

The complaint

Miss R complains that Creation Consumer Finance Ltd has asked her to make further repayments after she settled a finance agreement she had with it.

What happened

Miss R had a finance agreement with Creation which she used to acquire a car in 2018. She contacted Creation in February 2018 and asked it for an early settlement figure. Creation told her she needed to pay £5,701.86 to early settle the agreement.

Miss R was acquiring a new car at this time. The dealer she was acquiring the new car from paid the early settlement monies to Creation. Miss R heard nothing further.

In March 2021 Miss R started to get correspondence from Creation. It told her there was a balance still outstanding on her finance agreement. Miss R checked with the dealer and the dealer confirmed that the early settlement monies had been sent to Creation on 23 February 2018. Despite this, Miss R says that Creation has been sending her numerous letters demanding further repayments and threatening to enter a notice of default with credit reference agencies. Miss R complained to Creation.

Creation investigated her complaint. It said that the early settlement quotation it had sent to her in February 2018 made clear that the payment of £5,701.86 had to be paid before 17 February 2018. The payment hadn't been made until 26 February. So, a further early settlement figure should've been requested. Creation also said there'd been a failed direct debit on 12 February 2018 which hadn't been included in the early settlement figure it had provided. Creation said there was still a balance outstanding of just over £1,000. Creation said it hadn't contacted her in the period since 2018 because her account had shown up as being in credit. This meant there was no arrears figure recorded until March 2021.

Miss R didn't agree. She referred her complaint to our service. Our investigator looked into her complaint. Creation didn't provide our service with its business file. So, our investigator was only able to consider the information provided by Miss R.

Our investigator thought Creation hadn't acted fairly. Miss R had only been made aware in March 2021 about the direct debit failure and the fact that the early settlement hadn't been paid before 17 February 2018. Our investigator said it was reasonable to expect Creation to have reached out to Miss R in February 2018 to explain to her what had happened. In these circumstances he thought the complaint could be fairly resolved in the following way:

- Miss R would be liable for any arrears on the account on the 26 February 2018
- Creation should remove all charges, fees and interest applied to the account after 26 February 2018;
- If there was a shortfall after these actions had been taken Miss R should pay any shortfall which would've been due at 26 February 2018 and Creation should then close the account and record it with credit reference agencies as settled and closed;
- Creation should remove any adverse information it had recorded with credit reference agencies.

Creation didn't agree with what our investigator said. It reiterated that the early settlement amount had been paid after the expiry date on the letter it sent to Miss R in February 2018. It also said it had sent her letters on 14 February 2018 and again on 26 February 2018 to inform her that the direct debit had failed.

Our investigator considered what Creation said but he didn't change his view about how this complaint should be resolved.

So, the complaint has been passed to me to decide.

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'd just point out at the outset that Creation hasn't responded to my request for additional information. So, when deciding how this complaint should be resolved, I've only been able to take into account the information Creation has already provided and the documentation and testimony provided by Miss R.

The Early Settlement Quotation

Miss R received an early settlement quotation from Creation on 12 February 2018. The letter set out the early settlement figure (£5,701.86) and the Settlement Expiry Date (17 February 2018). There was also further information set out on the letter. It said

"Please ensure that the full Early Settlement Figure is received by Creation in cleared funds by the Settlement Expiry Date. In the event that the account is not settled by the Settlement Expiry Date, this Early Settlement Figure will be invalid. If you wish to settle the account after the Settlement Expiry Date, please request a new Early Settlement Figure. In the event that you make part-payment of the Early Settlement Figure, or funds are received after the Settlement Expiry Date, except by prior agreement, you will be liable for any shortfall."

Miss R says she arranged for the dealer, that she was acquiring her new car from, to make the payment to Creation. She's provided us with confirmation that the payment of £5,701.86 was sent on 23 February 2018 and Creation has provided a copy of its records which show that the payment was received by it on 26 February 2018.

Having considered the sequence of events here, I'm satisfied that Miss R hadn't complied with the arrangements for making the Early Settlement Figure. Although the full amount had been paid, it was paid after the Expiry Date and the quotation had made clear that in these circumstances, she would be liable for any shortfall.

The cancelled Direct Debit

Creation says that in addition to making the payment after the Expiry Date, Miss R also failed to pay a direct debit that was due on or about 12 February 2018. The Early Settlement Figure had assumed that this Direct Debit would be paid. I'd just point out, in passing, that the Early Settlement quotation was issued on 12 February 2018 and there's nothing on that document to indicate what assumptions had been made when the quotation was issued.

Creation says that because the payment was made after the Expiry Date on the quotation, it wasn't enough to early settle the debt. But despite that, and despite the cancelled Direct

Debit on 12 February, the payment which was received was treated as a part-payment. This meant that Miss R's account was put into credit. For that reason, Creation says it didn't need to contact Miss R until her account went into arrears – which was March 2021.

I've thought about what Creation has said. But, having done so, I don't think it is fair and reasonable for it to have taken the actions it did here. I'll explain why.

Creation has acknowledged that on 8 March 2018, the dealer did contact it to confirm that the payment it had sent had cleared. It says it wasn't able to provide any details to the dealer at that time due to data protection requirements. But, I think that the phone call from the dealer should have alerted it to the fact that the Early Settlement Figure had been received after the Expiry Date and that Miss R's account was now in credit. For that reason, I think it would've been fair and reasonable for Creation to have contacted Miss R to explain to her that it was treating the payment received from the dealer as a part payment only. And, I think it would have been reasonable for Creation to have told Miss R that she would need to make a further payment if she wanted to close the account. It didn't do that.

Creation says it did send correspondence to Miss R about the cancelled Direct Debit. It's provided records from its systems that show a letter was sent on 14 February 2018 and a further letter was sent on 26 February 2018. Miss R doesn't recall receiving these letters. And, although I'm satisfied on balance that the letters were sent to her, I can understand why she wouldn't have queried them at the time. She thought that the agreement had been settled early. It is also the case that she didn't receive any further follow-up letters or indeed any correspondence from Creation until March 2021 (some three years later). So, I think, on balance, the fact that no further correspondence was received by her would have affirmed her understanding and belief that the agreement had been early settled.

What needs to be done to put things right

Having considered everything I think it's fair and reasonable to require Creation to put Miss R back into the position she would've been in if it had contacted her on 26 February 2018 to inform her that there was still a shortfall on her account after it had received the early settlement amount she'd paid to it.

So, I think Creation should refund all fees, interest and charges it's applied to her account after 26 February 2018. It should calculate the amount she would've been required to pay to it on 26 February 2018 to early settle the agreement, taking into account what it's told us about the cancelled direct debit. If there is still a shortfall after these actions have been taken Miss R should be asked to pay that amount.

If Creation has recorded any adverse information with credit reference agencies about Miss R's account for the period after February 2018, it should remove that information.

My final decision

For the reasons given above, I uphold this complaint about Creation Consumer Finance Ltd.

I now require it to take the following actions:

- Remove all charges, fees and interest applied to Miss R's account after 26 February 2018;
- Calculate the amount Miss R would've been required to pay to early settle the account on 26 February 2018, taking into account the cancelled direct debit payment;

- If there is a shortfall after these actions are taken Miss R should pay any shortfall which would've been due at 26 February 2018 and Creation should then close the account and record it with credit reference agencies as settled and closed;
- Creation should remove any adverse information it has recorded with credit reference agencies about Miss R's account for the period after 26 February 2018.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 7 June 2022.

Irene Martin
Ombudsman