

## **The complaint**

Mr M complains Creation Consumer Finance Ltd ("Creation") haven't managed his account with them correctly after he fell into arrears.

## **What happened**

Mr M borrowed from Creation in 2017. The account fell into arrears and from August 2018 was administered as part of a Debt Management Plan through a debt charity. In early 2019 Creation sold the debt to a third party. Mr M's unhappy as he thinks the debt should've been defaulted by Creation before it was sold on. He thinks as a result of this there's been a more detrimental and longer lasting impact on his credit file than had the account been defaulted back in late 2018/early 2019.

Our investigator didn't uphold the complaint. She thought Creation had made a number of things clear to Mr M. Namely he wasn't making payments in line with the loan agreement, that the account was in arrears and that they wouldn't be defaulting as it had agreed a temporary repayment plan for 12 months. She thought Creation had made it clear to Mr M the account could still default as per the original agreement. She also found it was reasonable for Creation to sell the debt without defaulting the account first as there was a repayment plan in place and Mr M had kept up with the repayments. So, she didn't uphold Mr M's complaint.

Mr M asked for an ombudsman's decision. He told us he couldn't see any reference at all in the correspondence from August 2018 - at the time the payment arrangement was agreed by Creation - setting out clearly that the result of this (arrangement) would be that the account would not be defaulted. Mr M thought Creation saying that not keeping up with a repayment plan may lead to the account being managed in line with standard debt collection procedures, was completely ambiguous as there was no reference (clear or otherwise) in the correspondence to the word "default", let alone details of what the standard debt collection procedure entailed.

He thought it was wrong to say Creation made it clear that the account would not be defaulted. He couldn't see reference to this in any correspondence he held. And he told us both the arrears notice from November 2018 - after the event - and the information sheet didn't state that a repayment plan would prevent the account from being defaulted.

## **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.

Mr M entered a contract with Creation to borrow and has had the benefit of the money it lent him. He found himself unable to meet repayments and, with advice and assistance from a debt management charity reached an arrangement with Creation, namely a DMP.

Mr M's helpfully referred me to guidance published by the Information Commissioner's Office ICO "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference*

*Agencies*". He thinks the failure to default his account is contrary to Principle 4 of this guidance. But I disagree.

It states *"If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down. As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in"*. I think this covers what *might* happen but it's not mandatory. And I don't think it amounts to an "expectation" as Mr M says. Particularly when read alongside the later part of Principle 4 which sets out several circumstances where a default should *not* be filed. One of those is where *"If jointly with the lender an agreement is reached for an arrangement and you keep to the terms of that arrangement"*. That seems to me to have been the case here with the DMP. Although I haven't seen copies of the arrangement reached at the time there doesn't seem to me to be any dispute between the parties that this was in place and that the payments were being met by Mr M. So, for these reasons it doesn't seem to me Creations actions in reporting the DMP until they sold the debt - at which point the obligations on reporting stop - are contrary to this guidance.

Mr M's unhappy as he can't see it stated anywhere in the 2018 paperwork with Creation that the result of the DMP was that the account would not be defaulted. I appreciate Mr M is unhappy with this but I don't think it's reasonable for him to expect to be told that. It's not the sort of information I'd expect lender to give as its impossible to say whether an account will default or not. A lender can't know the end result when an arrangement is made. Whilst both parties share the hope the plan will be kept to, there's always the possibility the arrangement might fail and the account may default. So, although I understand that Mr M's unhappy, I don't think Creation did anything wrong here.

The sale of Mr M's debt to a third party when it's in a DMP and the payments are being met is a commercial decision for the lender and ordinarily not something we would get involved with. Given my findings, it wouldn't be fair or reasonable for me to uphold this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 January 2024.

Annabel O'Sullivan  
**Ombudsman**