

## The complaint

Mrs G complains that Creation Consumer Finance Limited (CCF) treated her unfairly when it added interest to a fixed sum loan and provided poor service after she complained, causing additional distress and inconvenience.

## What happened

In October 2019 Mrs G purchased furniture from a retailer that I'll refer to as B. She paid a deposit of £500 in the shop leaving a balance to pay of nearly £850 which she funded with credit. Mrs G thought B was the lender and she didn't have to pay the balance for six months – under a buy now pay later (BNPL) option. She phoned B in March 2020 when she hadn't heard anything - nearly six months after delivery. There was no answer so she sent B an email shortly after, asking when payment was due exactly and how she should pay. Mrs G heard nothing back she was aware that some businesses were struggling to deal with customers due to the impact of the pandemic (this was near the start of the first lockdown), she decided to wait for B to respond.

In November 2020 CCF sent Mrs G a financial statement that said she owed over £1,600 (the £850 balance plus interest) under a fixed sum loan that CCF had provided. Mrs G says she'd never heard of CCF before - no third party was mentioned when she bought the goods and agreed to defer the balance payment. She was upset to find that interest had been added to the account. She says she had the funds to pay and wanted to do so within the BNPL period. And the only reason she didn't, was B didn't tell her who or how to pay when she took out the finance - or when she asked about this a few months later.

After she received the statement Mrs G phoned CCF to try and pay the balance without interest. A call handler accepted payment of about £850, but told Mrs G that she'd need to apply online if she wanted to extend the date when interest was added. Mrs G made the online application for an extension but her request was declined and CCF says she's liable to pay interest of over £700. Mrs G feels this is unfair. She's retired and says she'd never taken out this sort of finance before. She's unhappy that she wasn't given the information she needed to make the payment in time without incurring interest. And she considers CCF made matters worse when she asked for help. Mrs G wants CCF to remove interest and acknowledge that she's paid the debt and the finance is settled in full.

CCF looked into what happened but it didn't uphold the complaint. In its final response letter (FRL) CCF said (in summary):-

- Mrs G took out a fixed sum loan with CCF when she bought the goods, the loan agreement has CCF's name on it and Mrs G should reasonably have been aware of the name of the lender;
- under the loan terms Mrs G had the opportunity to pay for the goods free from interest if she paid the full cash price on or before the special offer date (SOD) - 31st October 2020;
- a reminder letter was sent to Mrs G in September 2020 but payment wasn't made by the SOD so interest was added properly at that point and CCF started to collect

- monthly payments by direct debit (over 36 months) as agreed under the loan terms;
- Mrs G asked to extend the SOD in December 2020 but this was impossible as the due date had already passed.

Mrs G remained unhappy and she referred the matter to our service. One of our investigators considered the evidence. He wasn't persuaded, on balance, that Mrs G was provided with all of the necessary information at the outset. He asked CCF to supply a copy of the reminder letter it said was sent in September 2020 (as referred to in the FRL) but CCF said reminders were actually sent in May and October 2020 and the reference to September was a mistake.

CCF was unable to provide copies of the actual letters that were sent to Mrs G but it sent us a standard template and a screenshot that indicated some correspondence was issued to her in May and October 2020. The investigator didn't think this was sufficient to prove that reminder letters were actually sent – given the confusion over the number of letters and the issue dates. He was satisfied that Mrs G has consistently said she never received anything from or about CCF - before the account statement. He thought the fact she got in touch with CCF very shortly after she received that - and repaid the balance - suggests she had the money available and she wanted to pay. He considered this was also supported by her earlier efforts to contact B in March and April 2020.

The investigator considered it was more likely than not Mrs G would have repaid the balance before the SOD if she'd been given all the necessary information at the outset or been sent reminders. And he thought CCF could have done more to assist when she asked for help. He didn't think it was fair of CCF to suggest that Mrs G should apply online for a payment deferral - which was inappropriate for her circumstances - and then fail to tell her about the outcome of that application when it said that it would.

The investigator thought the complaint should be upheld. And, in light of the fact Mrs G has paid the full purchase price already, he recommended CCF should end the loan agreement, mark it as settled and pay Mrs G £100 for associated distress and inconvenience – to put things right.

CCF didn't agree. It said (in summary):-

- the loan agreement bears Mrs G's electronic signature and she was required to read and accept the terms and conditions before she signed;
- the loan agreement states clearly that the finance is provided by CCF and who to pay;
- a copy of the credit agreement is *always* provided at the point of sale;
- CCF can't provide an exact copy of the letters Mrs G was sent as reminder letters are automated - but the information supplied shows that such letters were generated on the dates stated - and templates like those supplied have been accepted as evidence by our service in the past;
- SOD extensions are possible for consumers who were impacted by Covid-19 and wish to pay the cash price to avoid interest but need more time to do so - Mrs G had already paid the balance of the cash price on 7th December 2020 so it was unlikely that such an extension would be granted.

CCF acknowledged that Mrs G should have been kept informed about the decision not to provide an extension and it offered to pay her £50 compensation for any distress and inconvenience caused by that.

Our investigator wasn't persuaded to change his recommendations. He thinks call

recordings that CCF provided make it clear that Mrs G didn't want to defer payment due to financial problems. She wanted an extension so she could pay the balance free from interest. And she would probably have done this in time - if she'd received all the information that she should have been given earlier. CCF asked for an ombudsman to review the matter.

Having considered the available evidence I was minded to uphold this complaint but my reasons were somewhat different to the investigator's. I issued a provisional decision on 25 January 2022 to allow the parties to consider my provisional findings and make further submissions (if they wanted to) before I made my final decision. I've set out below what I decided provisionally – and why – and this forms part of my final decision.

### **My provisional decision**

I don't think there's any dispute that Mrs G agreed to take out some credit when she purchased the goods from B. She paid a deposit of £500 in the shop when she placed the order which left over £800 to pay. The parties disagree however about what happened exactly and what information Mrs G received about the credit agreement at the relevant time.

Mrs G says B told her that she could defer paying the balance for six months, CCF wasn't mentioned at the time and she has no memory of accepting a loan from CCF – electronically or otherwise. She thought this agreement was with B. She expected to hear from B about the balance payment after the goods were delivered. And she received no paperwork about the loan on the day of the purchase - or after.

CCF, on the other hand, says the loan agreement bears Mrs G's electronic signature. And this means she was taken through the loan documentation by B - via various electronic screens - before signing, to ensure that she understood and accepted the relevant terms and conditions. Then B would have provided a paper copy of the loan agreement before she left the store. And Mrs G should not reasonably have been misled about who the lender was or what she'd agreed to.

It's impossible for me to be certain what happened at the point of sale itself, from the information I've got. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I'm satisfied that CCF may be held liable (under section 56 of the Consumer Credit Act 1974) if B told Mrs G something that wasn't true that she relied upon during pre-sale negotiations - or if Mrs G wasn't given all the information that she should have received about the loan before she took it out.

I appreciate CCF has told us about what *usually* happens during the course of this sort of Sale. But, Mrs G says the usual process wasn't followed here. In this situation, I'd expect the lender to be able to provide some record of the sale process – such as an electronic footprint showing how long it took Mrs G to read through the pre-contract credit information, for example. Or some form of confirmation from B (or the borrower) that a paper copy of the loan agreement was provided. We asked CCF to supply details of the sale process and sight of any relevant electronic records that illustrate the various stages of this loan application but CCF hasn't done so.

I have read through the loan documents and I can see these contain Mrs G's personal information and her banking details. So, I think she must have provided this information to B at the relevant time. But, Mrs G doesn't dispute that she agreed to take out *some* finance here – so it's perhaps not unexpected that B would have this information. And I'm not

persuaded that the presence of this information alone means that Mrs G *must* have been taken through the loan forms properly in the way that CCF suggests.

I think Mrs G has been fairly consistent in her version of events. She told us, for example that she didn't know that the credit provider was CCF until near the end of 2020. I'm satisfied she emailed B in April that year to ask when the loan payment was due and how she should pay – which seems consistent with her being unaware that CCF was the lender.

I think the call recordings that CCF supplied (from December 2020) also suggest that it was a shock to Mrs G to find out CCF had provided the loan - when she received the statement. And, when we asked Mrs G about the paperwork she received in the store on the day of the purchase, she was able to supply the original order form, the deposit receipt and the product booklet itself. I think the fact she was able to do this, some 12 months after the transaction, suggests she's fairly careful with her paperwork. And she's unlikely to have mislaid or forgotten if she was given a copy of the loan agreement at the same time.

On the information I have at the moment, I have no reason to doubt what Mrs G says happened. I've seen nothing to show that a paper copy of the loan agreement was provided to Mrs G - either in store or later. And CCF hasn't supplied the information I'd normally expect to see about the electronic loan application process. I appreciate B *should* have taken Mrs G through the loan forms online and given her a copy of the executed loan agreement – in line with CCF's usual process. But I don't have a statement from B about what happened. And I can't rule out the possibility that the salesperson filled out the online forms - asking Mrs G for her details as they went along.

Ultimately, I'm satisfied that CCF was under an obligation here to ensure that Mrs G was reasonably informed about the loan terms before she borrowed this money and provide a copy of the loan agreement. I think Mrs G has been fairly consistent in her recollection of events. And I don't think CCF has done enough to show that it complied with its obligations.

I appreciate CCF says Mrs G would have been reminded, in any event, about when the BNPL period was due to end - because it sent her letters before the SOD. CCF originally said one reminder was sent in September 2020 (in the FRL) but it told us subsequently that was wrong and *two* reminders were sent in May and October the same year. Like the investigator, I think this confusion casts some doubt as to when - and if - reminders were issued.

I'm satisfied that Mrs G has consistently denied receiving any reminders and, again, I think her actions support this. I'm satisfied she made efforts to try and sort out the balance payment with B earlier in the year. And she was able to pay the balance not long after she was contacted by CCF – just after the SOD - which suggests she had the money to pay what she owed at the time.

It's difficult to see why Mrs G would ignore reminders that CCF says were sent in May (just after she got in touch with B asking how and when to pay) and October (when she was able to pay the balance not long after - as soon as she received the November statement). On balance, I think it's unlikely Mrs G received any reminders – and, if she had, she would probably have paid the balance in time to avoid interest.

In light of the above, I'm minded to agree with the investigator that a fair and reasonable outcome - in these particular and unusual circumstances - is for Mrs G to be allowed to pay for the goods without added interest. As she's already paid the purchase price in full, I think CCF should cancel the finance with nothing further owing and remove any adverse information from Mrs G's credit file. If CCF has taken any additional direct debit payments (in excess of the balance due) these should also be refunded with interest.

Mrs G has told us how upset and stressed she was by what happened. I understand she found CCF difficult to contact and feels she was passed around various departments without any resolution to her problems. For the reasons I've set out, I'm not persuaded that CCF did all that it should have here. I think CCF also accepts it should have handled things better – it has offered to pay £50 compensation. Taking everything into account, I'm minded to agree with the investigator that it is fair and reasonable for CCF to pay Mrs G £100 compensation for distress and inconvenience.

### **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.

I invited the parties to consider my provisional findings and let me have any further comments or information by 15 February 2022 and I'd review all the evidence available after that and make my final decision.

The date set above has now passed and CCF hasn't responded or raised any objection to my provisional findings. Mrs G accepts my provisional conclusions. And I see no reasonable grounds to depart from my provisional decision in the circumstances.

For the reasons I've given, I remain of the view that it is fair and reasonable, in these particular circumstances, for Mrs G to be allowed to pay for the goods without added interest and CCF should take the steps below to put things right.

### **My final decision**

For the reasons set out, my decision is I uphold this complaint and I require Creation Consumer Finance Limited to:-

1. end the finance agreement and mark the loan as settled;
2. refund any additional direct debit payments taken *after* the balance was repaid (with interest at 8% simple from the date of payment to the date of settlement);
3. remove any adverse information from Mrs G's credit file; and
4. pay Mrs G £100 compensation for distress and inconvenience.

If CCF considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mrs G how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 24 March 2022.

Claire Jackson  
**Ombudsman**