

The complaint

Miss J complains that Creation Consumer Finance Ltd reported missed payments to her credit file and incorrectly defaulted her account when she had a payment arrangement in place.

What happened

In April 2020, Miss J took out a running account credit agreement with Creation to finance the purchase of goods through a retailer. The purchase was on a buy now pay later offer, and monthly repayments of £236.17 were due to commence in February 2021 – the agreement says that Miss J was required to make 12 monthly repayments, with the expected end date being January 2022.

Miss J has had difficulties keeping up with the contractual repayments under the agreement and has set up various repayment plans with Creation. She says that in June 2023, she set up a payment plan with Creation and as part of the plan, she agreed to pay £144.34 per month. Miss J says that Creation didn't set the plan up correctly on its systems. The result of this is that Creation incorrectly reported that she had missed six payments and defaulted her account – even though she kept to the terms of the agreed plan. Miss J says she missed a payment in November 2023, but the account shouldn't have defaulted after one missed payment.

Miss J told us that this situation has caused her a lot of distress. She has also been unable to get a house or a new car as a result of the information showing on her credit file.

Creation responded to Miss J's complaint, but it didn't uphold it. It explained that it had previously set up multiple six month holds to her account. And then in June 2023, it set up a 12 month repayment plan for her. Because the account was in arrears and the November 2023 payment was missed, the account defaulted. Creation said it had applied the default fairly.

An Investigator considered what both parties had said, however, they didn't think Miss J's complaint should be upheld. The Investigator found that Miss J's account was in arrears by many months at the point in which it defaulted. And in summary, they didn't think it was unfair of Creation to have defaulted the account.

Miss J didn't agree with the investigator. I have summarised her main points below:

- She carried out the actions in the default notice by setting up a repayment plan in November 2023, so it wasn't fair to register a default.
- It wasn't fair to default the account after only missing one payment in November 2023.
- She was told by someone at Creation that the missed payments it recorded, and the default would be removed. She said she was told it would do this because it had incorrectly recorded the payment arrangement, which resulted in missed payments being recorded and the account defaulting.

- Creation should have shown her forbearance and fair treatment when it applied the default. Miss J referred to CONC 7.3 to support her view on this.
- Miss J reiterated the severe and disproportionate impact the default has had on her credit file.

Because an agreement couldn't be reached, the complaint was passed to me to decide on the matter.

I previously issued a provisional decision on this case, that's because it was my intention to come to a different outcome to the Investigator. Because of this, I wanted to give both parties the chance to respond with anything else they wanted me to take into account before I came to my final decision on the matter.

I have copied my provisional findings below, which also form part of this final decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Having considered all of the information available to me, it is my intention to uphold Miss J's complaint. However, I understand that what I intend to require Creation to do to put things right will disappoint Miss J.

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my provisional decision. I say this as I'm aware I've summarised Miss J's complaint, and her responses to the Investigator's view in considerably less detail than she has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

In my view, Miss J's complaint falls into three separate points, and I intend to cover these off separately.

Default

I don't think it's in dispute here that Miss J's account was many months in arrears at the point in which it defaulted.

Based on what I've seen, Miss J set up a repayment plan in June 2023. She started making repayments of £144.34 in August 2023 and missed a payment in November 2023 at which point Creation sent Miss J a default notice.

The ICO has provided guidance to say that generally, an account should default when it is between three to six months in arrears. Miss J's account was many months, more than six, in arrears at the point in which it defaulted. So, in my view, the default should have been applied much earlier than it was. However, I will go onto this in more detail later.

Miss J has provided this service with information to show that an account shouldn't default when only one payment has been missed. And she feels this applies to her situation because the only payment she missed was in November 2023. As I've explained, Miss J's account was in arrears by many months at the point it defaulted, with her not having kept up with her contractual repayment since September 2021. So, while Miss J did miss one

payment during the repayment plan, her account was in arrears by many months at this point.

The ICO has produced other guidance (see ICO publication 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies' (Version 2a Published July 2016 (updated to refer to GDPR and DPA 2018) which specifically relates to how accounts in payment arrangements should be reported. This states "If your lender agrees to give you a temporary arrangement, but you fail to make the agreed payment against the new terms, they may still file a default (see Principle 4 below) as soon as a payment is missed, as long as you were at least 3 months in arrears on the original agreement."

I am aware that Miss J contacted Creation within the 28 days provided in the default letter to set up a new arrangement. And that despite doing this, a default was still applied.

But looking at what happened here, it doesn't look like an arrangement was put in place to clear the arrears. The default notice set out that Miss J needed to clear the arrears or come to an arrangement to clear the arrears. But Miss J couldn't afford to do this and so it was agreed that she didn't have to pay for a further six months – so an arrangement wasn't put in place to pay off the arrears and put the account in a better position.

Given what I've said here and taking into account what the ICO guidance says about an account defaulting as soon as a payment in an arrangement is missed, I can understand why Creation defaulted the account when it did.

That being said and taking into account the ICO guidance I've mentioned above, I'm currently persuaded that Creation should backdate the date of the default. I think it ought to have been clear to Creation much earlier that Miss J was struggling to keep up with repayments at the contractual amount, and she had been in arrears for a very long time by the time Creation defaulted the account.

Miss J initially set up a three-month payment freeze in March 2021; this is due to the effect Covid-19 was having on her finances. Once this ended, Creation carried out an income and expenditure with Miss J and found that she was in a deficit, so she wasn't required to make a payment for six months – interest appears to have been frozen throughout this time. Then in August 2022, Miss J set up a temporary arrangement to pay around £100 for three months.

But she wasn't able to make the payment in October 2022 and so the payment arrangement was broken. It is my view that Creation should backdate the default to October 2022. At this point, Miss J had broken the terms of the arrangement and her account was in arrears of more than six months. I accept that Creation did try to help Miss J by continuing to set up plans, but it seemed clear by October 2022 that Miss J couldn't pay the contractual amount due, let alone clear the arrears that had built up.

I note that Miss J has referred to the severe impact the default has had on her credit file, and that she feels this is disproportionate to what's happened. While I accept that the default will have a negative impact on her credit file, making it more difficult and/or more expensive to get credit; a credit file should be an accurate reflection of how an account has been managed. And in this case, I think the default is an accurate reflection of how the account has been managed and I don't find it to be disproportionate.

Forbearance

Miss J says that Creation haven't shown her forbearance when it applied the default.

Creation is required to show a customer in financial difficulties forbearance, and the CONC 7.3 provides examples of forbearance which includes suspending, reducing, waiving or cancelling any further interest or charges. But this doesn't mean it should prevent a customer from getting a default.

I can see that Creation did provide Miss J with forbearance on a number of occasions when it agreed to waive interest and suspend repayments for the periods of time Miss J couldn't afford to pay. So I think it did make attempts to support her when she was struggling financially.

That being said, my current view is that Miss J's account should have defaulted in October 2022, because I think Creation ought to have been aware by this point that Miss J couldn't make the contractual repayments or pay back the arrears. So I'm currently minded to say that Creation should refund Miss J any interest it has charged her since October 2022, and it should stop any further interest charges from being applied to her account.

Misinformation provided by Creation

Miss J says that Creation admitted that it made a mistake when recording the payment arrangement. This meant that payments were recorded as being missed, and a default reported. She says that someone at Creation told her that it would remove the missed payments and default from her credit file, but only the missed payments have been removed, and the default remains.

The call Miss J refers to is no longer available, so I can't be sure about what Miss J was told on the call. But even if I accept that Creation told her it would remove the default from her credit file, it doesn't necessarily follow that I would order Creation to follow through with this.

Creation have said that its reporting of the missed payments was incorrect, because of how it had recorded the payment plan. It says it shouldn't have recorded these as missed. I'm minded to agree with this, given that the ICO guidance states that an account in an arrangement to pay should be recorded as such. I note that Creation has removed this reporting now, and so there isn't anything left for it to do here.

But Creation hasn't agreed that it did anything wrong in recording the default. And given that I have found that a default should be recorded (albeit at an earlier point in time), I won't be asking Creation to remove this.

I appreciate this will be disappointing for Miss J, especially if she was in fact told the default would be removed. But not reporting a default wouldn't be an accurate reflection of how the account was managed. And so, it wouldn't be reasonable of me to ask it to do this.

Summary

Overall, I'm satisfied that Miss J's account should have defaulted, however it is my current view that the default date should be backdated to October 2022, and any interest charged after this date should be refunded and no further interest charges should be applied to the account."

Neither party responded to the provisional decision by the deadline.

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.

Given that neither party responded to my provisional decision with any other points they want me to consider, I see no reason to depart from the findings in my provisional decision. It follows that I uphold Miss J's complaint.

Putting things right

To put things right for Miss J, I order Creation to:

- Update Miss J's credit file to reflect a default date of October 2022.
- Re-work Miss J's account so that all interest, fees and charges applied to it from October 2022 onwards are removed.
- If an outstanding balance remains once these adjustments have been made Creation should contact Miss J to arrange a suitable repayment plan for this.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss J, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. †

† HM Revenue & Customs requires HSBC to take off tax from this interest. Creation must give Miss J a certificate showing how much tax it's taken off if she asks for one

My final decision

For the reasons set out above, I uphold Miss J's complaint. I order Creation Consumer Finance Ltd to put things right for Miss J by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 23 December 2024.

Sophie Wilkinson
Ombudsman