

The complaint

Mr B complains that Creation Consumer Finance Ltd has unfairly failed to settle an account he had with it for a fixed sum loan because it says the payment was received too late.

What happened

In December 2016 Mr B entered into a fixed sum loan for a car with Creation Consumer Finance Ltd.

In February 2019 Mr B made enquiries about the settlement amount for the credit agreement as he intended to use the car in part exchange for another one. Creation informed Mr B that the outstanding amount under the agreement was £6,493.91 but said if he paid the settlement figure by a set date then he would be entitled to a rebate of £764.35 meaning the total payable was £5,729.56.

Mr B part exchanged the car and the dealership said it would pay the settlement amount to Creation. The payment was made one day after the set date for the settlement figure of £5,729.56 had ended.

Unfortunately, it appears that the dealership didn't use the account number and Creation placed the payment in its suspense account. This meant Mr B's account wasn't credited with the funds.

In April 2019 Mr B says that Creation took a direct debit for this account from his bank. Mr B says he contacted Creation and it apologised and reimbursed this amount. He also says he became aware that there was a problem about the funds from the dealership having settled his account. He contacted the dealership who provided proof of the payment it had made.

He says the dealer went back and forth with Creation and he had to provide the dealer with a passcode. Mr B says he was told by Creation that the loan had been cleared with nothing to pay.

The money was finally credited to Mr B's account by Creation in mid-May 2019. Creation says that due to this delay the settlement figure provided in February 2019 no longer applied, so instead of clearing the outstanding balance the credit amount was instead treated as an overpayment. This meant the rebate wasn't applied to Mr B's account.

In May 2021 Creation wrote to Mr B and informed him that his account was now in arrears. Mr B made enquiries with Creation and learnt that he owed £764.35 on his account due to the late crediting of the money from the dealer.

Mr B complained to Creation. Creation didn't uphold his complaint. It said the funds weren't credited to Mr B's account until mid-May 2019 and so the settlement figure no longer applied. Creation said Mr B correctly owed the balance.

Mr B was unhappy at Creation's response and so complained to this service. Our

investigator recommended Mr B's complaint should be upheld. He said Mr B had intended to clear his account and a significant payment had been made although he accepted this was a day after the set date for the settlement figure had expired. Our investigator said it would be fair for Creation to calculate the settlement figure that would have applied on the date the dealer had paid the money in March 2019 and deduct the £5,729.56 from that figure. Mr B was to pay the residual amount less any additional interest and charges that may have been applied since March 2019.

Our investigator also said that due to Creation's poor handling of Mr B's account that it should pay him £50 compensation for the distress and inconvenience caused.

Mr B agreed with our investigator's view, but Creation disagreed. It said it was Mr B's responsibility to ensure his account was settled in March 2019 and he should have checked with it that the money had been received. Creation said the delay with the payment not being credited to Mr B's account until May 2019 should be taken up by him with the dealer.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

Although I hadn't been provided with a copy of the credit agreement between Mr B and Creation, I accepted that it was Mr B's responsibility to make sure payments were made as required by its terms and conditions.

However, here I'd seen that Mr B had agreed for the dealer to make the settlement payment when he part-exchanged the car. And I thought this wouldn't be an unusual agreement between a consumer and a dealer in these circumstances. I'd also seen proof that the dealer made the payment one day after the settlement figure had expired.

Creation said that Mr B should have made checks that his account had been settled. But I'd seen that at the start of April 2019, Mr B had learnt the settlement payment hadn't been received by Creation and that he had immediately taken steps to check things with the dealer. The dealer had provided him with a screenshot showing the money being paid to Creation in March 2019 albeit one day after the settlement quote had expired.

I accepted Mr B's evidence that there had been communication back and forth between the dealer and Creation. I'd seen an email confirming Mr B had given permission for Creation to speak directly with the dealer and that he had provided the dealer with his password for the account.

I also thought the situation appeared to have been further confused for Mr B by a direct debit payment being taken and then returned after the settlement figure had been paid by the dealer. I also accepted Mr B's evidence that Creation had confirmed to him that the account had been settled with nothing further to pay which was why the arrears letter arriving in May 2021 had been such a shock for him.

I thought Mr B had acted reasonably when trying to ensure that the settlement payment was made to Creation, he had chased up the situation with the dealer and received proof of the payment, he had assisted with the dealer communicating with Creation.

I also thought it was fair to take into account that the money had been paid to Creation only one day late and that it had confused the situation in the way it had handled the direct debit payment and told Mr B the account had been settled.

So, for the reasons set out above, I intended to uphold Mr B's complaint. And I thought a fair solution was for Creation to treat Mr B's account as settled in March 2019 (following the payment of £5,729.56) so that there was nothing further to pay and for any arrears now showing to be written off. Any payments made by Mr B towards the outstanding balance of £764.35 were to be reimbursed together with interest at the yearly rate of 8% simple from the date of payment until the date of settlement. Finally, any adverse information recorded about this account on Mr B's credit file are to be removed.

Mr B has agreed with my provisional view. Creation hasn't asked me to re-consider any parts of my decision.

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.

Although I haven't been asked to reconsider any of the conclusions that I reached by either party, I have still carefully reviewed my reasons for my provisional view. I haven't changed my view. I'm still satisfied that Mr B acted reasonably when arranging to settle his account with Creation following the part-exchanging of the car with the dealership. And that it's also fair to take into account that although the money was placed in a holding account by Creation rather than used to clear Mr B's account, the funds had been received by it only one day after the settlement figure expired.

Taking into account what happened, and that Creation confused the situation when it refunded a direct debit and informed Mr B his account was cleared I still think it's fair for Creation to treat the account as though it had been settled in full in March 2019.

For the reasons given, I'm upholding Mr B's complaint.

Putting things right

I'm asking Creation Consumer Finance Ltd to do the following:

- Treat Mr B's account as settled in March 2019 following the payment of £5,729.56.
- Remove all the arrears so that there is nothing further to pay.
- Reimburse any payments made by Mr B towards the arrears amount of £764.35 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Remove any adverse information recorded about this account from Mr B's credit file.

My final decision

For the reasons set out above I'm upholding Mr B's complaint. I'm asking Creation Consumer Finance Ltd to do the following:

- Treat Mr B's account as settled in March 2019 following the payment of £5,729.56.
- Remove all the arrears so that there is nothing further to pay.

- Reimburse any payments made by Mr B towards the arrears amount of £764.35 together with yearly interest at the rate of 8% simple from the date of payment until the date of settlement.
- Remove any adverse information recorded about this account from Mr B's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 June 2022.

Jocelyn Griffith
Ombudsman