

## The complaint

Mrs S complains Creation Consumer Finance Limited irresponsibly lent her a loan. She also complains they didn't help her when she was in financial difficulties.

## What happened

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

*Mrs S took out a loan for £12,500 in January 2017. Including interest, the total amount repayable was £18,470.40. The information I have shows Mrs S kept up the repayments on the loan from February 2017, until February 2019 when she didn't make the contractual repayment for the first time. Some correspondence suggested the loan hadn't been defaulted, other correspondence suggested the loan had been defaulted – with different dates given of July 2019 / January 2020.*

*Mrs S entered into a repayment plan with Creation, as some partial payments were made, and then overpayments made. The overpayments were between September 2020, and February 2021. It was in February / March 2021 Creation decided to sell the account to a debt purchaser.*

*In her complaint to Creation, Mrs S said:*

- *She'd been irresponsibly lent to*
- *When she couldn't repay the loan Creation didn't help her – by offering to freeze interest and charges, or by telling her about free debt advice agencies*
- *Creation didn't see if she could afford to pay back the loan over an extended time*
- *She raised a Data Subject Access Request (DSAR) in May 2022 which hadn't been responded to*

*Creation said they had assessed her circumstances so hadn't lent irresponsibly. And they'd carried out multiple financial assessments in order to help her – including agreeing the repayment plan. They also said they'd processed her DSAR and sent it to her.*

*Mrs S brought these issues to us, along with concerns regarding whether she was told about the default, and how she was communicated with regarding her loan being sold to a debt purchaser. We decided in a separate complaint we couldn't consider those two issues under the rules we're required to apply.*

*Our Investigator did consider Mrs S' concerns about whether she'd been irresponsibly lent to, and overall found she hadn't been so didn't think Creation needed to do anymore. Mrs S didn't accept his, so the complaint's been passed to me to decide.*

*Before doing so, I arranged for us to gather more information from Creation and Mrs S to help me decide the outcome. I'm aware Mrs S is still waiting for some statements, but I'm satisfied I've received enough at this point to reach an outcome on her case.*

### ***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.*

*From my review of Mrs S' concerns, they relate to three issues:*

- *Irresponsible lending of the loan*
- *Not helping her when she entered into financial difficulties*
- *They didn't send her a DSAR*

#### ***Irresponsible lending***

*We've explained on our website how we handle complaints about unaffordable and irresponsible lending, and I've used this approach to help me decide Mrs S' case. Creation were required to make sure they didn't lend irresponsibly – which meant they had to gather details of Mrs S' circumstances to ensure she could sustainably repay this loan.*

*This is called carrying out proportionate checks. Our website sets out what proportionate checks are – so I've looked at what information Creation gathered to see if they carried out proportionate checks.*

*We generally say the higher the amount of borrowing, or the lower a borrower's salary, the more a lender needs to do to satisfy themselves they've gathered proportionate information. Equally, if the amount of borrowing is low, and the salary is high, then the less we'd say lenders need to do in order to show it didn't lend irresponsibly.*

*The loan Mrs S applied for was £12,500. I think this is significant when compared to her salary. Creation have recorded her salary as £20,844 – Mrs S says it was £21,500. I think it's likely Creation have taken this figure from Mrs S' application itself, so I'll use £20,844.*

*The loan is essentially 60% of Mrs S' annual income. That's a significant figure and I means I think they needed to carry out a significant amount of checks in order to satisfy themselves they could make a fair lending decision.*

*Creation have told us they used a credit bureau to gather the following information about Mrs S' monthly expenditure and this showed the following:*

- *£226 in unsecured commitments*
- *£386 in rent / mortgage costs*
- *£175.14 in revolving account repayments*

*They noted in her application Mrs S had two dependents and found overall she earned around £1,737 a month and her monthly commitments – factoring in the £307.84 monthly repayment for this loan – was now £1,176.70. So, they said she had £560.30 disposable income each month.*

*In reviewing all the evidence I have, I don't think Creation carried out proportionate checks. The amount Mrs S was borrowing was very high compared to her annual income, so I think they needed to gather more information.*

*Next, I need to consider what Creation would have found, had they done further checks. In the circumstances, it seems reasonable to suggest this might have included looking at Mrs S' bank statements to see what this showed regarding her monthly expenditure. Mrs S has listed out her various monthly costs, which when I totalled what she's listed came to over £2,000 and has provided bank statements to support this.*

*Using her bank statement from December 2016 – which is most relevant given the loan was granted the following month, I don't quite total Mrs S' expenditure to be over £2,000. But, her total costs do come in at around £1,750.*

*Mrs S' salary is shown to be £1,824.16 – so she roughly has £75 spare income before the monthly loan repayment of £307.84 became due.*

*In the circumstances, I can't reasonably conclude Creation reached a fair lending decision given she couldn't afford to repay the loan based on her statements. I'll explain in the 'Putting things right' section how Creation need to resolve this.*

#### Financial difficulties

*One of Mrs S' concerns is Creation didn't stop applying interest and charges when she experienced financial difficulties.*

*I think it'll help her to know her loan had interest front loaded. What that means is the interest was added on at the very beginning of her loan in a lump sum. So, although her monthly payment pays off part of the amount she borrowed, and part of the interest, the interest isn't added each month like a credit card – it was added in a lump sum at the beginning.*

*Mrs S can verify this by looking at the statement of account when it was first opened. This shows the opening balance of £18,470.40 – made up of the £12,500 she borrowed, plus the interest charged.*

*This same statement shows Creation did charge Mrs S one fee of £30 on 13 February 2019 – but this was refunded the same day.*

*So, overall, Creation didn't do anything wrong in adding interest – because it was added at the beginning. And they didn't add any charges which haven't already been refunded.*

*Creation have also said they regularly wrote to Mrs S offering support. To evidence that, they've provided a system spreadsheet showing the date they contacted Mrs S, and sample letters. I've seen no reason to doubt these letters would have been sent, so I'm satisfied Creation did contact Mrs S as they said they did – and they provided details of free debt charities.*

*I do have questions over whether Creation should have given Mrs S a second arrangement to pay of six months – on the basis it seems her position hadn't significantly improved following the first plan of six months. But I think this was done in an effort to help her and I'm upholding her main complaint which effectively negates this issue – so I won't be upholding this part of her complaint.*

#### DSAR

*Mrs S said she never received the DSAR she was sent. We asked Creation about this, and they say it was sent on or around 25 May 2022.*

*They've provided evidence of asking their post room to send it – and they've provided the tracking number for the item as well.*

*The tracking number doesn't work on Royal Mail's website – but given it's been over a year and a half I don't think that's too surprising at this point.*

*Based on the evidence I have, it seems the DSAR was sent. I'd be grateful if Mrs S could let us know if she still requires a copy of this in response to my decision. If she does, then I'll require Creation to send her another copy.*

## **Responses to my provisional decision**

Mrs S replied and said she was thankful for the outcome I'd reached. She asked if:

- The DSAR could be re-sent to her, as she's never received it
- Once all outstanding balances are paid, if the default on her credit file could be removed

Creation challenged my outcome on the basis the statements showed Mrs S had a joint account at times – and said it was reasonable to factor in any contribution the joint account holder could have made to some of the bills.

## **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.

While I understand Creation's argument, I did base my calculations on Mrs S' December statement – as I said in my provisional decision. So, my comments regarding what I found about her disposable income remain. Because of that, I'm still upholding this complaint.

I've seen no reason why Creation can't re-send the DSAR to Mrs S as she's asked – so I've instructed that below.

In respect of the default, I've considered what Mrs S has said, and again updated my recommendations. This doesn't though cover the exact scenario Mrs S has mentioned. From what I can see about the amount Mrs S has borrowed, it seems likely a balance will remain. If it does, then the loan itself remains owing. Although Mrs S might reasonably say she wouldn't have defaulted on the loan if the interest hadn't been added, I have already found she had a very minimal amount of disposable income when the loan was granted. So, I think it's likely she would have defaulted at some point anyway.

In addition, if I require Creation to tell the current debt owner to remove the default, and Mrs S falls behind again in her repayments, the current debt owner will simply default the account again. But, it'd be based on the 'new' default – meaning the default could last for significantly longer than the current six years it will last. At this point in time, the longest I think I'd expect it to be on her account would be until January 2026. And, once Mrs S has repaid the full balance, I'd expect the status of that debt to show as 'settled' or some other variance of that to show the full balance has been repaid – and the date of when that happened will usually be recorded as well.

I hope this information puts Mrs S' mind at ease about what should happen regarding the default, although I'm sorry I won't be giving her exactly what she's asked for.

## **Putting things right**

I don't think Creation should have granted Mrs S the loan. Because of that, I require them to:

- Rework the loan to remove any interest so only the amount borrowed is left to be repaid – then remove any payments Mrs S made to the loan from this. If Mrs S has then repaid the balance then anything extra should be treated as overpayments. Any overpayments should be refunded.
- Add interest at 8% per year simple\* on overpayments, if any, Mrs S made from the date she made them, to the date of settlement
- Update the current debt owner on the outstanding balance (if any)
- If the debt has been fully repaid as a result of the refund of interest and charges, ask the current debt owner to remove the default.

Creation also need to re-send a copy of the DSAR to Mrs S.

\*HM Revenue and Customs requires Creation to deduct tax from the interest payment referred to above. Creation must give Mrs S a certificate showing how much tax they've deducted if she asks them for one.

## **My final decision**

I uphold this complaint and require Creation Consumer Finance 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 Ms S to accept or reject my decision before 1 March 2024.

Jon Pearce  
**Ombudsman**