

## The complaint

Mr B complains that Creation Financial Services Limited trading as Creation (Creation) defaulted his account.

## What happened

In July 2022, Mr B started a Buy Now Pay Later credit agreement at a retailer. The limit was £1,000 and was interest free on the first purchase of £554 until January 2023. If the balance wasn't repaid by then, monthly payments were £32.25 would start in February 2023, and interest would start to be added.

But Mr B lost his job and his account fell into arrears. No payments were made until June 2024 – so by then, he was 16 months in arrears.

Creation wrote to him on 8 April 2024, 23 April 2024, 30 April 2024.

On 1 May 2024, Creation sent him a Notice of Default. The balance was £688.94, all of which had to be paid within 28 days – because of the large arrears.

The account was defaulted on 29 May 2024.

Mr B called Creation on 1 May 2024 to set up an arrangement. Mr B said he could pay £72.25 each month from then on. This was to be the contractual payment of £32.25, plus an extra £40.

After that, he paid as follows:

June 2024: £69 (additional £36.75 paid)

July 2024: £32.25

August 2024: nil (direct debit unpaid)

September 2024: £52.25 (additional £20 paid)

October 2024: £32.25

November 2024: £32.25

December 2024: nil (direct debit unpaid)

*Mr B complained.* He said the default wasn't fair. He said he had been told on the phone to ignore the letters he was to be sent. Therefore, the default should be removed. He sent to us two further letters sent by Creation. One dated 9 August 2024 was a Notice of Arrears of £531.66, and another dated 2 August 2024 said he was in arrears of £499.41. These created further confusion.

Creation said Mr B's account fell into arrears and he contacted the firm in May 2024 to set up an arrangement. But the default had been applied before he set up the arrangement. Creation said he was correctly advised to ignore the letters as he had set up an arrangement.

*Mr B brought his complaint to us.* Our investigator said the default was fair – as he had missed more than three months payments. In May 2024, Creation advised him of their intention to default the account if he didn't clear the arrears in 28 Days – which he didn't. And he then missed a payment after that time – so it was likely he would've defaulted later in any case.

He said Creation had sent some later, confusing letters in August 2024 which wasn't helpful and caused confusion. For that, he said Creation should pay compensation of £100.

Creation accepted this but Mr B didn't. He said he should've been given the chance to pay off the arrears but wasn't. He said he hadn't received a default notice from Creation and so didn't have a chance to clear the arrears.

Our investigator said he was in arrears so it was always likely the account would default anyway.

Mr B said that wasn't the point – he should've been given the chance to put things right but wasn't.

Mr B asked that an ombudsman look at his complaint, and so it has come to me.

### **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.

Businesses have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like Creation should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments or defer them, and allow customers more time to repay their debt.

And firms must also communicate with customers in a clear and not misleading way.

Creation wrote to Mr B several times in April 2024 – so he was aware he was falling into arrears when he missed payments. And by 1 May 2024, he was 16 months in arrears.

The guidance for dealing with defaults is laid down by the Information Commissioner's Office (ICO). This says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. It is the business' responsibility to put an entry on the credit file. This cannot be taken off unless it is an error.

Therefore by 1 May 2024, as Mr B was 16 months in arrears, it was reasonable that Creation sent him a Notice of Default – on 1 May 2024.

Mr B argues that he was told he could ignore any letters he was sent when he called Creation on 1 May 2024 and when he made an arrangement to pay. In other words, he believes the arrangement to pay meant a default shouldn't have been applied to his credit file.

I reviewed the Notice of Default he was sent on 1 May 2024 – this said *'if you do not pay your arrears, you should be aware that the default will be registered with the Credit Reference Agencies, no less than 28 days from the date of this letter. The default will remain*

*on your credit file for six years from the date of registration, and will make it more difficult for you to obtain credit in the future.'*

So, I think that was clear.

Mr B has gone on to say he was told he could ignore any letters he was sent. Creation haven't been able to provide the call on 1 May 2024 - so I haven't listened to it. Creation's notes on the call say Mr B made a 'promise to pay' of £72.25 per month for the next three months.

But - there's nothing on Creation's file to say that they agreed to suspend the default process and wait to see if the extra payments were made. And Mr B hasn't said that was agreed by Creation. Creation told us their call handlers are instructed to say the letters could be ignored where an arrangement is set up. That's because the balance and arrears will change when compared to the letters. But I have not seen evidence that Creation went as far as to say the default process was suspended or called off – and Mr B has not said that either.

And so, I'm persuaded that the important evidence here is the content of Creation's letter dated 1 May 2024 – the Notice of Default.

I then looked at what happened after 1 May 2024 – and he didn't manage to make the extra payments in any case. Looking at Mr B's account:

- in May 2024: he was 16 months in arrears
- by August 2024: he was 15 months in arrears and
- by December 2024, he was 16 months in arrears.

So in this case, I need to consider: even if Mr B was able to pay off the arrears in (say) June 2024 then would he have avoided the default later? And as he didn't reduce the arrears significantly after that time, I'm persuaded that he would then have defaulted again later in 2024.

Therefore, in this case – it isn't in Mr B's best interest for me to say the default was unfair in May 2024 (which I don't think it was) and ask Creation to remove it from his credit file – as it would likely have occurred again later in 2024. And as a default remains on a customer's credit file for six years - it is in Mr B's best interest to allow the earlier default instead of applying it later.

So, on the balance of evidence I've reviewed, I do not consider that Creation should remove the default from Mr B's credit file.

But I do agree that Creation sent out some confusing communications in August 2024 (as our investigator said) – but these didn't affect the default as they were after it. And Creation made an error in their final response letter. They said the default had already been applied when Mr B called the firm on 1 May 2024 – which was wrong as it was registered later than that - on 29 May 2024.

So, while those errors do not affect the default, I agree Creation should pay compensation of £100.

### **My final decision**

I uphold this complaint. And Creation Financial Services Limited trading as Creation must:

- Pay compensation for £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 January 2025.

Martin Lord  
**Ombudsman**