

The complaint

Mr R complains that Creation Consumer Finance Ltd (Creation) did not mark his account as defaulted.

What happened

Mr R had a debt with Creation (and other lenders). He entered a Scottish Debt Arrangement Scheme (DAS) in January 2020. The debt due to Creation was £1,376.54. This was due to be paid in 72 instalments. Interest was stopped.

The DAS was completed in June 2022. By then, the balance had reduced to £1,164.53. And Creation accepted a final payment of £527.25 and agreed to write off the balance of £637.28.

During the period of the DAS, Creation marked Mr R's credit file with late payments. When the final payment was made, Creation marked his credit file as 'partially settled'.

Mr R complained. He said that the marking of his credit file with late payments was unfair – as it meant that his credit record would be affected for another six years from June 2022. He says his credit file should've been marked as 'default' when he entered the DAS in January 2020. He says this would be in line with the Information Commissioner's Office (ICO) guidance stating that: *"Where an arrangement to pay breaks down, a default may be filed when the total value of the arrears is equivalent to three monthly payments under the original terms. However, this should not result in the customer being placed in a worse position than someone who had made no effort to pay whatsoever."*

Mr R says his other lenders marked his credit file with a default and Creation should do the same. He says that the DAS is the same as bankruptcy or an IVA – which would lead to a default being marked. He said he has been disadvantaged by trying to deal with his creditors rather than stopping the payments and defaulting.

Creation didn't uphold Mr R's complaint and said his credit file had not been marked as default- but agreed that it should be marked as in 'arrangement'; and then 'settled' in June 2022.

Mr R brought his complaint to us. Our investigator didn't uphold it. He looked at the ICO's guidance called 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies'. He was satisfied that what Creation had done was in line with that.

Mr R didn't agree and asked that an ombudsman look at his complaint.

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.

I hear what Mr R has argued and I appreciate the points he has put to us – and I have thought a lot about his complaint.

In general terms, lenders must advise true, and accurate information to the credit reference agencies (CRAs). And in the ICO's guidance, it says that a default should normally be marked if the account is subject to an arrangement and the terms of that arrangement had broken down.

The crux of this decision therefore comes down to whether the DAS should have been considered an 'arrangement to pay' or a default. And on balance, I think it is reasonable to have considered it as an arrangement to pay.

I looked at the terms of the DAS scheme sent to Creation in January 2020 – when Mr R entered the DAS. The letter says – a 'Debt Payment Programme' (DPP) was approved for Mr R and it says:

"DAS helps people with debts to pay most of what they owe to their creditors over an agreed period of time.

No further interest or charges can be added to the debt whilst the DPP continues and they are written off on completion of the DPP the debtor must make their first payment within 42 days of the date the DPP is approved. After that they must make all of their payments on the date agreed with the Payments Distributor..."

It goes on: *"There are a number of grounds where the debtor, a money adviser acting on behalf of the debtor or you as a creditor in the DPP can apply to revoke a DPP. The DAS Administrator can initiate the action without an application.*

These grounds include where:

- the debtor failed to satisfy the conditions of the DPP.*
- the debtor missed the equivalent of payments due over a 2 monthly period and a further payment is due..."*

In other words, DAS is an agreed arrangement to pay off creditors (i.e. lenders). I don't think it is reasonable to regard it as the same as bankruptcy, for example. Indeed, there is reference in the letter - to one way that the DPP can fail is if a debtor enters bankruptcy – so bankruptcy is a further step from a DAS/DPP.

I also noted that DAS is a 'debt *arrangement* scheme' and DPP is a 'debt *payment programme*' – in other words, an arrangement to make regular payments to pay off a debt.

I looked at the further information on filing defaults with the CRAs - found in the 'Principles for the reporting of arrears, arrangements and defaults at credit reference agencies.'

The principles in this document have been drawn up by the credit industry in collaboration with the ICO.

In this, it refers to a Debt Management Programme. This is common in the UK. The document says: *"A debt management programme (DMP) is when a third party debt adviser negotiates a repayment schedule for all or a number of a consumer's credit agreements. If the plan is accepted by the lender, the record filed at the credit reference agencies must reflect that the consumer is on a DMP. For such accounts arrears may continue to be calculated in accordance with the contracted terms, but the account marked as under a*

DMP.”

I consider the DAS/DPP to be close to a DMP – where the ICO guidance is to mark the credit file with ‘DMP’ i.e. an ‘arrangement to pay’.

The guidance goes on: *If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down.*

So – if the payments under the DPP aren’t maintained, then a default may be the next step. In other words, if Mr R had not made the agreed payments to Creation under the DAS, *then* Creation could’ve then defaulted his account and marked a default on his credit file. That would have been consistent with the guidance to reflect true and accurate information.

The guidance also says: *In normal circumstances lenders will be notified when the debt that is owed to them is to be included in an insolvency e.g. bankruptcy, IVA or similar and should be marked as included in that by filing a default as soon as is practical.*

So- the guidance says a default only applies in the case of bankruptcy or an IVA or similar – and I don’t regard the DAS as ‘similar’ for the reasons I’ve set out.

Creation agreed to change the marks on Mr R’s credit file to ‘arrangement’ – which I think fairly and reasonably describes the circumstances he was in – he was in a scheme of arrangement to pay his debts. He wasn’t in an enforcement or recovery process - as in bankruptcy or under a County Court Judgment for example.

Mr R has said (and evidenced) that some other lenders defaulted his accounts. But I can’t comment on what they did – I have only considered what Creation did.

As I said, I appreciate the points Mr R has made and have considered his complaint fully. But, on balance, I think Creation’s treatment of Mr R’s credit file was reasonable and I’m not asking the firm to do any more here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 14 February 2025.

Martin Lord
Ombudsman