

## The complaint

Miss G complains that Creation Consumer Finance Ltd (“Creation”) failed to default a loan she had with the firm when she entered into a Debt Arrangement Scheme (“DAS”) in December 2017.

## What happened

I issued a provisional decision on this complaint in July 2024. In that decision I explained why I thought a part of the complaint should be upheld and what Creation needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*Miss G was given a loan by Creation in January 2017. She agreed to repay the loan in 48 monthly instalments of £33.25. Miss G made the first seven repayments as planned, but then appears to have faced some difficulties managing her finances. Miss G didn’t make any further repayments to her loan for around three months.*

*Miss G entered into a DAS in December 2017. Under that scheme she made a single monthly repayment to an administrator who then distributed a share of the payment to each of her creditors. Creation received a payment of around £10.80 each month from January 2018. At the time she made the complaint Miss G was continuing to make monthly repayments to Creation via the DAS.*

*Miss G complained that Creation wasn’t reporting her account fairly to the credit reference agencies. She said that the other lenders that were part of her DAS had defaulted her accounts when the DAS started. So she said those accounts no longer appeared on her credit file. But she said that Creation was simply showing her account as being six or more months in arrears.*

*Creation didn’t agree with Miss G’s complaint. It said that it wouldn’t update her credit file until the DAS had been completed. And it said that, although it was still receiving her payments through the DAS, a formal arrangement to pay was not in place. Unhappy with that response Miss G brought her complaint to us.*

*Loans of this nature are regulated by the FCA. So, as a starting point, I have considered what the FCA would expect to see before a loan is defaulted. It says that both the following conditions should be met;*

- *the borrower is past the contractual payment due date by more than 90 days; and*
- *the firm reasonably considers that the borrower is unlikely to pay or otherwise fulfil its credit obligations to the firm.*

*Guidance on how the DAS is designed to operate is contained on the Accountants in Bankruptcy website. Consumers are warned that entering into a DAS might affect their credit rating. It says details of the DAS will be entered onto a register that can*

*be checked by other parties free of charge. And it says that lenders might update a consumer's credit file to reflect a DAS being in operation.*

*Further information about the impact of a default is provided by the Information Commissioner's Office ("ICO"). Under information about how events might be shown on a credit file, it says the following;*

*A defaulted account.*

*This may show on your credit reference file for six years from the date of the default. A default normally occurs when you have not met the terms of a credit agreement and your account is three to six months in arrears. When you repay the debt, the entry on your credit reference file should be marked as settled or satisfied.*

*An arrangement to pay.*

*Sometimes, if you cannot make the full payment for your account, the lender may allow you to pay a different amount for a short time. This will show on your credit reference file as an arrangement to pay. The credit reference agencies may show these arrangements to pay in different ways. What the agency sent you with your credit reference file should explain how it records such arrangements.*

*As I said earlier, Miss G had missed around three payments when she entered into the DAS. Miss G has sent us a copy of her credit file that she downloaded in June 2022. That shows correctly that she started to fall behind on her payments in October 2017. But the information about the loan Miss G had with Creation doesn't show that she had entered into a DAS – it just continues to report that Miss G was at least six months in arrears.*

*Based on what I've said above I'm persuaded that it was reasonable for Creation to not default Miss G's loan. In line with the regulator's guidance I would expect to see an account be defaulted when the relationship between the lender and the borrower had broken down and that situation was likely to be irretrievable. Here I think the situation was rather different. Although Miss G had fallen behind on her repayments, she had dealt with her problems in a responsible manner and had started to make payments to Creation (via the DAS administrator) to repay what she had borrowed. I don't think that could reasonably be considered to be evidence that Miss G was unlikely to fulfil her obligations to Creation for the repayment of what she had borrowed.*

*But I am not satisfied that Creation has fairly represented Miss G's loan in the reporting it has provided to the credit reference agencies.*

*I have seen that Creation says that Miss G doesn't currently have a formal arrangement noted on her account. But it seems clear to me that is the situation Miss G is actually in. Over the past six years Creation has accepted a reduced monthly payment, being made on Miss G's behalf by the DAS administrator. I don't think that any other conclusion apart from it accepting that to be a payment arrangement could reasonably be reached.*

*So I don't currently think Creation reporting missed payments on Miss G's since the DAS was entered into is fair. It fundamentally goes against the principles of any kind of debt management plan. And the ICO also provides other guidance saying people's credit files need to be an accurate reflection of the way they've run the account. I've seen nothing to suggest Miss G didn't generally make her payments to the DAS when she was required to. Creation needs to make allowances for this in the way it reports the information on Miss G's credit file.*

*I also think Creation should pay Miss G £100 for the inconvenience she has been caused by the way the information about her loan has been reported to the credit reference agencies.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Creation hasn't provided us with anything further. Miss G has said that she doesn't agree with my provisional decision. Although I am only summarising here what she has said, I want to reassure Miss G that I have read, and carefully considered, her entire response.

Miss G has noted that the ICO says "as a general guide [a default may be recorded] when you are 3 months in arrears, and normally by the time you are 6 months in arrears." She says that she was three months in arrears when she entered the DAS so in line with those guidelines a default could be recorded.

And Miss G has noted some guidance from The Steering Committee on Reciprocity. She says there are two aspects of some guidance it published in 2019 that are relevant here. It said; "If the payment set out in the DMP is at a level that represents only a token sum in repayment because that is all the customer can afford the account should be recorded as a default" and then went on to say "an example of calculating whether a token payment is acceptable would be to assess whether it would take longer than 6 years for the debt to be repaid should the consumer continue to pay at that level".

So Miss G believes that it would be fair and reasonable for her account to be defaulted as at the date she entered the DAS.

### **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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Miss G and by Creation. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional information Miss G has provided. I'm sorry to tell her that it doesn't make me think I should change my provisional findings on this complaint. But I would like to comment further on some of the matters she has raised.

There are no fixed rules about when an account must be defaulted. As I explained in my provisional decision, a default generally represents an irretrievable breakdown in the relationship between a borrower and a lender. But there are an infinite set of circumstances in those relationships, and it is for a lender to make a decision based on the individual

circumstances that are present about whether a relationship has failed. The guidance that Miss G has provided to me, whilst entirely relevant to her complaint, does generally refer to lenders decisions in terms of “may” rather than “must”.

The Steering Committee on Reciprocity (“SCOR”) is not a regulator so there is no compunction for firms to follow any guidance that has been produced. From its website it notes that;

*“SCOR operates on behalf of the trade associations and industry bodies that it represents and can only make recommendations on matters concerning the Principles of Reciprocity to those organisations; it has no powers of its own.*

*Each trade association and industry body will have internal procedures for debating and agreeing their position on proposals from SCOR.”*

As I have said, the extract of guidance that Miss G provided was published in January 2019. That is more than a year after she entered the DAS. I don’t think it would be reasonable to consider guidance that had not yet been published to represent good industry practice at the time, or to have any retrospective application to her circumstances.

I have also noted that the extracts of the guidance that Miss G has provided, and that I have set out earlier, do deal with two different aspects of loan arrears. It firstly sets out that a token repayment might lead a lender to consider that a default should be reported. And then in the second extract it suggests when a lender might be expected to accept a token repayment. I’m not satisfied that it is reasonable to extrapolate between the two extracts.

Creation decided to accept a payment arrangement from Miss G via her DAS. The over-riding requirement is that the reporting it provides to the credit reference agencies is a fair and reasonable reflection of its relationship with Miss G. I am satisfied that the relationship between the parties had not broken down, and that Creation has a realistic prospect of recovering the money that it lent to Miss G. So I don’t think it is unreasonable for it to not report her account as being in default.

But, as I set out in my provisional decision, I don’t think Creation reporting missed payments on Miss G’s account since the DAS was entered into is fair. It fundamentally goes against the principles of any kind of debt management plan and what I’ve said about credit files needing to be an accurate reflection of the way accounts are being run. I’ve seen nothing to suggest Miss G didn’t generally make her payments to the DAS when she was required to. Creation needs to make allowances for this in the way it reports the information on Miss G’s credit file.

And so I think Creation should pay Miss G £100 for the inconvenience she has been caused by the way the information about her loan has been reported to the credit reference agencies.

### **Putting things right**

I think that Miss G’s loan should be reported as being in an arrangement to pay, rather than being in arrears from the date she entered the DAS. So, Creation should do the following;

- Unless it has already done so, amend its reporting of Miss G’s loan to reflect it has been in an arrangement to pay since she entered the DAS in December 2017.
- Pay Miss G £100 for the distress and inconvenience she has been caused by the way the loan has been reported.

**My final decision**

My final decision is that I uphold a part of Miss G's complaint and direct Creation Consumer Finance Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 18 November 2024.

Paul Reilly  
**Ombudsman**