

## **complaint**

Ms Y complains about interest and charges that have been added to her account with Creation Financial Services Limited.

## **background**

Ms Y had a credit card account with Creation. Ms Y experienced financial difficulties in April 2011, and she was unable to meet her minimum monthly payments. Ms Y contacted Creation and it agreed a payment plan of £10 each month for a period of six months. Ms Y kept to the terms of this plan. It ended in November 2011 however Ms Y didn't contact Creation to say that she was still unable to pay the contractual minimum payments. Because of this, the account returned to normal, and interest and charges were added in line with the terms and conditions of the account.

In November 2011 and December 2011, Ms Y didn't make a payment to her account. On 3 January 2012, Creation agreed a further repayment plan arrangement of £10 a month for a further six months. Ms Y did not however make a payment under this arrangement. Ms Y's account again returned to normal with charges and interest added.

On 13 April 2012, Creation agreed a further repayment plan with Ms Y of £5 a month for four months. Ms Y made a payment under the plan in April 2012. No payment was received in May 2012, so the arrangement was broken. Interest and charges were added to Ms Y's account.

Ms Y is unhappy with the charges and interest which have been added to her account. She brought a complaint to us to consider.

The adjudicator recommended that the complaint should be upheld. She considered that Creation should have defaulted Ms Y's account in May 2012. If this had happened, interest and charges would have been frozen at that point. The adjudicator recommended that Creation should retrospectively default Ms Y's account as of 4 May 2012, and refund interest and charges added to her balance since then.

Creation does not agree. It says, in summary, that Ms Y did not provide it with information to allow it to agree new repayment plans. Creation does not agree that it should have defaulted Ms Y's account in 2012. It says their relationship had not broken down at this point. Furthermore it cannot backdate the default as a notice of default was not sent. Creation points out that it would not apply a default until Ms Y had failed to make payments for a six month period.

Creation sent Ms Y a notice of default in 2013, and it has refunded charges and interest added since then.

## **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 have noted what Creation says about the ICO guidance. In deciding what's fair and reasonable we must take into account industry guidance. But the ICO is mainly giving guidance to lenders about handling their customers' personal data, not about handling debt.

The Lending Code says the business must respond positively and sympathetically to a consumer in financial difficulty. In this case, Ms Y had been unable to make her contractual payments for several years. She was finding it difficult even to stick to the repayment plans. There was little prospect of her financial position improving unfortunately given her ill health.

I agree with the adjudicator that it would have been reasonable for Creation to have defaulted Ms Y's account in May 2012 when the third repayment plan been broken. I find their relationship had broken down and the account should have been defaulted at that time. I note default notices were sent to Ms Y in September 2013 and January 2016. I consider that Ms Y should be put in the position as if her account had been defaulted on 4 May 2012. Her credit file should be amended to reflect this and all interest and charges which have been added to the account since that date should be refunded.

### **my final decision**

My decision is that I uphold this complaint. In settlement of it, Creation Financial Services Limited should:

- Record a default on Ms Y's credit file from 4 May 2012.
- Refund all interest and charges that have been added from 4 May 2012 onwards to Ms Y's account if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 23 June 2016.

Rosemary Lloyd  
**ombudsman**