

The complaint

Mrs S complains that Creation Financial Services Limited trading as Creation didn't default her credit cards in 2013. Instead it continued to charge her interest while she was in a debt management plan and her accounts defaulted in 2018 and 2020 respectively. She wants the defaults backdated to 2013.

What happened

Mrs S had two credit cards operated by Creation. In 2013, she was experiencing financial difficulties, was missing payments and was in arrears. She says she agreed a payment plan for both credit cards but as her situation didn't improve she entered a debt management plan in July 2013. Mrs S says that interest continued to be applied to her accounts, so she wasn't able to reduce the debts. Defaults were applied in 2018 and 2020 but she thinks the accounts should have been defaulted in 2013 as she was only making token payments.

Creation says that its records showed Mrs S was in financial difficulties in 2013 and 2015 and that arrangements with reduced rates of interest were applied. It says that Mrs S didn't miss six consecutive months of payments and it didn't default Mrs S accounts.

Our investigator didn't think that Creation was wrong not to apply the defaults to Mrs S' accounts in 2013 but she thought that defaults should have been applied when it decided to sell the accounts to a third party. Therefore, she recommended that the defaults were back dated to February 2016.

Mrs S didn't agree with our investigator's view. She reiterated that the payments she was making through her debt management plan were token and that it would have taken her more than six years to repay the debts.

Creation also disagreed with our investigator's view. It reiterated that while there were missed payments on Mrs S' account she wasn't six months in arrears when she entered a repayment plan.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- Mrs S was experiencing financial difficulties in 2013. She had two accounts with Creation – one was opened in October 2010 (Account 1) and the second in June 2012 (Account 2). A default is applied when a consumer fails to meet certain financial obligations. It is generally when arrears have reached an unacceptable level, most often when an account is three to six months in arrears. While six months of arrears may be a reasonable time to apply a default, it isn't a requirement that this happens at that time and it is possible that working with a consumer where there is a continuing relationship provides a better outcome.
- There were arrears on both of Mrs S' accounts in 2013. These built up over a few months and then payments were made. As Mrs S made payments towards her

arrears in the first half of 2013 I did not think it was unreasonable that Creation didn't default her accounts at that time. Mrs S was trying to manage her accounts and I didn't think it unreasonable that Creation allowed time for Mrs S to see if she could return to her contractual payments.

- Mrs S said she entered a debt management plan in July 2013. I hadn't seen the details of this but saw she started to make regular, although reduced, payments towards her accounts from September 2013. At this time, the relationship was still ongoing with Mrs S and she had taken steps towards managing her debt and so again, I did not think it unreasonable that any default consideration was put on hold at that time.
- From September 2013 until the accounts were sold, Mrs S was generally making payments of less than £20 towards Account 1 and just over £40 towards Account 2. I wouldn't say that these payments were token and I noted that she was maintaining the payments. That said, the payments weren't making any significant inroads into her outstanding debt as a significant amount of the payment was offset by the interest charge.
- I noted Creation's comment about reducing the interest rate and accepted that it wasn't required to stop charging interest when Mrs S entered the debt management plan. However, given the payments that she was making and the overall impact on her outstanding balance, I thought it would have been reasonable to regularly review her situation.
- I checked Mrs S' statements from July 2014, a year after she says she entered the debt management plan. These showed her outstanding balances had actually increased slightly since July 2013. The increase was due to Mrs S' payments in certain months being less than the amount she was being charged in interest. Had Creation been monitoring Mrs S' accounts, I thought by the time she had been in the debt management plan for a year it would have realised that Mrs S' situation wasn't improving and that she was still in financial difficulties. Given this, and that continuing to apply interest was preventing her reducing her indebtedness, I thought considering a default at that time would have been fair and reasonable. Had this happened, Mrs S would not have been charged any interest or fees from this time and any payments could have been used to start to reduce her outstanding balances.

Creation didn't agree with my provisional decision. It said that Mrs S had made payments through her debt management plan which had been set up to help her maintain her contractual payments. It said that the account was passed to a third party in 2016 and the third party allowed two further years before a default was applied. It said that the interest charged on Mrs S' account was reduced initially to 12% and then reduced further with longer term arrears. It said that a decision was made in 2015 that any form of financial difficulty would be at a 0% rate. It said it followed the correct procedures at the time and wasn't required to apply a default.

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.

My role is to consider each case based on its individual merits. I take relevant rules and guidance into consideration, but my decision is based on what I think fair and reasonable given the unique circumstances of the complaint.

Mrs S was experiencing financial difficulties in 2013. As I set out in my provisional decision, while arrears did build up in 2013, I think Creation acted fairly at that time by not applying a default and working with Mrs S, allowing her time to see if she could return to her contractual payments.

However, given Mrs S' situation, that is that she had entered a debt management plan and that her payments weren't reducing her outstanding balance by any notable amount I think her situation should have been monitored and regularly reviewed.

I note Creation's comments about the reduced interest rate being applied and I do not find I can say that it was required at that time to stop charging interest. However, having considered Mrs S' account over the year since she entered the debt management plan and noting that the balances had actually increased slightly, I think that Creation should have realised that Mrs S' situation wasn't improving and that her financial difficulties weren't short term. Given this, I think that applying a default at this time would have been reasonable.

I understand Creation's point

that it wasn't required to apply a default, however I have considered what I think fair and reasonable in this case and having looked at the situation of Mrs S' accounts and that she wasn't able to make payments that were reducing the outstanding balances, I think it would have been fair for a default to have been registered in 2014.

Putting things right

As I think that Mrs S' accounts should have been defaulted in July 2014 and the accounts were sold in February 2016, I now find that Creation should buy back the accounts, or if it is unable or unwilling to do this, it should work with the new owner to ensure the following happens:

- the default dates are back dated to July 2014 and any required amendments are made to Mrs S' credit file to reflect.
- all payments made from July 2014 are treated as though they were payments of capital and used to reduce Mrs S' outstanding balances. If this results in any overpayments these should be refunded to Mrs S along with 8% simple interest* per year from the date of the overpayment to the date of settlement. If there are still outstanding balances on the accounts then the business should work with Mrs S to set up an affordable repayment plan.

*HM Revenue & Customs requires Creation to take off tax from this interest. Creation must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint. Creation Financial Services Limited trading as Creation should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 5 April 2022.

Jane Archer
Ombudsman