

## **The complaint**

Miss M complains Creation Financial Services Limited didn't default her credit card in 2016 when she thinks they should have.

## **What happened**

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant element below, and they form part of this final decision.

*In 2014 Miss M unfortunately ended up in a situation with a lot of debt and got advice from a debt charity. Following this she began making nominal payments to her creditors. These payments were accepted by all creditors, and they all subsequently defaulted her accounts with them – apart from Creation.*

*Creation sold the debt to another company, who I'll call L, in February 2016 but didn't default the account then either. More recently Miss M was applying for a mortgage, but said the account not being defaulted was causing problems with the application, so she complained to Creation.*

*Creation replied to Miss M and told her as the account was owned and being reported to the credit reference agencies (CRA's) by L, then she'd need to speak to them.*

*Unhappy with Creation's reply, she asked us to look into things as her complaint was about them not defaulting her account before it was sold to L.*

*One of our Investigators found Creation didn't default the account when they should have – so asked them to record a default from February 2016. She also awarded £100 compensation for Creation not dealing with Miss M's queries properly.*

*Creation didn't agree with the outcome, saying Miss M was keeping to the arrangement they'd made, so didn't think it'd have been fair to have defaulted her. Because of that, the complaint's been passed to me to decide.*

## **What I've provisionally 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.*

*The Information Commissioners Office has issued guidance about when defaults should generally be applied. This says a default shouldn't generally be registered any earlier than three months' worth of payments being missed, or any later than six months' worth of payments being missed.*

*Here, Miss M had entered into an arrangement to pay. These are generally agreed for a short term, but the expectation is if they're going to go on for a long time they should be reviewed regularly – usually every three to six months.*

*From what I can see Miss M entered into an arrangement to pay in 2014, and the account was sold in 2016. From at least July 2014, until the account was sold to L in February 2016, Miss M was only making payments of £6 – and Creation only appear to have reviewed this once in 2015. Creation have pointed out they weren't adding interest or charges, and that's true I can see that in the statements.*

*But the statement produced in February 2016 shows Miss M had a balance of £3,474.52. So, in effect, I think the payment arrangement Miss M had was for token payments only – given the £6 per month wouldn't pay off the balance for around 48 years.*

*When only token payments are being made, creditors like Creation are entitled to follow their usual collections and recovery processes – this would usually result in a default being registered. So, the key question to establish is whether Creation should have defaulted the account or not.*

*I've thought carefully about Creation's point that it wouldn't have been fair to default Miss M while she was keeping to her payment arrangement. And, while I do understand their point, I agree with our Investigator that the length of time the matter went on for means they should have defaulted Miss M earlier. Defaults are only registered once – so by not defaulting the account previously, this means if Miss M doesn't keep to her current agreement the account could be defaulted. This wouldn't be fair, given Miss M's financial difficulties started in 2014.*

*A natural time to have registered the default would have been when the debt was sold to L, so I'll be requiring Creation to arrange for the account to be defaulted as of February 2016. As defaults only last for six years, I don't expect this to appear on Miss M's credit file as a result of this – but this action does fairly protect Miss M from L recording a default later on if she doesn't keep to the payment arrangement.*

*I do though need to make it clear to Miss M that L are entitled to continue reporting the balance of the account to the CRA's. So, although I've noted she says some of the accounts previously defaulted no longer appear on her credit file, defaulting this account doesn't automatically mean the balance can't be reported – as it can be. Naturally, if Miss M thinks L aren't reporting her debt correctly to the CRA's after Creation have arranged for the default to be applied, then she can raise a complaint about that.*

*I do also think compensation is due. I don't think Creation properly got to grips with the query Miss M was raising, which resulted in her speaking to L unnecessarily. I think that added to her distress, so I'm also going to require Creation to pay Miss M £100 compensation.*

## **Responses to my provisional decision**

Miss M said she was under the impression if the default is backdated then L wouldn't be reporting the account as it'll have passed its six-year defaulting stage and should be removed from her file. Miss M says she understands I've said she can complain to L if she's unhappy with how they report her data going forward, but she'd prefer a clear set of instructions for L to follow.

Creation didn't reply by the deadline.

## **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've noted Miss M's point, but the registering of a default doesn't automatically mean the account can't be reported by the legal owner of the debt. This complaint is against Creation, so I've no power to require L to do anything or give them clear instructions on what should happen going forward.

L can choose to still report the debt if they'd like to, and that likely wouldn't be wrong, as Miss M does have a debt with them. But, if she is unhappy about the way L report her account, after Creation have arranged for a default to be recorded, then she can complain to L and subsequently our service if she remains unhappy.

As Miss M didn't say anything that made me think I should change the decision I'd reached, and Creation didn't reply, I still think Creation should do the below actions.

### **Putting things right**

I require Creation to:

- Arrange for the default to be recorded in February 2016
- Pay Miss M £100 compensation

### **My final decision**

I uphold this complaint and require Creation Financial Services Limited to carry out the actions in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 10 August 2022.

Jon Pearce  
**Ombudsman**