

## **The complaint**

Mr A has complained about the way Creation Consumer Finance Limited (“Creation”) administered a hire purchase agreement he’d taken out to acquire a car.

## **What happened**

The circumstances of the complaint are well known to the parties so I’m not going to go over everything again in detail. But in summary, in April 2021 Mr A entered into a hire purchase agreement with Creation to acquire a used car. From looking at the agreement, the car cost around £33,500 and Mr A made an advance payment of £1,500. Monthly repayments were around £620 for five years. From what I’ve seen, Mr A fell into financial difficulties. He’s shown us a letter from a debt advisor he says was sent to Creation in July 2022 saying he’d applied for breathing space. He’s also shown us contact from the insolvency service that says he was put in breathing space by his debt advisor on 5 July 2022 and that the breathing space ended on 3 September 2022.

Creation said direct debits were missed for July, August and September 2022 and so the agreement was defaulted and passed to a company I’ll call E to manage. Mr A corresponded with E about the debt. Creation said it didn’t receive notification of breathing space and it couldn’t find any details on the insolvency service website. I note E said four payments were missed in 2022 – 30 May, 30 July, 30 August and 30 September. It said the arrears at the point of default were £2,541.28. This totals four repayments of £622.82 plus two sets of £25 fees for returned direct debits.

Mr A referred his complaint to our service. Our investigator ultimately didn’t uphold the complaint. He didn’t think Creation had made a mistake by applying a default in October 2022 and terminating the agreement. He said the correspondence from the insolvency service Mr A had shown was given to E after the agreement had already defaulted. He said the breathing space had ended on 3 September 2022 – before the default was applied. He said it’s not clear Creation was made aware of it. He didn’t think it was unreasonable Creation had applied the default when it did given Mr A was three payments behind, and not in breathing space during that time.

Mr A didn’t agree. He said he assumed Creation had made a mistake given it wasn’t aware of the breathing space. He said Creation had incorrectly taken enforcement action during the breathing space and that correspondence should have been sent once it ended which would have given sufficient time to respond.

In summary, Mr A said he was prepared to pay the arrears after the breathing space ended. He said he’d been delayed in receiving post because he’d moved. And he was unhappy E told him he was a day late to sort things out. Mr A said having the car repossessed would impact his ability to work. He thought he’d provided sufficient proof of the breathing space through the insolvency service’s email. He also queried the date of the default because he’d made a payment in June 2022. He queried the amount of the default, and whether or not it was valid. He also queried the date of termination. Mr A wanted the agreement reinstated. He said he was willing to bring all arrears up to date.

I issued a provisional decision that said:

*I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr A and Creation that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Mr A acquired the car using a hire purchase agreement, and our service is able to consider complaints relating to these sorts of regulated agreements.*

*I've first thought about whether Creation did something wrong during the breathing space Mr A said he'd arranged. Mr A has said his debt advisor told Creation about it on 4 July 2022. I've not seen Creation received that notification. Moreover, from looking at the Government website on the Debt Respite Scheme (Breathing Space) it says at paragraph 2.7 that secured debts (like hire purchase agreements) are excluded debts from the scheme. I've taken this from the same guidance Mr A has referred to in correspondence. So it's not clear Mr A would have been able to include the debt on the scheme in any event. He'd have to take it up with his debt advisor if he's been misled by it. Given I'm not persuaded the debt ought to have been included, and I've not seen Creation were put on notice, I don't find I have the grounds to say that Creation acted unfairly with regards to the breathing space.*

*I've next thought about Creation's decision to default the agreement. From what I've seen, the default was applied on 4 October 2022. This is the sort of process a firm is supposed to follow when customers are at least three months in arrears. So, on the face of it, it doesn't seem unreasonable if Mr A was at least three payments behind at this point. While I appreciate Mr A said he didn't receive notification and that he thought he was in breathing space, from what I've seen, Creation sent a default notice on 2 August 2022. It sent another notice on 3 October 2022, which preceded the date I've seen it defaulted the agreement. So I think Creation broadly took the steps I'd expect and, on balance, I think it had grounds to apply the default in October 2022. I'm therefore not intending to direct it to remove it.*

*However, I do want to point out that I note there's been some conflicting things said, and I don't have all the evidence of the repayments made. For example, Creation has referred to three missed payments in 2022, but E referred to four. Mr A indicated he made other payments that weren't recorded. E asked Mr A for evidence of the payments he made so it could check, but I've not seen his response. The payment profile Creation has supplied from one of the credit reference agencies sets out that for the months leading up to the default (showing as "D") the payments are recorded as ...00022D. I think that indicates Mr A was up to date, then he's recorded as two payments behind, the same again the following month, and then defaulted once he was three payments behind. So the evidence is slightly confusing, but it might just be the way the information has been received at the credit reference agency. Unfortunately, I don't have a statement of account so I'm unable to cross reference things. Given that I'm issuing a provisional decision because my reasoning is slightly different to the investigator, if Mr A has evidence he was less than three payments behind when Creation defaulted him, he can supply it in response to this provisional decision and I'll consider it. That would be in relation to the four payments I've set out above. I don't think he was, but I wanted to give him an opportunity in case that's not right.*

*If Mr A is unable to show he was less than three payments in arrears I don't find I'll have the grounds to direct Creation to remove the default or reinstate the agreement like Mr A has requested. I assume Mr A still has the car, but it's not clear if he's been making payment towards the agreement or putting the money to one side. I'd urge him to speak to Creation or E to come to some sort of agreement on a way forward. If he's not been paying towards the*

*agreement, the arrears will be substantial. I'd remind Creation to treat him with forbearance and due consideration if he's still in financial difficulties.*

Creation agreed there were no grounds to reinstate the agreement.

Mr A provided evidence of two payments he'd made – a direct debit showing on 30 June 2022 and a card payment made to Creation on 2 May 2022. He also said the car had been seized and he wanted that considered, as well as other problems he says have happened off the back of the seizure.

We put Mr A's evidence to Creation and it explained that the payment Mr A made by card in May 2022 was to pay the March 2022 direct debit that had failed twice. It said the payments due for May, July, August and September 2022 weren't paid. It supplied evidence from the statement. And it said it hadn't disputed it received a direct debit on 30 June 2022.

### **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'd like to thank the parties for their responses. Seeing as though I've not been supplied sufficient evidence Mr A was less than three payments behind when Creation decided to default him I don't find I have the grounds to depart from the conclusions I reached in my provisional decision.

I appreciate Mr A is unhappy Creation has decided to take steps to recover the car. But that's not something that was part of the complaint I'm considering. He'd have to take it up with Creation in the first instance, and if he's unhappy with its response, it may be something our service is able to consider. Once again, I'd remind Creation to treat Mr A with forbearance and due consideration if he's still in financial difficulties.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 March 2024.

Simon Wingfield  
**Ombudsman**