

complaint

Mrs E complains that Creation Consumer Finance Ltd (Creation) treated her unfairly when she experienced financial difficulties.

background

Mrs E had a finance agreement with Creation which she took in 2011. The agreement was for 48 months with 42 payments of £35.73 after an initial deferred payment period of six months.

These payments were made until September 2012, at which point Mrs E experienced a drop in her household income resulting in financial difficulties.

Mrs E spoke to her local Citizen's Advice Bureau (CAB) to help her arrange repayment plans with her creditors. She wrote to them all, including Creation, to detail what she felt she could pay – based on her income and expenditure assessment.

Creation set up a repayment plan for £1.00 per month but said it needed to see proof of the income and expenditure. It requested this from Mrs E. It attempted to call her a number of times in an attempt to confirm this. Mrs E kept a diary of these times after she felt Creation's attempts to contact her were becoming excessive. She also said CAB logged a complaint with the Office of Fair Trading over the number of calls Creation was making. The adviser at CAB also wrote to Creation detailing why Mrs E could only pay what was offered on the account.

When Creation didn't receive the information it said it needed to agree an ongoing repayment plan, it passed the outstanding balance on Mrs E's account to a third party debt collector. Any charges relating to this were added to the outstanding debt.

The third party let Mrs E know that a payment plan could be accepted. However, due to the amount of time it expected it to take for this plan to repay the debt in full it would be applying for a charge to be applied against Mrs E's property for the debt. A county court judgement was also recorded against Mrs E for the default on her original credit agreement.

The repayment plan has been maintained since its inception in early 2013. Mrs E is unhappy that after the repayment amount was agreed by the courts, the debt collection agent attempted to increase this. However, the plan has continued and the monthly amounts have increased from £1.00 gradually in line with what Mrs E can afford to repay.

Mrs E complained to Creation in 2018, she didn't think it had treated her fairly when she asked for help with her repayments in 2012. And she believed the number of phone calls and its attempts to try and recover this money were excessive – adding to the distress she was experiencing. She explained she hadn't complained sooner because of the impact of Creation's actions and her not being able to cope with this. But she was now able to do so.

Our investigator looked at Mrs E's complaint. He felt Creation was entitled to register a county court judgement for the debt. And that the courts have decided whether it was fair that an interim charge was applied against Mrs E's house and we couldn't change this. But he felt Creation failed in its duty to act in a positive and sympathetic manner towards the debt when Mrs E let them know she was experiencing financial difficulty.

He felt it was clear this had an impact on Mrs E and the situation she found herself in was made more stressful as a result of Creation's actions. He recommended that Creation pay Mrs E £250.00 in recognition of this. Mrs E agreed with his findings.

Creation didn't agree. It said it hadn't received the second letter from CAB providing the information it was requesting about the income and expenditure details. And it felt if this was being provided, it would have been reasonable for Mrs E to explain this to its advisers when it attempted to contact her on the phone. It said it needed to proactively chase its debt because of the limited time it could allow a reduced payment and it didn't feel its actions were unfair. It also felt Mrs E could have raised her complaint sooner.

Because of this, the complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've decided to uphold this complaint, for much the same reasons as our investigator.

It isn't disputed that Mrs E had agreed to the credit agreement she had with Creation and that she wasn't able to maintain this. And Creation applied for a county court judgement in respect of this. I haven't commented on this as this isn't in dispute.

I've focused on the whether I feel Creation acted, overall, in a positive and sympathetic manner as per the expectation on a creditor when a customer is experiencing financial difficulty.

Mrs E was proactive in her attempts to reduce the impact of her financial circumstances changing with her creditors. And she worked with CAB to provide a breakdown of what – at the start – she could afford to repay towards her debts. This was provided to Creation. I appreciate after this Creation said it didn't receive the follow up information it requested in response to this. But I think it's fair to say it was made aware of Mrs E's situation and should have been aware that it needed to act in a positive and sympathetic manner.

The number of phone calls Creation made after this point to pursue the debt can't be confirmed. Creation said its call log shows all calls made. But Mrs E has provided a log of the calls she said she received following her complaint about its action to the Office of Fair Trading – this shows more calls than Creation's call log. And in the absence of Creation showing all calls dialled, I'm persuaded on balance this is likely to be a fair reflection of the number of calls she was receiving.

There are days when more than three calls were attempted – often within a short period of time. With Creation being aware of Mrs E's significant drop in her income I don't think it's fair to say its actions here were positive or sympathetic.

Creation has questioned why, during one of its many attempts to speak with Mrs E, she didn't say she'd sent in the income and expenditure proof. While I agree this would have been helpful, I understand why this might not have happened. Mrs E explained how the number of phone calls Creation made and its actions chasing her for the debt were making her feel distressed and upset. She had previously used CAB to help negotiate with her other creditors and Creation. And with the calls coming directly to Mrs E without this third party

being able to assist her, I can see why she found it stressful and upsetting – especially when I consider the number and frequency of these calls.

When Creation wasn't able to speak with Mrs E on the phone, I think it could have considered other options to try and let her know what it needed. And this could have helped Mrs E to engage with it on this.

Mrs E has also explained how these calls impacted on her whole family. While I can't consider the impact of Creation's actions on her family directly – as they aren't its customers – I can see why this would have further upset and distressed Mrs E.

Mrs E said she needed to change jobs as a result of the stress she experienced because of Creation's actions. However, I can't say this change was all because of Creation's approach to this debt and I don't think it would be fair to do so.

The court agreed an interim charge, setting out what it expected Mrs E to pay each month. Despite this she was still contacted by the debt collection agent trying to arrange a higher payment. This again would have added to the stress of the situation when she could have reasonably believed that she now only needed to maintain the payment plan.

Mrs E said for a long time she found even discussing what happened with Creation to be upsetting and this is why she didn't complain sooner. I understand this and don't think this delay can be taken to show the impact was reduced.

Overall, I think Creation has failed to demonstrate how it approached Mrs E and her situation in a positive and sympathetic manner. And its actions have caused further distress and upset to what was already a distressing time.

my final decision

For the reasons I've explained above, I uphold Mrs E's complaint.

Creation Consumer Finance Ltd should pay Mrs E £250.00 in recognition of the impact its actions had on her and the distress and inconvenience she experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 27 March 2019.

Thomas Brissenden
ombudsman