

The complaint

Mr N complains Creation Consumer Finance Ltd (Creation) charged interest on a loan following the end of a Buy Now Pay Later (“BNPL”) promotional period without warning him they would do so. He also complains about the overall service provided by Creation.

What happened

In November 2019, Mr N purchased a sofa at a cost of around £1,100 from a retailer. He also purchased an insurance policy at a cost of £160. He paid a deposit of £300 and financed the remainder via a credit agreement with Creation.

The agreement gave a BNPL option which allowed him to delay paying for 52 weeks without paying any interest as long as he paid the full balance of £978 by 24 November 2020.

Mr N didn’t make any payments during the BNPL period but he says it was always his intention to pay the full balance by the end to avoid any interest being applied. In December 2020, he made a payment of £818. Creation said because the full balance wasn’t paid by the BNPL end date, they were entitled to apply interest.

Mr N complained he had never received the credit agreement and Creation hadn’t told him when the BNPL period would end. He was also unhappy about the overall service from Creation including setting up direct debits without his authority and failing to provide him with statements.

Creation said the agreement was clear about the BNPL period. They said an annual statement was sent to Mr N as a reminder as to when it was coming to an end but full payment wasn’t received. They added as there was an outstanding balance, direct debit payments were initiated to be taken from Mr N’s bank account in May 2022. Lastly they said there was no evidence Mr N contacted them before the BNPL period came to an end.

Unhappy with their response, Mr N referred the complaint to our service. Our investigator recommended the complaint wasn’t upheld. She said the agreement and welcome letter were clear about the BNPL period and the amount Mr N needed to pay to avoid interest. She concluded Creation acted fairly by applying interest.

Mr N disagreed and maintained his position. He also commented Creation had the incorrect email address for him which may explain why he received no correspondence from them.

In June 2023, I issued my provisional decision outlining my intentions to uphold the complaint. I said:

“As a starting point, I’ve referred to the credit agreement, I’m satisfied it clearly sets out a number of details including the cost of the sofa, the insurance cost, the total amount payable and the amount needed to be paid by the end of the BNPL period otherwise interest would be applied if it wasn’t met. Mr N electronically signed this agreement in November 2019 so I’m satisfied he was aware of the same.

In cases involving BNPL agreements, The Financial Conduct Authority's Handbook says at CONC 6.7.16A:

"Where a customer has the benefit of a zero-percentage or low interest, introductory or promotional offer that depends on the customer meeting certain conditions, a firm must provide notice to the customer reminding them of any action they need to take to meet the conditions of the offer and the date by which this action must be taken, within a reasonable period before that date, taking account of the time at which the information may be most useful to the customer".

It also goes on to say that notice must be provided in an appropriate medium, be sufficiently prominent and take into account any communication preferences by the consumer. So I've taken this into account when considering this complaint.

Generally speaking, such reminders of the BNPL period are set out in the account statements. Alternatively, some firms may send separate correspondence about it. In this case, I'm not satisfied Creation has provided sufficient evidence to demonstrate they sent notice to Mr N to remind him about the BNPL end date and what he was required to do. They said they sent him a statement but according to them, it was dated December 2021. That is a year after the BNPL ended so I wouldn't consider that advanced notice. The other correspondence that Creation say was sent to Ms N were also after the BNPL period ended. Mr N says he never received a copy of the agreement or any other correspondence from Creation but he had always intended to pay the balance by the end of the BNPL period. Creation may argue if that was the case, it would've been reasonable for him to contact them sooner than he did. Whilst I'm inclined to agree, that doesn't negate their obligation as outlined above.

With the exception of the initial credit agreement, I've seen no other satisfactory evidence for me to reasonably say Creation gave Mr N sufficient notice the BNPL period was ending. Therefore I can't say they acted fairly or in line with the FCA's above requirements.

Evidence shows Mr N made a payment of £818 in December 2020. He says this was the amount and the date he believed he needed to pay to satisfy the BNPL. I'm convinced by his testimony given the amount he paid and the fact it wasn't necessarily long after the period ended. In the absence of any paperwork and given when the agreement was entered into, it's understandable he forgot the exact amount and the promotional end date.

It would appear Mr N's payment in December 2020 was the remaining amount for the sofa only and he failed to take into account the cost of the insurance policy. I'm aware he disputes agreeing to take out such a policy but I note that wasn't a point he raised to Creation when bringing this complaint to our service. So it wouldn't be appropriate for me to make any comment on that particular issue. He will need to raise it directly with Creation and allow them to investigate.

I'm persuaded had Creation correctly notified Mr N the BNPL period was coming to an end and the balance he needed to pay, he would've done so. I say this because I'm satisfied it was always his intention to do so, he had sufficient funds to pay it and his payment in December 2020 supports that. So to put things right, I find he should be able to pay the sofa and insurance policy without any interest.

Other

I've taken into account Mr N's comments about the level of service by Creation. I won't address every point but I can assure him I've considered them all. Instead I've thought about

the overall service and having done so, I agree that it fell below what a reasonable person would expect.

He's raised the fact Creation had the incorrect email address for him. Based on the evidence presented to me I can see it was missing two digits. I've asked Creation to provide evidence of the application to determine what email address was given and how Mr N said he preferred to be contacted. However this evidence hasn't been provided. So in the absence of any contradictory evidence, I find it's most likely either Creation or the retailer incorrectly inputted Mr N's email meaning Creation's correspondence was sent to the wrong email which explains why it was never received by Mr N.

I've also seen evidence where Mr N had contacted them to find out about the account as he was concerned what was happening and whether he needed to take any further action. However on some occasions, I can't see Creation provided an adequate response, if any at all. Mr N says when he made the payment in December 2020 he believed that settled the agreement in full. So I can understand his surprise when Creation started taking direct debits from his account in May 2022, that's over two years after the BNPL period came to an end. Creation hasn't provided any explanation about this or the reason for the delay. It's unclear whether this has negatively impacted his credit file. If so, all adverse information about this agreement should be removed from Mr N's credit file.

Mr N says this situation has caused him much trouble and upset. He was chased by a third party company for the debt, sent demand letters, he had concerns about the impact on his credit file and he tried to speak to Creation on numerous occasions but without much success. Given the likely impact on him, I find Creation should pay £100 compensation for the trouble and upset caused.

Overall I'm not satisfied Creation followed the FCA's requirements. They failed to sufficiently give notice to Mr N that the BNPL period was coming to an end. Had they done so, I believe he would've paid the outstanding balance in full thereby avoiding the interest.

So to put things right, Creation should rework the account and remove any interest and allow Mr N to pay the outstanding balance in full (if not already done so). If after re-working the account it is found Mr N has overpaid, these amounts should be refunded to him plus 8% simple interest from the date of each payment to the date of settlement. Also Creation should remove any adverse information about this agreement from Mr N's credit file and pay £100 compensation for the trouble and upset caused".

Response to the provisional decision

Mr N accepted the findings. Creation didn't provide any further comment.

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.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr N's complaint.

To put things right, Creation Consumer Finance Ltd must:

- Rework the account and remove all interest from Mr N's agreement and allow him to pay the outstanding balance in full (if not done so already);
- Refund any overpayments plus pay 8% simple interest per year from the date of each payment to the date of settlement*;
- Remove any adverse information about this agreement from Mr N's credit file;
- Pay £100 compensation to Mr N for the trouble and upset caused.

*If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr N how much it's taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 24 August 2023.

Simona Reese
Ombudsman