

The complaint

Mr S is unhappy that Premium Credit Limited wouldn't adjust the day on which he was required to make monthly repayments under the credit agreement he had in place.

What happened

I issued a provisional decision on this complaint at the end of June 2020, part of which is copied below:

"Mr S entered into a credit agreement ('the Agreement') with Premium Credit in October 2018 to pay for an insurance policy he'd taken out.

It was a term of the Agreement that the monthly repayment of approximately £35 would be collected, via direct debit, from Mr S's bank account on the 23rd of each month going forwards (or if that fell on a weekend, the next working day) until it came to an end after 12 months. Three monthly repayments were successfully collected; on 23 November and 24 December 2018, and 23 January 2019.

Premium Credit tried to collect a monthly repayment, again by direct debit, in February 2019. That direct debit request was returned unpaid due to insufficient funds in Mr S's account. Premium Credit successfully reapplied for the direct debit payment on 8 March 2019 and charged Mr S a late payment fee of £27.50 as per the terms of the Agreement.

On 18 March 2019, Mr S requested that the date on which Premium Credit collected the monthly repayment by direct debit be changed. Mr S also notified Premium Credit that he suffered from autism and considered himself disabled as defined by the Equality Act 2010 (the EqA).

Premium Credit refunded Mr S the late payment fee as a gesture of goodwill and said it would change the date on which it collected the monthly direct debit payment to a date that suited Mr S. Premium Credit also said it would delay collecting payment due for March 2019 pending Mr S's confirmation of the date he wanted to change the monthly repayment date to.

Mr S didn't respond and didn't make a monthly repayment for March. Premium Credit unsuccessfully attempted to collect the monthly direct debit payment due for April. Premium Credit submitted the request again on 1 May 2019 and this was, again, declined. It wrote to Mr S providing 14 days' notice to terminate the Agreement for non-payment and as it received no reply, the Agreement was cancelled on 16 May 2019.

Mr S says he's been treated unfairly, and had Premium Credit agreed to change the repayment date from the 23rd of each month to every fourth Wednesday he would've been able to make payment, and the Agreement wouldn't have been cancelled. He also says he's been subjected to disability discrimination by Premium Credit and it's failed to make reasonable adjustments.

Our investigator didn't think Premium Credit had acted unfairly in this particular case, so he

didn't uphold Mr S's complaint. Mr S didn't agree so his complaint was passed to me to look at everything afresh and decide.

What I've provisionally 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.

When doing so, I'm required to take into account – amongst other things – relevant law and regulations. Relevant to this case is the EqA so I've taken that into account. But it's not our role to determine whether Premium Credit has breached the EqA – that's the role of the courts. The EqA sets out the ways in which someone who has a protected characteristic may be discriminated against by a service provider. Mr S says he has autism and, as such, he's protected under the EqA.

We've asked Mr S for further information about how his autism affects his ability to carry out normal day to day activities. He's explained that he finds it hard to manage his finances and has referred us to certain websites which go into detail about the effects of autism. However, autism affects people in different ways and to varying degrees. Under the EqA for a physical or mental impairment to amount to a disability, such impairment(s) must have a long term and substantial - i.e. more than minor or trivial – impact on someone's ability to carry out normal day to day activities.

In this particular case, I'm currently satisfied that I don't need to determine whether a court is likely to find that Mr S's autism amounts to a disability. Because even if a court did conclude this, I'm proposing to find that a court is unlikely to find that Mr S has been discriminated against. And in all the circumstances I'm not persuaded Premium Credit has acted unfairly or unreasonably by not changing the repayment day to every fourth Wednesday or cancelling the Agreement. I'll explain why.

There are three forms of disability discrimination that could be applicable to Mr S's complaint under the EqA:

indirect discrimination:

This applies only where the following conditions are met:

- a service provider, applying a provision, criterion or practice, treats service users who don't have a disability the same as those who do;*
- doing so puts those with a disability at a disadvantage compared to those who don't have a disability;*
- the provision, criterion or practice puts (or would put) the person complaining at a disadvantage; and*
- the service provider can't show that it is objectively justified – that is, that it's a proportionate means of achieving a legitimate aim.*

discrimination arising from disability:

A service provider:

- treats a service user unfavourably because of something arising in consequence of a disability; and*
- it can't show that the treatment is objectively justified – that is, that it's a proportionate means of achieving a legitimate aim.*

In each of the above cases, justification depends on proportionality. This is a legal concept and, essentially, Premium Credit would need to show that it has a specific lawful aim in mind when making the decision it did, and that the way it chose to achieve that aim was proportionate.

failure to make reasonable adjustments:

This is where a service provider's provision, criterion or practice puts disabled persons at a substantial disadvantage compared to those who don't have a disability. A service provider should take such steps as necessary reasonable steps to alleviate the disadvantage.

It's possible that a court may find Premium Credit's policy that it can only collect payments on the same date each month puts autistic customers at a disadvantage compared to those customers who aren't autistic. But I'm not proposing to make a finding on what a court is likely to say about this. That's because I'm currently satisfied that Premium Credit's policy to only collect direct debit payments on certain dates of the month didn't put Mr S to a disadvantage in the circumstances of this case.

Mr S did make the first three monthly payments even though the payment dates fell on different days of the week, and not on the fourth Wednesday of the month. Our investigator asked Mr S what changed in March 2019 which meant he needed to have that arrangement in place. Mr S said he wasn't good with finances and his wife would put some money into his account to ensure there were sufficient funds for direct debits to be collected. However, she forgot to do so one month and so the direct debit couldn't be collected. For similar reasons, I also think it's unlikely that a court would find that Mr S was treated unfavourably because of something arising in consequence of his autism.

Premium Credit did apply a criterion to Mr S; namely that it could only collect direct debits from customers' accounts on a set day each month. I don't propose making a finding about whether that placed Mr S – as a customer with autism - at a substantial disadvantage compared to those who don't have that condition. That's because, in the circumstances of this complaint, I'm satisfied a court is unlikely to find Premium Credit failed to take such steps as were reasonable to alleviate any substantial advantage.

What's reasonable can depend on many factors such as the extent to which it's practicable for a business to take such steps – and the likely cost to be incurred and disruption caused by taking them. I've considered Premium Credit's comments that its internal systems prevent it from changing Mr S's direct debit payments to a set day each month (as opposed to a set date) for various reasons, including that it would be relying on a manual process which would be subject to human error and could be burdensome to maintain / monitor. It's possible that in certain circumstances it would be fair and reasonable for Premium Credit to adjust its processes to change the way it collects payments - if those processes cause a customer (or prospective customer) a substantial disadvantage and reasonable steps can be taken to alleviate that disadvantage.

But in the circumstances of this particular complaint, I'm not currently persuaded Premium Credit's decision not to change its policy to collect direct debit payments on a certain day of the month was unfair or unreasonable - taking into account the requirements of the EqA, in conjunction with the EqA statutory code of practice for services, public functions and associations.

That's because another factor to take into account when considering what constitutes a reasonable adjustment is the effect Mr S's autism had on him. As I've said above, Mr S has told us that the reason he missed one monthly payment was because his wife had forgotten

to put money into his account – not because the date on which payment fell. I've seen nothing to say that if payment had been collected on the fourth of the month, payment would've been made.

Further, Mr S signed the Agreement confirming that the monthly payment would be collected by direct debit on the 23rd of each month and the first three monthly payments were collected without issue. The fourth direct debit was also collected – albeit at the second attempt. As far as I can see, Mr S didn't make Premium Credit aware of his condition and nor had he requested any adjustments until after the fourth repayment had been collected. Further, I've not seen anything that leads me to reasonably conclude that Premium Credit's failure to alter its criterion meant that he was unable to make the monthly payment due on 23 April 2019.

Once Mr S made Premium Credit aware of his condition and requested that monthly repayments be collected by direct debit on a certain day of the month, it said it would change the date of collection to whichever date Mr S preferred. I know Mr S doesn't think Premium Credit went far enough by offering to do this, but it also waived the late repayment fee. And I'm currently satisfied that was fair and reasonable.

Premium Credit was unable to collect the monthly direct debit from Mr S's bank account for payment due in April 2019. Having also not received any payment for March 2019, I don't intend to find it unfairly relied on the term in the Agreement giving it the discretion terminate the Agreement, providing 14 days' notice, if a direct debit repayment had been missed.

And having not received any payment within the notice period, I don't think Premium Credit unreasonably cancelled the Agreement with effect of 16 May.

When proposing to make this finding, I've considered what Mr S says about other businesses agreeing to change the day on which they collect direct debit payments to certain days on the fourth week of each month. That may be the case. But for the reasons above, I don't think Premium Credit has acted unreasonably by not doing so in the circumstances of this particular case”.

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they wanted me to consider.

Premium Credit said it agreed with my provisional decision and had nothing further to add.

Mr S disagreed with my provisional decision. He has provided an explanation of the duty to make reasonable adjustments and said:

- He's registered as a vulnerable adult, he struggles with his finances and every other supplier and employer has always made reasonable adjustments to allow him to manage his autism;
- He's paid on a particular day of the week, so his money goes into his bank account on that day – and his bills are paid then too;
- Premium Credit 'hit' him with £50 of charges;
- Autism is classified as a mental health and learning disability and requires support;

- There's been a clear breach of the Equality Act 2010 and he will proceed to Court if our Service doesn't uphold his complaint.

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.

That all the points raised by Mr S in response to my provisional decision.

Having done so, I don't uphold his complaint for the reasons detailed in my provisional decision.

I'd already considered many of the points Mr S raised in response to my provisional decision when provisionally determining his complaint, as they'd been made previously. But I understand why he wanted to raise them again, to make sure that I had considered them – which I have.

Although Mr S has told us that he's paid on a particular day of the week and his bills are paid on that day, as I said in my provisional decision, the first three monthly payments were collected from Mr S in line with the terms of the Agreement he signed - without issue. And he's also told us that the reason he subsequently missed one monthly payment was because his wife had forgotten to put money into his account. So I'm not persuaded that payment was missed because of the date on which the payment date fell. And all in all, I'm not persuaded that Mr S was put to a substantial disadvantage on account of the monthly payment not being collected on a particular day of the fourth week of the month.

I've also taken into account what Mr S says about being charged late payment fees. But I'm satisfied that these were reimbursed shortly thereafter – after Premium Credit was told of his medical condition, and whilst exploring options around changing the date on which the monthly payment should be made.

My final decision

I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 September 2020.

David Curtis-Johnson
Ombudsman