

## The complaint

Mr S complains of information failings by Creation Consumer Finance Limited (“Creation”) and their agents in relation to a Buy Now Pay Later (“BNPL”) deal on a running account credit agreement, leading to him being charged significant amounts of interest.

## What happened

I issued a provisional decision on Mr S’s complaint on 14 October 2024, in which I set out the background to the complaint and my provisional findings on it. A copy of the provisional decision is appended to, and forms a part of, this final decision.

For that reason, it’s not necessary for me to go over the events leading up to this point again in detail, but in brief summary:

- Mr S purchased some white goods from a store (“C”), in September 2022. A running account credit agreement with Creation was set up to finance the purchase of some of the goods, and these were added to the account on a Buy Now Pay Later (“BNPL”) basis.
- The BNPL terms were that Mr S did not have to pay anything towards the items for 12 months, if he didn’t want to. But if he did not repay the items in full within that time, Creation would apply interest to the balance, backdated to the point of purchase. The 12 month deadlines for Mr S’s BNPL purchases expired on 23 and 29 September 2023.
- Mr S said he wasn’t advised properly of the terms and was just told it was a one year interest free account. He said he didn’t see or sign any documents which explained how the BNPL purchases worked.
- Mr S contacted Creation in October 2023 after losing his job the previous month, with a view to obtaining forbearance in relation to his financial circumstances. He says it was at this point that he became aware all the interest had been added to his BNPL purchases. Creation refused to remove this interest and Mr S complained.

In my provisional decision I made the following key findings:

- The Financial Conduct Authority (“FCA”) required Creation to provide clear reminders to customers about the terms of any BNPL purchases, to reduce the risk that they would miss any deadlines inadvertently and end up paying more interest.
- I thought the key questions to answer were, firstly, whether Mr S had been given sufficient information to understand the BNPL purchases at the point of sale; and, secondly, whether Mr S had been given sufficient information *subsequently* to enable him to understand the BNPL purchases, in good time before the deadline.
- Mr S had not been given sufficient information at the point of sale. The paperwork I’d seen dating from that time didn’t seem to explain how the BNPL purchases worked.

- Creation had sent Mr S letters which explained how the BNPL purchases worked, in March and April 2023, around six months before the deadline. These had been correctly addressed and, on balance, I thought it was likely they were received.
- Creation had given prominent reminders of the deadline on the August and September 2023 account statements. Mr S had said he'd read the statements.
- Overall, I considered Creation had given enough information to Mr S after the point of sale, and in good time before the BNPL deadlines, for him to be able to understand the terms on which he'd made the purchases, correcting the information failing at the point of sale and meaning that it was not unfair or unreasonable for Creation to have charged the interest after the deadlines expired.
- When Mr S contacted Creation in October 2023 after he lost his job, I didn't think Creation had refused to freeze the interest on the account, it appeared to have refused to remove the interest it had already charged, which wasn't unreasonable given the conclusions I'd reached about the BNPL purchases.

I asked the parties to the complaint to let me have any further submissions they'd like me to consider, before 28 October 2024. Creation replied to say it agreed with the provisional decision. Mr S has not responded.

The case has now been returned to me to review once more.

### **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.

Because neither party to the complaint has put forward any new evidence or arguments for me to consider, I see no reason to depart from the conclusions I reached in my appended provisional decision, as summarised above.

It follows that I do not think Mr S's complaint should be upheld.

### **My final decision**

For the reasons explained above, and in my appended provisional decision, I do not uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 November 2024.

Will Culley  
**Ombudsman**

## COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same overall conclusions as our investigator, but I've given different reasons for my conclusions and, in the interests of fairness, I'm issuing this provisional decision to give the parties to the complaint an opportunity to provide further comment.

I'll look at any more comments and evidence that I get **before** 28 October 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

### The complaint

Mr S complains of information failings by Creation Consumer Finance Limited ("Creation") and their agents in relation to a Buy Now Pay Later ("BNPL") deal on a running account credit agreement, leading to him being charged significant amounts of interest.

### What happened

Mr S went to purchase some white goods from a well-known household appliance retailer ("C"), in September 2022. He purchased one set of goods with his own funds, then returned on 23 September 2022 to purchase a fridge, an oven and a dishwasher. The fridge cost £2,279, the oven cost £629, and the dishwasher cost £489. These items were purchased as a "bundle", using a running account credit agreement with Creation, opened for this purpose, and were bought on BNPL terms.

What this meant was that for the first 12 months, Mr S was not obliged to make any payments for the goods, and that if he paid off the purchases in full within that window of time, he wouldn't pay any interest on them. However, if he did *not* repay the purchases in full within 12 months, Creation would apply interest to the remaining balance, backdated to the date of purchase.

Mr S says he understood the agreement differently, based on what C's staff in the store had told him at the time. He says he was just told it was a "one year interest free account", that he didn't need to make any payments for 12 months, then the loan repayments would start, with interest added monthly like a credit card. He says he wasn't told that a whole year's worth of interest would be added to the balance at that point. Mr S says he didn't see or sign any agreement at that time, and had understood he'd be sent all the details, and a copy of the agreement, via email.

One of the items – the fridge – had to be replaced with a different item. It appears that because it wasn't possible to refund the old fridge before ordering the replacement one, Mr S put the remaining credit available on the Creation account (£1,603) towards the replacement, making up the remaining amount via his own funds. C subsequently refunded £2,261.91 to the Creation account, on 25 October 2022, after the old fridge was returned. The purchase dates of the original items and the replacement fridge were not completely aligned on the Creation account, meaning the BNPL periods for each expired on 23 and 29 September 2023 respectively.

Mr S says he never received a copy of the agreement, but trusted what he'd been told by C's staff. He says he received an email from Creation on 23 September 2022, inviting him to sign up for an online account. He says he tried to do so, but the website kept crashing or

returning errors. He says he received several emails after this and was eventually able to sign up for the online account on 6 October 2022, but that when he tried to access it there were no documents available to be downloaded (such as the credit agreement). Mr S says he received emails occasionally after this which informed him that he had a new notification, but that clicking on the links within the email directed him to a message saying the links had expired.

In August 2023, Mr S says he received an email to say he had a statement ready to view, and he logged on and viewed the statement. He received a similar email early in September 2023. He said that he looked at the statements and they appeared to reflect his understanding of the agreement and how much he had to pay.

Mr S says he lost his job in September 2023 and contacted Creation the following month to ask for some forbearance due to his changed financial circumstances. He says he was told a much higher balance than he was expecting, and that it was at this point he discovered that around £800 interest had been added to what he owed as he had not repaid the agreement within the 12 month BNPL period.

Mr S complained as he felt he'd not been properly informed about the BNPL terms of his purchases. He also felt Creation hadn't been reasonable when he'd looked to them for assistance with his financial situation, as they'd not agreed to freeze the interest on the account.

Creation sent a final response to Mr S's complaint on 30 October 2023. In this it said that the credit agreement made on 23 September 2022 had stated that if the balance wasn't cleared in full by 23 September 2023 then interest would be added, backdated to the date of purchase, not calculated forwards from when the BNPL period ended, as Mr S had thought. Creation said Mr S was now in arrears as he'd cancelled his direct debit.

Dissatisfied with this response, Mr S referred his complaint to the Financial Ombudsman Service, where it was looked into by an investigator. Our investigator reached the following set of conclusions:

- On balance, he thought Mr S had probably seen and signed the credit agreement at the time of purchase in September 2022.
- The credit agreement had explained how the interest worked on the BNPL purchases, so he couldn't say the BNPL terms had been mis-sold.
- Creation had given reasonable notice of the BNPL period ending, and what the consequences of this were. Mr S had misunderstood the end date of the BNPL period, thinking it was the date of the first repayment (a month later).
- While Mr S may have had difficulties with his online account, he could have contacted Creation via other means if he'd not had adequate information about the account.
- If it was in fact the case that Mr S hadn't been given reasonable notice of the BNPL period ending, and what this meant, it didn't appear Mr S had had the funds to pay off the balance anyway. It looked like he'd have needed to borrow money to do so, which would have come at a cost.

Mr S disagreed with our investigator. He said he was sure he'd never seen or received a copy of the credit agreement – everything had been handled by the manager at C's store and he was never asked to sign anything. He accepted that his understanding of how the BNPL purchases worked didn't reflect the reality, but this wasn't his fault as he'd trusted what C had told him. He said that it was too speculative to assume he'd have been unable to repay the balance had he been properly informed, although he accepted that he may have needed to borrow to do so (either from lenders or family/friends).

Our investigator considered Mr S's points but didn't change his view. He still thought there was some responsibility on Mr S to have sought information about the BNPL terms, given he was aware he'd not received any and that the BNPL period was coming to an end.

No agreement could be reached, and so the case has been passed to me to decide. I directed some further information be obtained from Mr S and Creation. Mr S was able to clarify some of the details of his purchases from C, and stated he had never (until he complained) received any paper letters from Creation. Creation said the following:

- It would not have sent Mr S a copy of his agreement via email but Mr S should have seen the agreement in store when he set up the account.
- It had sent Mr S two letters, one on 27 March 2023 and one on 3 April 2023, warning him about when his BNPL period was coming to an end and which said interest would be added from the date of purchase if he didn't pay off the balance in time.
- All of the emails it had sent to Mr S from one of two IT systems had not been delivered successfully, and it acknowledged that emails sent from another system may not have been delivered either.

### **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.

Mr S's agreement with Creation is a running account credit agreement regulated by the Consumer Credit Act 1974 ("CCA"), meaning the Financial Ombudsman Service can consider a complaint about how the account was sold and has been administered.

Due to the operation of section 56 of the CCA, C would be treated as having acted as Creation's agent when setting up the running account credit agreement and when posting specific purchases to the account which resulted in a drawing on the credit limit. So any failing by C here would, in essence, be taken to be the failing of Creation.

Regarding BNPL deals more specifically, the Financial Conduct Authority ("FCA") has made specific rules regarding the kind of information which must be given to borrowers taking out such deals. The most relevant of these rules is CONC 6.7.16A R, which states:

*"Where a customer has the benefit of a zero-percentage or low interest, introductory or promotional offer that depends on the customer meeting certain conditions, a firm must provide notice to the customer reminding them of any action they need to take to meet the conditions of the offer and the date by which this action must be taken, within a reasonable period before that date, taking account of the time at which the information may be most useful to the customer."*

*This notice must be provided in an appropriate medium (taking into account any preferences expressed by the customer about the medium of communication between the firm and the customer), in plain language and sufficiently prominent, so that it is likely to be seen and understood by the customer."*

In other words, lenders must provide timely and clear reminders to consumers about the terms of their BNPL purchases, to lessen the risk that they inadvertently miss the deadline and become liable to pay a significant amount of interest.

Bearing the above in mind, I think the most important questions that need to be answered in this case are as follows:

- Was Mr S given sufficient information by Creation or C to understand the nature of his BNPL purchases at the point of sale?
- Was Mr S given sufficient information subsequently which corrected any information failing at the point of sale and, if yes, was this within a reasonable period before his BNPL deadline?
- If there was an uncorrected information failing, or an information failing which was not corrected in good time before his BNPL deadline, what was the impact of this on Mr S?

#### The point of sale

The evidence regarding what happened at the point of sale is somewhat unclear. Mr S himself has given somewhat conflicting accounts of what happened and when, as it seems he made multiple visits to C to buy different items, some on the account with Creation, and some via other means. It appears to me that Mr S has sometimes conflated the different visits.

Mr S has been consistent however in saying that he gained his understanding of how the BNPL purchases worked from C's staff who arranged the agreement with Creation. He says he didn't see or sign the credit agreement until our investigator sent him a copy. I think what Mr S says about what happened at the point he entered the agreement is plausible – I could see that in a busy retail store there may not be the time to go through a credit agreement in detail, and it may have been considered acceptable by C, for example, to explain the important features verbally. There is no audit trail associated with the signing of the agreement – all that's known is that it was an electronic signature.

But whether or not Mr S saw or signed the credit agreement, I note the credit agreement itself doesn't explain how BNPL purchases worked. Mr S has provided copies of other documents he received at the time of his purchases, such as receipts, and I was unable to see an explanation on these of how the BNPL purchases worked either. I think it's likely in the circumstances that Mr S relied on the explanation he was given verbally by C's staff. It's apparent that a misunderstanding resulted, and I've no reason to disbelieve Mr S when he says that he wasn't made aware that interest would be backdated to the time of purchase if he didn't repay the balance in full within 12 months.

On balance, I think it's likely there was an information failing at the point the running account credit agreement was taken out and the BNPL purchase(s) loaded onto it, meaning Mr S didn't understand how the purchase worked or what the consequences would be if he failed to repay the balance within 12 months.

### Subsequent information provided to Mr S

If Creation clarified to Mr S how the BNPL purchases worked in good time before the 12 month deadline, I think this would go at least some way towards correcting the information failing at the point of sale.

Creation appears to have confirmed that it wouldn't have sent Mr S a separate "welcome pack" containing a copy of his credit agreement or other important information from the point of sale. It's also confirmed that none of the emails sent from one of its IT systems to Mr S were delivered successfully.

That's not to say that *none* of Creation's emails were delivered, as we know that some were as Mr S has been able to supply a screenshot of his inbox and of individual emails. All of these emails appear to have come from the other IT system Creation used. However, it appears that two of the undelivered emails were reminders, sent in January 2023, of the terms of Mr S's BNPL purchase. Based on what Creation has said, it appears these reminder emails were generated quarterly and sent from the IT system which was unable to deliver emails successfully to Mr S, so I think I have to conclude that none of these reminder emails reached him.

That's not the end of the matter however, as Creation says it sent Mr S physical reminder letters on 27 March 2023 and 3 April 2023. I've seen examples of what these letters would have looked like, and I think they explain how the BNPL purchases worked quite clearly. I think, had Mr S received these letters, these would have been sufficient to correct the information failing at the point of sale, although I would also have expected a reminder to be issued closer to the BNPL deadline.

The example letters have a "code" which matches the code on Creation's systems next to the entries which Creation says indicates a letter was sent. Mr S's account number appears next to both entries. I know Creation had the correct postal address details for Mr S, and I'm not aware of any postal issues late in March 2023 or early in April 2023, which could have prevented such letters from reaching him. In my experience, the vast majority of correctly-addressed post is delivered successfully, and to the right address. So I think I have to conclude, on the balance of probabilities, that the March/April 2023 reminder letters were successfully delivered and corrected the information failing at the point of sale.

As I said above, I think a reminder ought to have been given to Mr S closer to the BNPL deadline. I think that would have been appropriate in order for Creation to have met its obligations under CONC 6.7.16A R.

The August 2023 and September 2023 statements both contained reminders on the front page of the statement, in a box titled "Important Information". The reminders included: *"Any balance left to pay after [the BNPL deadline] will incur interest from the date of your purchase at the rate specified in your credit agreement"*. The interest rate appeared above the box. I don't think this information was insufficiently clear or prominent, and it is known that Mr S read these statements, so I have to consider that he was given a timely reminder of the BNPL deadline and what would happen if he still had a balance when the deadline expired.

My overall conclusion is that Creation corrected the information failings at the point of sale by providing reminder letters in March/April 2023 which clarified the terms on which Mr S's purchases had been made, and then a further set of reminders on the August and September 2023 account statements. Mr S may not have appreciated the significance of these reminders, but they were sufficient in my opinion.

This means that I don't think it would be fair or reasonable to require Creation to refund any of the interest that was subsequently added to the purchases, after the BNPL deadlines expired.

#### Other points

Mr S has said Creation acted unreasonably when he approached it for assistance while he was in financial difficulties. There isn't a great deal of information about this point of complaint, but from Mr S's submissions, I understand he was unhappy that Creation refused to freeze interest on the agreement. It's not clear to me that Creation refused to freeze interest – it appears the problem was that a year's worth of interest had already been added (as per the BNPL terms) – and I don't think Creation was wrong to have done that for the reasons I've already explained, nor would I generally expect it to remove interest which had already been added as part of treating a person in financial difficulties with forbearance.

More recently, Mr S has complained of receiving unwanted correspondence from Creation despite settling his account some time ago and asking for his personal data to be deleted. That is not something that we will be able to consider as part of this complaint, as it significantly post-dates the matters originally complained of, and Creation has not had an opportunity to respond to the issues.

#### **My provisional decision**

For the reasons explained above, I am not minded to uphold Mr S's complaint.

I now invite the parties to the complaint to let me have any further submissions they would like me to consider, **before** 28 October 2024. I will then review the case again.

Will Culley  
**Ombudsman**