

The complaint

Mr R complains that Creation Consumer Finance Ltd reported adverse information on his credit file unfairly.

What happened

In November 2017 Mr R applied for a credit account with Creation. He used the account regularly to make purchases from a retailer.

In February 2022 Mr R purchased goods from the retailer and charged these to his Creation account. The agreement had a special offer date of 25 August 2022, meaning that if the purchase price was settled in full by that date there would be no interest charged.

At the time of purchase, Mr R had a credit limit of £1500 on the Creation account. The purchase price of the goods was £1500.

Mr R says that at the time of purchase of the goods, he made a specific enquiry about whether, if he didn't settle the balance within the special offer period, there would be any impact on his credit file. Mr R says he was told by the retailer that he wouldn't exceed his credit limit in these circumstances and there would be no impact on his credit file. Mr R says that in reliance on that advice he entered into the agreement.

Mr R didn't settle the balance within the special offer period. He started making monthly repayments at the end of the special offer period. These payments included interest.

Later that year, Mr R applied for a loan. He wasn't offered the rate he expected and on making enquiries, was advised that his credit file had been impacted by an over credit marker from Creation.

Mr R complained to Creation. He said he'd never been advised that he had exceeded his credit limit. He felt that Creation had reported incorrectly on his credit file.

Creation issued a final response in which it said that Mr R had missed the special offer date and that interest had been correctly applied to his account as per the terms and conditions of the agreement. It said that the interest applied to the account had taken Mr R over his credit limit of £1500 and that this had been correctly reported to the credit reference agencies.

Mr R remained unhappy and complained to this service.

Our investigator upheld the complaint. She said that under section 56 of the Consumer Credit Act 1974, Creation could be held responsible for statements made by the merchant to Mr R prior to the point of supply. The investigator said she thought Mr R's testimony about what the merchant had said was plausible and said that if Mr R had been given correct information about the consequences of not settling the balance within the special offer period, he would likely have made a payment towards the balance to avoid going over the credit limit and having adverse information reported on his credit file. The investigator said

that Creation should remove the over limit marker from Mr R's credit file and pay compensation of £100.

Creation didn't agree. It said it hadn't reported incorrect information to the credit reference agencies. Creation said that Mr R was aware that if the balance of £1500 wasn't settled within the special offer period, interest charges of £596 would be applied meaning that the total amount payable would increase to £2096. Creation said that if Mr R had the intention not to settle the account within the special offer period, he should've taken into consideration that the total amount payable would be higher than his credit limit.

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 think it's important to be clear about what Mr R is complaining about here. He isn't complaining about the application of interest to the account, or the amount, or the balance owed. His complaint is that he was told by the merchant prior to entering into the agreement that if he didn't settle the account within the special offer period, he wouldn't exceed his credit limit and there wouldn't be any impact on his credit file.

The advice given to Mr R by the merchant was incorrect. Creation hasn't made an error by adding interest to the account. With the addition of the interest, the balance has exceeded Mr R's credit limit. A provider of credit is under an obligation to report accurate information to the credit reference agencies. In this case, it would be accurate to report that Mr R had exceeded his credit limit.

However, the whole point of Mr R's complaint is that he was told by the merchant that there would be no impact on his credit file if he didn't settle the balance within the special offer period. Creation has said that it can't comment on what the merchant did or didn't say. But what the merchant said is relevant because under section 56 of the Consumer Credit Act 1974, Creation can be held liable for untrue statements made by the merchant.

I therefore need to determine whether it's more likely than not that the merchant made an untrue statement to Mr R in the way that Mr R has described.

There's no record of what was said. So I've looked at what I think are other relevant factors here.

I've reviewed Mr R's credit account with Creation. He's held this account since 2017 and it's been well managed. Mr R has chosen not to settle the balance within special offer periods in the past so he knows that interest will be added, and he's always made the correct payments. In his written and verbal communications with this service, Mr R presents as financially astute. So whilst I can't be certain of exactly what was said in the discussion between Mr R and the merchant prior to the point of supply, I am persuaded by the clear and consistent testimony that Mr R has provided about the questions that he asked and the responses given by the merchant. I think it's more likely than not that the merchant told Mr R that there would be no impact on his credit file if he didn't settle within the special offer period. If the merchant hadn't made this statement, I don't think Mr R would've acted the way he did. I think he would have either settled the balance within the special offer period or taken steps to make a payment to reduce the balance so that the interest didn't cause him to exceed the credit limit and impact his credit file.

In conclusion, I'm persuaded that the merchant gave incorrect advice to Mr R which caused him to think that if he didn't settle within the special offer period his credit file would be

impacted. In the circumstances, Creation is responsible for the merchant's statement under section 56 of the Consumer Credit Act 1974.

Putting things right

In section 56 cases, this service would look to put the consumer back in the position they were in had the statement not been made. But it isn't always possible to do that.

Mr R has said that the over limit marker impacted on his ability to obtain other credit. However, I haven't seen evidence to prove that this was solely down to Creation's marker. Lending decisions are influenced by a range of factors and without clear evidence that it was solely Creation's marker that caused Mr R to be offered a different rate of interest to that expected, I can't hold Creation liable for any losses incurred by Mr R as a result.

That said, and having found liability under section 56, I think Creation has acted unfairly here by reporting the over credit marker to the credit reference agencies. So I think the marker should be removed from Mr R's credit file.

Mr R has explained the impact that this has had on him. He's been caused frustration because of Creation's response to his complaint, because Creation didn't deal with the issue raised by Mr R about the incorrect information given to him by the merchant. This has caused Mr R distress and inconvenience, for which I think Creation should pay compensation. I think the sum of £100 is fair and reasonable.

My final decision

My final decision is that I uphold the complaint. Creation Consumer Finance Ltd must:

Remove the marker from Mr R's credit file

Pay compensation of £100 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 December 2023.

Emma Davy
Ombudsman