

## **The complaint**

Miss D complains that Creation Consumer Finance Ltd has treated her unfairly in relation to her fixed sum loan agreement and reporting on her credit file.

## **What happened**

In July 2021 Miss D entered into a Fixed Sum Loan Agreement with Creation for £852.97 to pay for a computer and associated accessories. This was due to be paid back over 24 months at £35.54 per month. Creation says number of payments were missed and Creation reported this on Miss D's credit file. Miss D says she didn't know payments weren't being taken and didn't know a default was being applied to her account. She says she agreed with Creation a number of arrangements to pay the arrears, so she shouldn't have a default on this account. She says applying a default in these circumstances is unfair. So she complained to Creation who said it had done nothing wrong. So she complained to this service.

Our investigator looked into the matter. Overall, she didn't think Creation had acted unfairly. Miss D didn't agree. So the complaint has been passed to me to decide.

## **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.

Creation has provided its evidence on the matter. Miss D says she didn't get letters from Creation. I've compared Miss D's address she gave on the fixed sum loan agreement, her address on Creation's records and the address she's given to this service recently when she made her complaint here. All the addresses are the same. So I'm satisfied Creation hasn't made a mistake with her address.

I've considered Creation's record of Miss D's payments to this account since the loan was made. It's clear Miss D's direct debit payments haven't successfully credited her Creation account on a number of occasions in both 2021 and 2022. This is because the Direct Debit was returned unpaid. I can see Miss D repeatedly made ad hoc payments using her card during this time which kept the account from falling into arrears. In May 2022 and June 2022 (twice) Creation wrote to Miss D telling her she was in arrears. Miss D then got back on track with her payments in July 2022. However in August 2022 two Direct Debits were both reversed due to insufficient funds and Miss D fell into arrears again. I can see on the account that when Creation wrote to Miss D about her arrears, on occasions she was charged for such correspondence as per the terms and conditions of the account. So I don't think Creation did anything wrong by making these charges and I'm satisfied on balance the letters were sent to the address Miss D specified.

Creation then agreed an arrangement with Miss D to pay off the arrears but the records show Miss D didn't meet her side of the arrangement by making the necessary payments. In October 2022 Creation and Miss D agreed a new arrangement to catch up on arrears, but Miss D didn't make the agreed payment that month either. A third arrangement was agreed

but Miss D failed to make the agreed payment in December 2022. Across December 2022, January 2023 and March 2023 further letters were sent to Miss D about her arrears. It is clear to me Creation made a number of arrangements with Miss D, (which she didn't maintain) and Creation wrote to her regularly on the matter. And clearly there was discussion between Miss D and Creation as the arrangements were arranged in such discussions.

Creation sent Miss D a notice of default letter in March 2023 and this was reflected on her credit file from April 2023. I'm satisfied on balance that the letter was sent and correctly addressed. Creation has provided a sample of the letter sent and its computer records showing the reference of the letter and the sample letter mirrors that reference. So although it hasn't provided a copy of the actual letter it sent her, I'm satisfied on balance the audit trail Creation has provided shows a default letter was sent when the records show it was sent. So I don't think Creation made a mistake here.

Miss D argues that arrangements to pay should mean no default should be added to her records. However arrangements to pay are arrangements to pay off the arrears that had accrued and when an account is in arrears for enough payment cycles then firms are entitled to apply a default. It should be noted that the records show that payments weren't received in line with the terms of these arrangements and so the account was repeatedly in arrears for periods during this accounts' history. It can become unfair on borrowers if accounts aren't defaulted in such circumstances because it prolongs matters unnecessarily. I'm satisfied on balance that considering the missed payments and arrears being in place for sufficiently long, Creation was entitled to use its discretion to apply a default when it did.

Miss D has repeatedly said she didn't know there was a problem with her payments. I can see why she says this, but it is her responsibility to make the payments or to liaise with Creation if she can't pay. And I've seen evidence which indicates the direct debit set up to make the payments was stopped in November 2022 and this wasn't done by Creation. I've also seen that throughout the account there were repeated instances of Miss D making ad hoc payments to the account by card. And some of these ad hoc payments occur when direct debits were returned unpaid. Bearing in mind these repeated interactions with Creation, the card payments and the letters sent, I'm not persuaded Creation has treated her unfairly here by considering it had made clear that the direct debits were repeatedly not crediting the account as it should. Particularly after it received notice that the Direct Debit had been stopped. I don't think Creation failed to take action to notify Miss D of the issues present.

Miss D says she was told the arrangements would stop further activity. But I don't think Creation has acted unfairly, bearing in mind Miss D regularly failed to make the payments under the arrangements agreed. Miss D has provided an email that says the arrangement 'will prevent receiving calls, letters and charges', however it doesn't say defaults wouldn't be applied particularly if the arrangement isn't adhered to. So I'm not persuaded Creation has done anything wrong here.

Miss D has argued she didn't know payments were not being made. It seems clear from the evidence that the direct debit to pay this account was stopped some time ago. It's also clear from Miss D regularly making card payments that she was aware the account wasn't up to date from payments from a direct debit otherwise there would be no reason to make card payments. And ultimately it is Miss D's responsibility to ensure she meets the payments due. I've seen many instances of Creation writing to Miss D and lots of other contact between the parties. It is Miss D's responsibility to ensure she met the terms of the loan agreement made by making the payments and managing her account with Creation in line with the agreement she made with Creation.

Miss D says she would have paid off what was necessary if she'd known about the default was going to be put on her account. However it is clear Miss D repeatedly made arrangements to pay with Creation and didn't make the agreed payments. And I'm satisfied Creation sent her notice of default letter when it said it did.

Miss D has said she lives at two addresses. She's only provided one address to Creation and I'm satisfied all the letters its records show it sent her were addressed to this address she gave. So I don't think Creation did anything wrong.

Miss D points to issues with her email and discovering emails in her spam folder. I'm sorry to hear this but this is the email address provided by Miss D to Creation, so I'm not persuaded Creation has made a mistake by using it.

I appreciate that Miss D feels strongly about what happened and this isn't the decision she wishes to read. However having considered all the evidence and requirements in the Consumer Credit Act and from the FCA and ICO, I'm not persuaded Creation has treated her unfairly in any way in these matters. Consequently her complaint is unsuccessful.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against Creation Consumer Finance Ltd. It has nothing further to do here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 9 July 2024.

Rod Glyn-Thomas  
**Ombudsman**