

## The complaint

Mr C is unhappy that Creation Financial Services Limited (Creation) has not refunded some unauthorised transactions on his credit card.

## What happened

On two occasions, Mr C contacted Creation to dispute some transactions on his credit card account. Both times, Creation sent Mr C some forms in the post to complete and return. As Mr C didn't return the forms within the required timescales, Creation didn't take any action about the disputed transactions. Mr C said he didn't receive the forms and that he had also asked for any requests or information to be sent via email. He said that Creation should look at the disputed transactions.

Creation replied and said that it had logged the disputed transactions, but not received any written confirmation of them from Mr C. The chargeback time limit had then passed and there was no liability under Section 75 of the Consumer Credit Act 1974 (CCA) because the disputed transactions were below £100. It said all letters were sent by second class post but once they left the business it had no control over them.

Mr C complained to this service. Our investigator didn't uphold the complaint. She didn't think that Creation needed to do anything further.

As Mr C did not agree, the complaint has been referred to me.

I issued my provisional decision on 28 September 2020. In my provisional decision, I explained the reasons why I was planning to partially uphold the complaint. I said:

*When Mr C phoned Creation about the disputed transactions, he said he asked to be contacted by email. However, Creation contacted him by letter. Mr C said that this meant that he didn't receive the forms that he needed to complete in order to dispute the transactions.*

*In one of Creation's responses to Mr C's complaint, it said that its records showed that the dispute was raised, but that it didn't then receive written confirmation from Mr C by email. A dispute form was then sent to Mr C's home address, which stated that it must be returned within 14 days, but Creation didn't receive a completed form. Mr C contacted Creation again about three months later and so it sent a new form. Creation received a response from Mr C about three months after that.*

*I asked Creation for the call recordings, but it was unable to locate them. I've read the call notes and these provide only very brief details of the conversations about the disputed transactions. The notes don't say whether Mr C was asked by Creation to send an email about the disputed transactions or whether Mr C said he only wanted to be contacted by email. I've listened to a phone call that Creation provided for another complaint Mr C made to this service and Mr C briefly commented that Creation had sent a letter about a complaint when he had asked to be contacted by email.*

*I asked Creation whether it would have sent the form by email if it had been asked to do so. It said that it would have, but that its standard procedure was to contact customers by letter.*

*Given that the call recordings aren't available, I need to decide what I think is most likely to have happened based on the other information available. Creation's response to Mr C's complaint said that Mr C didn't send an email confirming the disputed transactions and that he also didn't respond with the details until several months after he raised the dispute. Looking at Creation's call notes, these don't explain what Mr C was advised or what action he was told to take, so I'm not clear what Creation's evidence is that it asked Mr C to send an email, even if it's Creation's normal practice to do so. Looking at what Mr C has said, I can't see that he was aware that he was meant to send an email.*

*Looking at the records, I can see that both times Mr C phoned to raise the disputes, a dispute form was sent by post several days later. So I think there is enough evidence to show that the form was sent on both occasions. If the forms weren't received by post, I don't think this was Creation's fault though because it was only responsible for sending it, not for delivering it, as that was outside of its control.*

*But I'm aware that Mr C said he didn't want to receive the form by post and that it should have been emailed to him. Mr C explained why he wanted to be contacted by email, including that he was frequently abroad and that he hadn't received other letters Creation had sent in the post. Without the relevant phone calls, I can't say for certain what happened, but given that throughout the complaint Mr C had said that he wanted to be contacted by email and his reasons for this, I think it is more likely than not that he told Creation that he wanted to be contacted in that way. Given that Creation has said that it could have sent the form by email if it had been asked to do so, it therefore follows that, on balance, I think that Creation didn't do as requested by Mr C because it then sent the forms by post.*

*The question is - what impact did the above have on Mr C's disputed transactions?*

*When a cardholder disputes transactions on their credit card, there are two potential routes to get a refund, subject to certain conditions being met. These are under Section 75 of the CCA or as a chargeback.*

*Mr C has argued that the transactions should have been disputed under Section 75 of the CCA. To use this legal protection, the cost of a single item must be more than £100, although the full cost of the item doesn't need to be paid on the credit card. In this instance, the transactions on Mr C's account were each below £100. Mr C has argued that he had unknowingly signed up to a subscription service and that although there were several transactions on the card, they should be considered as one transaction, the cumulative total of which was over £100. I've thought about this but can't currently see that what Mr C has said meets the criteria for a Section 75 claim. He seems to be arguing that the transactions should be treated as one item, but the reference to one item refers to the goods themselves and I haven't seen evidence to show that the cost of each individual item was more than £100. So, on that basis, I can't see that Section 75 applies.*

*This meant that the only option available to Mr C was a chargeback. A chargeback has strict deadlines that apply to it. This is normally 120 days from the payment, or from when the customer became aware of the problem. So, the amount of time that it took Mr C to receive the form and for him then to return it is therefore key.*

*Mr C said that he phoned Creation on multiple occasions to follow up on the dispute, including in each of the three months after he first raised the disputed transactions. Looking at Creation's call records, these don't show that Mr C spoke to Creation in the months in between the two calls that resulted in the dispute forms being sent. Although the call notes*

are very brief, I haven't seen anything to indicate that they don't include all of the times Mr C phoned. So, I haven't currently seen evidence that shows that Mr C phoned as often as he thought he did.

If the first call was taken as the date on which Mr C was first aware of the problem, by the time of the second phone call, the 120 day limit for raising a chargeback had almost expired. Again, without the call recording and only very brief call notes, I don't know what was discussed, but I haven't seen evidence that the call handler made Mr C aware in this phone call, or the earlier one, that this was likely to be a chargeback claim and the deadlines involved. So, I can understand that Mr C didn't necessarily understand the urgency to respond.

However, I also need to think about Mr C's role in this. Given he raised the disputed transactions and asked to be contacted by email, when he didn't receive the email, he could have followed this up sooner. If he had done so, he might then have been able to raise the dispute within the 120 day limit. However, I'm aware that Mr C seems to have thought that this could be dealt with as a Section 75 claim. In which case, again, he might not have realised the urgency to respond, as the same time limits don't apply to that type of claim. But I haven't seen any evidence that it was Creation that gave Mr C the impression that this might be a Section 75 claim, so I don't think it would be fair to hold it responsible for this.

I'm aware that what Mr C really wanted though was for his disputed transactions to be refunded. To be clear, it isn't now possible to raise a chargeback claim because of the 120 day limit to do so. Banks also aren't obliged to submit a chargeback claim if they don't think that it will be successful, so I don't know if Creation would have submitted the chargeback claims anyway or whether the claims would have been successful if it had.

But Creation didn't assess the disputed transactions to see if they should be considered as a chargeback claim and my current view is that some of the reason for that is because Creation didn't do what Mr C asked, which was to contact him by email. However, even if it had done so, I don't know whether Mr C would have replied within the required timescales anyway – whether that was the 14 days specified by Creation to return the form or the 120 days within which the claim needed to be made overall.

So thinking about all of the above, I'm minded to partially uphold this complaint. This is because I currently think it is more likely than not that Mr C asked to be contacted by email but that Creation failed to do this. However, I can't say with certainty whether Mr C would have returned the form within the required timescales or that the disputed transactions would have been refunded. I'm also currently minded to say that Creation should pay Mr C £200 compensation for the distress and inconvenience caused by it not contacting him in the way he asked about the disputed transactions.

I asked both parties to send me any more information or evidence they wanted me to look at by 28 October 2020.

Mr C asked for more time to provide comments, so was given a number of extensions to the deadline. However, he didn't provide any comments.

Creation confirmed it had nothing to add.

### **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.

Having done so, I've decided to maintain my previous decision to uphold this complaint in part and for the reasons that I previously gave.

### **Putting things right**

Creation must pay Mr C £200 compensation for the distress and inconvenience caused by it not contacting him in the way he asked about the disputed transactions.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint in part. I require Creation Financial Services Limited to pay Mr C £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 February 2021.

Louise O'Sullivan  
**Ombudsman**