

## The complaint

Miss D is unhappy that Creation Financial Services Limited (“Creation”) set up a payment arrangement on her credit card when she thought she had been given a payment break. She also says she should’ve been given a payment break.

## What happened

In 2019 Miss D was having difficulty in keeping up with the payments on her credit card with Creation. She contacted Creation and had two calls with it. They went through her finances to see how much she could afford to pay. It was agreed that she could pay a monthly amount of £5 but Creation and Miss D disagree about the terms of the arrangement. Miss D says that Creation agreed to a payment break, which meant her account would be placed on hold, and she wouldn’t have to make payments, but could if she wanted to.

Creation say that the arrangement was a more formal arrangement, and Miss D had to make a payment of £5 every month. This is how the arrangement was documented in Creation’s internal records and in a letter to Miss D.

Miss D didn’t keep up monthly payments, and Creation sent her letters asking for payment which said she’d broken the arrangement with them.

Miss D complained because she said she had been told the account had been put on hold for six months and thought there shouldn’t have been any collections activity on her account. Creation disagreed, and said it was clear that Miss D was on a payment arrangement. It didn’t uphold Miss D’s complaint but as a gesture of goodwill it refunded all charges and fees applied to the account between September 2019 and April 2020, totalling £211.15.

Miss D was not happy with this response and brought her complaint to our service.

Our investigator looked at the available evidence and had to rely on Creation’s file notes as it no longer had the call recordings. He considered what Miss D had told him, and the available evidence from Creation, and concluded that Miss D did agree to pay £5 each month, and that Creation had not agreed to put the account on hold. He didn’t uphold the complaint.

Miss D was unhappy with this and asked for an Ombudsman to review the case, so it came to me to decide. As I considered issues that hadn’t been referred to by our investigator, I issued a provisional decision, which is set out below:

*“As I don’t have the call recordings that would show what was said about Creation’s arrangement with Miss D, I have to reach a conclusion based on the information I have. I can see that Miss D says she was told that her account was put on hold for 6 months, and that she only had to make a payment if she could. I understand that this is what she recalls, but I have to look at all of the evidence and circumstances at the time.*”

*Creation’s notes show that in the two conversations, there was an assessment of what Miss D could afford to pay. The notes do not detail the full conversation, but I can see that on both*

occasions Miss D offered to pay £5 a month. I can see from the first conversation that Creation thought Miss D had £131 disposable income, so would normally require a minimum of £52.97 a month. The notes for this call mention that Miss D said she was suffering from ill health and had been signed off work for six months. The notes for the second call show that Creation was willing to accept £5 "due to circumstances". The notes don't say what this refers to, but I can see that the period of the arrangement is consistent with the information about Miss D being off work.

The details of the arrangement are recorded in Creation's internal notes, and a letter was sent out confirming this. I think it's unlikely that Creation's internal notes, and the letter sent out to Miss D, would record something fundamentally different to what was agreed. In the light of this, I think that it's more likely than not that a payment arrangement was agreed for payments of £5 a month between August 2019 and January 2020, rather than an agreement that Miss D could pay if she wanted during this time.

Miss D says she was "in negative financial status", and that the financial assessment done by Creation was incorrect. I have seen the detail of the assessment carried out by Creation, and it does reflect the call notes, so I have no reason to think that it doesn't reflect the information that Miss D provided. However, I do think that the very low figure of £50 a month allocated to "housekeeping" could reasonably have prompted further questioning by Creation, to ensure that it had an accurate picture of Miss D's circumstances. But having said that, even if this had been increased substantially, for example to £150, the £5 offered would still have been affordable. So, I can't fairly say that the available evidence suggests that Miss D had no disposable income or that Creation set up an unaffordable arrangement.

Miss D has also mentioned her health issues. She had told Creation about this, and she had previously been dealt with by its specialist team. But, at the time of the arrangement, her account was with Creation's customer support team, which deals with customers in financial difficulties. This was because Miss D hadn't provided any medical evidence of her condition to enable the specialist team to continue to deal with her account. I can't say that this was unfair of Creation, as it had requested this information, and didn't have the information it needed to enable it to consider whether a different course of action was appropriate.

Miss D says that Creation should not have carried out any collections activity because the payments were voluntary. In the light of what I have already said, I can't agree with this. The evidence I've seen shows that there was a fair payment arrangement, the details of which had been confirmed to Miss D, and I can't say that it was unfair or unreasonable of Creation to contact Miss D when she didn't keep to the arrangement.

In her initial complaint to Creation, Miss D mentioned that she was concerned about the potential impact on her credit file but had not seen any adverse impact at that time. She hasn't provided any further information on this, so I have not been able to consider that point any further. In any event, as I can't see that Creation acted unfairly in setting up a payment arrangement, I can't say that it would have been unfair of Creation to record the status of Miss D's account.

When Miss D complained to Creation, her account was put on hold while it considered her complaint, and I think this was the right thing to do pending the outcome of its investigation. As a gesture of goodwill, Creation refunded all charges up to the date of its final response. This wasn't something Creation had to do, but it was a helpful action in the light of Miss D's circumstances.

In her response to our investigator's view Miss D said there had been errors when a revised financial check was carried out, but then said that her account had been put on the correct hold, so as far as I can see, Miss D's complaint remains about what happened in 2019.

*After considering the various issues raised, I can't say that Creation acted unfairly in its dealings with Miss D, so I do not intend to ask it to do any more."*

I considered everything that Miss D and Creation have said and provided since my provisional decision, and in the light of that, I issued a second provisional decision addressing the additional points which I summarise as follows;

I reviewed the evidence as to the nature of the agreement to pay £5, noting the unavailability of call recordings, and remained of the view that the available evidence supported a commitment to pay £5 each month for 6 months. In the light of this, I also thought Creation was entitled to record payments that were missed on Miss D's credit file.

I looked at the financial statement where Miss D was concerned about how mortgage commitments had been dealt with. I could see that it said Miss D's mortgage was on hold, and that this was why no payment was allocated to it. The call notes suggest there was discussion about this but are inconclusive as to exactly what was said. As Miss D's mortgage was documented as on hold until January, I didn't think it unreasonable for a payment arrangement to be agreed for £5. Miss D thought a further assessment had been carried out, but I couldn't see any evidence of this.

Miss D commented on the fact that Creation said in its final response that it didn't offer payment holds but told her subsequently that if there was no disposable income, it would do so. While I could see that there was some inconsistency in what Creation said then and at other times, my view remained that this of itself didn't show that Creation had done anything wrong in putting Miss D on a payment arrangement.

I noted that Miss D had provided a sick note to Creation at the time of her complaint, but that her account had previously been moved from the specialist team to the customer support team as she hadn't provided medical records when requested to do so by Creation.

Miss D complained of delays in dealing with her case. I thought that there hadn't been significant delays, and that Creation had fairly told Miss D of her right to bring her case to our service while it investigated further. However, I saw that Creation hadn't replied to Miss D's email in June 2020, after saying it would investigate further, which wasn't the level of service Miss D would've expected.

Miss D raised issues about what happened when her account needed to be re-assessed after Creation had responded to this complaint. I said these were not part of this complaint and would need to be raised separately with Creation as a new complaint.

I said I didn't intend to uphold the main parts of Miss D's complaint, but that Creation should've responded to her as it had agreed to do and should pay £50 compensation her for this service issue.

Miss D has responded further on several points, namely the nature of the arrangement with Creation, issues with the financial assessment, and the way that her account should've been dealt with in the light of what Creation had said to her about its processes.

### **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.

Miss D provided a detailed response to my second provisional decision, but after considering what she provided, I haven't changed my view on the main part of her complaint. The evidence is conflicting so I can't categorically say what happened in the course of this case, and I do understand Miss D's frustration at the unavailability of the call recordings which has made it more difficult to establish the facts. In the circumstances, I have to base my decision on what the available evidence suggests is more likely than not to have happened.

Miss D's further comments and information centre on the following points:

### **Evidence of the arrangement made**

Miss D says that the call notes and template letters don't evidence a payment plan for £5 a month. Creation's notes from the calls in July and August 2019 both refer to an offer of £5. Miss D says this doesn't show that £5 was to be paid each month. While it is correct that the word "monthly" is not included in the notes, the other information I've seen supports the conclusion that this was what was agreed. The internal notes show the payment schedule, which reflects a payment of £5 in each of the next six months. While Creation have only been able to provide templates of the letters sent, its system notes show that a letter confirming a payment plan was sent to Miss D in early August 2019.

While the template doesn't contain the details specific to Miss D, it sets out the framework for a plan requiring specified payments in successive months over a specified duration, with variable fields for the inclusion of those details. I think it is reasonable to conclude that this would've been populated with the payment schedule recorded in Creation's internal notes.

I haven't seen anything to suggest that Creation's correspondence records are incorrect, and accordingly I am satisfied that the evidence indicates that it is more likely than not that a letter detailing the payment plan was sent to Miss D.

In summary, I remain of the view that the evidence shows that it's more likely than not that a payment plan was agreed.

### **Creation's use of "payment holds"**

Miss D commented again on what Creation has said in the course of its dealings with her about its use of payment arrangements and payment holds. As I said previously, this is only material if on the basis of the information Creation held, Miss D had no disposable income. I have considered this below.

### **The financial statement**

Miss D says the treatment of her mortgage in the financial statement was incorrect, and that the notes of the August call show this.

The financial statement is dated July 2019, and it noted that Miss D's mortgage was on hold until January (2020) and consequently didn't include a payment amount for the mortgage. Miss D says that she told Creation that she had tried to get a six-month payment holiday on her mortgage, but it was rejected. She says Creation must have misheard or mis-interpreted what she said and wrongly recorded that she had a payment holiday. She mentions that the call notes say the agent couldn't hear Miss D in support of this. I can see that the call notes say that the agent couldn't tell Miss D the outcome of the financial assessment because they couldn't hear her, but from what I can see, this only happened after the assessment had been completed, so I haven't seen anything to suggest that this was an issue during the rest

of the call.

Miss D has provided copies of correspondence that show that she had a concessionary arrangement with her mortgage company for two months from June 2019, and that after this ended, she discussed further arrangements with them. It shows that she then made a proposal in September 2019 for a further two-month payment holiday, with payments starting again in November 2019. This was rejected in October, but this happened after the conversations with Creation. This gives some background, but doesn't reflect exactly what was recorded by Creation, or what Miss D says she told them.

I have to decide what is most likely to have been said during the call in July 2019 based on what I've seen. The financial statement recorded by Creation, and the information most recently provided by Miss D both indicate that Miss D had a mortgage payment holiday in place in July 2019, so I think it is more likely than not that Miss D said she had a payment holiday at that time. The payment plan with Creation covered a six-month period to January 2020 and Miss D hasn't suggested that a different period was discussed with Creation. In the light of all of this, I think it's more likely than not this was the period discussed. Taking account of all of this, I think it's more likely than not that the financial statement was an accurate record of the discussion about the mortgage during the July 2019 call.

Miss D says that Creation should've taken account of her mortgage payments in any event as they are a priority payment. As I've said previously, I don't think it was unfair to agree of Creation to agree a payment plan for the small sum of £5 on the basis that she was able to pay this during a period when she was not required to make mortgage payments.

The arrangement was set up during a call in August 2019 and is evidently based on the July 2019 financial statement. However, I can see that there was some further discussion during the call in August 2019 and Miss D says that the financial statement was finalised during this call and was to be corrected.

Creation's notes state that it wasn't correct that Miss D was paying £0 towards her mortgage and that she pays towards this when she can. I've said that I thought it was likely this statement reflected that Miss D said that it wasn't correct that she didn't pay anything towards her mortgage because she did pay when she could. I remain of this view, and as such, I don't think that this suggests that the financial statement was incorrect as it isn't inconsistent with monthly payments being on hold.

Miss D says she provided her monthly mortgage payment details during the August 2019 call and was led to understand that the agent updated the statement accordingly. But the only statement Creation have on record is the July 2019 statement. Miss D also says there are multiple other errors in the financial statement, which if corrected would show she had no disposable income. She says she understood that these were being corrected. As the information recorded isn't consistent with what Miss D has told this service was said, I have to decide what is more likely than not to have been said on this call. Although the documentation provided by Miss D shows that some of Miss D's outgoing were greater than stated, there is no record of these figures, or mortgage repayments being discussed. Creation's notes record the comments about the mortgage that I have already mentioned but no other discussion or figures are referred to in the call notes and I haven't seen any evidence of further communication between Miss D and Creation about this at the time. Accordingly, I can't fairly say that Creation should've taken this into account.

Miss D comments on the brevity and general standard of the call notes as indicating the likelihood of error on the part of Creation. I am not convinced that short notes, and grammatical errors mean that information is likely to be mis-recorded. Additionally, while the notes are short, the detail of the financial assessment is in the financial statement that was

taken over the phone in July 2019. Miss D also says that Creation made errors in a subsequent financial assessment, making it likely there were errors in this case. I am not persuaded on this point and have looked at this case on its own facts.

In summary, my view remains that a payment plan was agreed, and that Creation didn't act in error or unfairly in setting it up and taking follow up action.

I know that Miss D will be disappointed with this, but I hope she can understand my reasons.

I do understand Miss D's frustration at the unavailability of the recordings of the two calls. Miss D had asked Creation to provide the call recordings at a time when they would've been available and they would have provided clearer evidence. Miss D was put to considerable time and trouble due to their unavailability, and it's fair and reasonable that Creation compensate her for this. In my provisional decision, I said I was intending to award £50 in respect of Creation's service shortcomings, but I am increasing this to £150 to take account of the particular inconvenience caused by this issue and have communicated this to Creation separately.

### **Putting things right**

Although I am not upholding the main part of Miss D's complaint, I am requiring Creation to pay £150 to compensate for the time and trouble caused by the shortcomings in the service provided by Creation.

### **My final decision**

My final decision is that I uphold this complaint in so far as it relates to the service provided by Creation Financial Services Limited to Miss D.

I require Creation Financial Services Limited to pay £150 directly to Miss D to compensate for the time and trouble caused by its service failings.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 31 August 2021.

Rosemary Campbell  
**Ombudsman**