A firm must establish and implement clear, effective and appropriate policies and procedures for:
(1) dealing with customers whose accounts fall into arrears;
(2) the fair and appropriate treatment of customers, who the firm understands or reasonably suspects to be particularly vulnerable.'

CONC 7.3.2 G

'When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.'

CONC 7.3.4 R

'A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.'

And the FCA guidance which follows is set out in full here - CONC 7.3.5 G:

'Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

(1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);

(2) allowing deferment of payment of arrears:

(a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or

(b) provided that doing so does not make the term for the repayments unreasonably excessive;

(3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).'

CONC 7.3.6 G

'Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.'

CONC 7.3.7A G

'(1) If a customer is in default or in arrears difficulties, the firm should, where appropriate:

(a) inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and

(b) refer the customer to a not-for-profit debt advice body.'

I have reviewed that part of CONC 7.12 which relates to lenders' responsibilities in relation to debt and without citing each part that may be applicable my provisional decision is that Drafty ought not to have refused to accept the payment offered by Mr R.

Having said that, with a debt of over £1,700, £1 a month would have been unreasonable for Drafty to contemplate but equally accepting the £1 a month as a token payment for a short time while another solution was investigated may well have been the appropriate approach for Drafty to have taken on 25 October 2022. And I think that would have been compliant with CONC.

Whilst I appreciate that Drafty's representative may have been informed about the policy that it needed a debt repaid within 24 months, that sounds like it was formulated as a commercial policy for its benefit and not necessarily designed for the benefit of a customer saying he could only afford £1 a month. I think that Drafty was too rigid with its 24 month requirement.

Having said that I understand that Drafty would have not been able to accept £1 a month indefinitely as that would, in my view, have been unreasonable. And Mr R was suggesting that it be for 1 year 11 months and then Drafty and he would talk again. That I also consider having been unrealistic and as he'd told Drafty in August 2022, just two months earlier, that he earned £4,000 a month then I consider that Drafty was justified to have required a more detailed picture from Mr R. But that could have been sorted out later.

Drafty did refer Mr R to a third party agency to assist him – and the CONC guidance in 7.3.7A G (duplicated earlier in the decision) does use the word '*should'* in which case Drafty did not do anything wrong in referring Mr R to those agencies. But that is caveated with the phrase '*where appropriate'* and as the conversation in October 2022 proceeded I think that the Drafty representative ought to have appreciated that the referral to other agencies was not what Mr R was wanting or needing at that time. It may have been appropriate later.

Again, I consider a balanced approach by Drafty on 25 October 2022 would have been more successful than the application of its 24 month repayment policy. I have decided, provisionally, that Drafty could have done both – accepted the £1 a month arrangement in the interim, but then recommend and subsequently write to Mr R to encourage a better and more long term arrangement.

Instead, it was an outright refusal, followed by some rather stringent letters from Drafty reminding Mr R he was in arrears.

Considering Mr R had informed Drafty on 25 October 2022 of his financial difficulties, his vulnerability emanating from that together with his health issues, then I do consider that to have been unnecessary.

I asked for and have now reviewed the Gain Credit Vulnerability Policy (which was applicable to Drafty I understand) all of which is relevant and I have chosen to cite this part:

> *'Financial difficulties - There are documented processes and procedures in place outlining the solutions that can be offered to consumers in financial difficulties. Forbearance options available are discussed and tailored to the needs and circumstances of the consumer.'*

The requirement for options being '*discussed and tailored'* does not represent to me what happened in Mr R's situation on 25 October 2022 and on 1 November 2022.

I uphold Mr R's complaint in relation to this part surrounding the repayment plan. I plan to make an award for this as I do think it likely has led to some distress and certainly inconvenience.

And this also leads me to another part of my provisional decision that from 25 October 2022, Drafty was fully aware Mr R was in financial difficulties and so I do think that any interest applied after that date ought to be removed from the account. This may have implications for a debt collector and/or any third party to which the debt may have been sold and I will expect Drafty to arrange with those other party or parties that the overall debt is adjusted to reflect this.

Managers call back

The Drafty representative on 25 October 2022 had said he would arrange for a call back within the next few days. But on the 1 November 2022 call the Drafty representative told him that none had been made. So, a fresh request was made and in fact Mr R did receive a manager's call on 1 November 2022 but having listened to that call as well Mr R was busy at work and asked for another call the following morning. I have seen no record of any further calls other than one on 8 November 2022.

I think that Drafty failed to do what it said it would do in relation to the first arrangement for mangers' call back, and then failed to follow-up on the second. This will be reflected in the redress I have provisionally decided to award Mr R.

SAR

Part of Mr R's complaint as raised during the call on 25 October 2022 included that he'd been told he could not make a Subject Access request (SAR) on the phone. He'd have to log onto the on-line account to create that himself.

During the call the representative was able to action the SAR for Mr R on 25 October 2022. So, the issue was resolved immediately. The correspondence I have seen shows the SAR being acknowledged. Drafty responded quickly. It sent to him password protected documents: Mr R says that this was incomplete. He also wanted telephone recordings and internal emails about him to be sent too. The follow-up email to Mr R from Drafty was clear. It sent additional information to augment the SAR documents already sent which included a phone summary.

So, I note that the adjudicator said that the matter was for the Information Commissioners Office (ICO) but I also make a provisional finding that the SAR was fulfilled. Whether it was sufficient I leave for Mr R's complaint he says he was going to take to the ICO.

I do not uphold this part of Mr R's complaint.

This is the end of the duplicated provisional decision save for the proposed redress.

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.

The 'reply deadline' for the parties to respond was by the 28 August 2023. We have received no response from Mr R.

Drafty has responded to say it agrees with the proposed redress of £300 distress and inconvenience to Mr R. As Drafty has agreed to that then I reaffirm that outcome. I direct that it is paid directly to Mr R as a compensation payment and not used to offset against any debt owed to it.

Drafty has not referred to the proposed re-calculation of the interest by removing interest from 25 October 2022. So, I have reconsidered it and I remain of the view that as Mr R's financial difficulties had been made clear during the telephone call, Drafty ought to have ceased charging interest from 25 October 2022. And as I have said in my provisional decision, Drafty will need to liaise with the other third parties involved to ensure that this reduction is reflected in the debt collected or in the process of being collected.

I appreciate that the account has defaulted. Drafty has not given me the up-to-date position on the debt. In setting up any future payment plan, I recommend that advice from third parties may be useful to Mr R and I recommend that sharing of information with Drafty about certain financial and other issues may help to create a suitable repayment plan going forward.

Drafty has raised some issues about its 24 month repayment period and has asked as to what I might consider a *'reasonable period'*. I refer Drafty to the relevant parts of CONC. I list here the FCA guidance provided in CONC which may assist in it formulating its own view on *'reasonable'*. These are linked with rules and are not stand alone provisions: CONC 7.3.5 G, CONC 7.3.6 G.

My view in relation to the circumstances surrounding Mr R was that for the Drafty representative to insist on the 24 month repayment period was the incorrect approach and in line with its own Vulnerability Policy then options being '*discussed and tailored'* seems to be a fair and reasonable approach.

I temper the comment I made in my provisional decision about the Drafty 24 month repayment policy being one formulated as a commercial policy. In these circumstances relating to Mr R during the 25 October 2022 telephone call my view was that the policy was too rigidly applied – this was what I did conclude in that part of my provisional decision. I was not necessarily intending for Drafty to interpret my comment as a wholesale criticism. So, I modify my comment by explaining further here.

I uphold Mr R's complaint in part and I direct that Drafty does as I have said below.

Putting things right

Drafty has agreed to the £300 distress and inconvenience payment to Mr R for the failure to arrange for a manager's call back followed by a failure to carry out a second manager's call. And for the failure to set up the repayment plan.

Drafty needs to recalculate the debt value factoring in that it had ceased charging interest from 25 October 2022. Drafty will need to liaise with the other third parties involved to ensure that this reduction is reflected in the debt collected or in the process of being collected.

My final decision

My final decision is that I uphold Mr R's complaint in part and I direct that Gain Credit LLC, trading as Drafty, does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 September 2023.

Rachael Williams
Ombudsman