

Complaint

Mrs K is unhappy that Creation Consumer Finance Ltd loaded a Cifas marker against her name.

Background

In January 2018, Mrs K purchased a new phone on credit provided by Creation. The agreement had an interest free period for the first six months. This meant that, so long as she paid the loan off before July 2018, it wouldn't attract any interest.

Shortly after the agreement was set up, Creation received two payments from a Mr K. These payments settled the outstanding debt in full. However, Mrs K said she wasn't aware of those payments and had never held an account with the bank responsible for sending them to Creation.

In February 2018, she called Creation to enquire about settling the agreement but was told it had already been settled. She assumed that a single payment had been collected directly from her account. Two weeks later, two chargebacks were raised against Creation in connection with those two payments that had settled the agreement. Creation wrote to Mrs K to let her know and she promptly settled the outstanding debt in full.

Creation loaded a Cifas marker against Mrs K's name. Mrs K was unhappy about this and so she referred her complaint to this service. It was looked at by an Investigator who upheld it. The Investigator set out that Creation could only justifiably load a Cifas marker against a customer if its decision to do so was supported by evidence sufficient to meet the burden of proof described in the National Fraud Database Handbook. She said that it was insufficient for Creation to merely suspect fraud. It would need strong enough evidence to allow it to report its customer to the police. She noted that Creation hadn't provided any evidence of the chargeback or contact from the bank that raised it. Overall, she didn't think there was enough evidence to support the Cifas loading. She recommended Creation remove it and pay £250 to Mrs K to reflect the distress that had been caused.

The Investigator issued her view of the complaint on 22 March 2022. Creation did not respond. She contacted Creation again on 6 April to let it know that the complaint would be passed to an ombudsman for consideration. That email had a deadline of 20 April, but no response was received. Because Creation hasn't responded to the Investigator's view or any follow up correspondence, the complaint has been passed to me to consider and issue a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that:

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from Creation, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of its failure to reply to the Investigator's opinion. I've considered whether the evidence looked at by Creation met the necessary standard of proof to justify loading a Cifas marker. From what I've seen, it has fallen some way short of that requirement and its decision to load the marker wasn't justified.

The Investigator also recommended Creation pay £250 to Mrs K in recognition of the distress it caused her. I think that was a fair sum at the time the Investigator issued her view, but I'm mindful of the fact that around two months have elapsed since then. In the circumstances, I think £300 would be a fairer reflection of the distress that the marker has caused to her.

Final decision

For the reasons I've explained above, I uphold this complaint.

I direct Creation Consumer Finance Ltd to:

- Remove the Cifas marker without delay
- Pay £300 to Mrs K to take account of the distress that its decision to load the marker has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 17 June 2022.

James Kimmitt
Ombudsman