

## **complaint**

Mr M complains that Creation Consumer Finance Ltd provided him with poor service and hasn't treated him fairly. He wants it to write off the remaining balance on his account.

## **background**

The background to this complaint is set out in my provisional decision dated 21 January 2019, a copy of which is attached. I concluded that:

- Overall, Creation had fulfilled its obligations to treat Mr M fairly whilst he was experiencing financial difficulties.
- But I thought Creation's communication should've been better and that this, together with its decision to pass the debt to a debt collection agency, caused Mr M distress for which he should be compensated. I thought £200 was fair and reasonable.
- I thought Creation's lack of action meant the default wasn't applied to Mr M's account as early as it should have been and that this should be amended to August 2017.
- I reminded Creation of its obligation to treat Mr M fairly and sensitively and that it should pass the management of his account to its specialist team for reassessment and to communicate with him by email, his preferred method of communication.

I invited both parties to provide further evidence and comments.

Mr M responded to say, in summary, that:

- He can't afford to pay for access to his credit file, so would like Creation to provide evidence that it's asked for the default date to be amended.
- Creation said it's suspended all interest and charges. But recent communications from Creation show the balance outstanding has increased.
- During a phone call with Creation in March 2017, its member of staff suggested that it would accept a lump sum offer of £9,000 in full and final settlement. But this was rejected when he offered it.
- According to the Information Commissioner's Office ("ICO"), as a general rule, a default may be recorded after three months of arrears and normally after six months of arrears. His account was three months in arrears by November 2016 and six months in arrears by February 2017.
- He's been alarmed by recent letters received from Creation.

Creation said it agreed with my provisional decision. It said it had arranged for Mr M's account to be dealt with by its specialist consumer support team but that it needed the following documents:

1. A completed financial statement (which is required every six months).
2. Proof of income (last three months wage slips or bank statements or proof of benefits).
3. A letter to confirm Mr M's medical circumstances on letter headed paper from a GP or other health professional (it will reimburse for any cost involved).

Creation said if the information wasn't received within 90 days, the account wouldn't stay with its specialist team.

### **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 considered the additional information provided by Mr M and I'll respond to the points he's raised:

#### *default recorded on Mr M's credit file*

Creation recorded a default in August 2018. Mr M has correctly quoted the ICO's guidance. But we would not expect a business to apply a default when there's a realistic possibility that the debt can be repaid. Usually, when a temporary payment plan is agreed, both parties remain hopeful that the consumer's circumstances will change and that they will be able to repay the arrears on the account in the future. And this was the case for Mr M. Two payment plans were agreed and Mr M told Creation he expected his position to change for the positive.

In my provisional decision I explained why I thought it was reasonably clear by August 2017 that Mr M's circumstances weren't going to improve and that this was when the default should've been applied. Having reconsidered the evidence, I find the default should've been applied when the second repayment plan ended on 1 May 2017. Although Mr M did make one more payment after this date, I think it was reasonably clear by 1 May that his circumstances weren't going to improve in the near future.

Mr M says he can no longer get a free copy of his credit file and he can't afford to pay to register with the credit reference agencies. I can't order Creation to provide documentary evidence that it's given instructions for the default date to be changed. But it is required to abide by my final decision if Mr M accepts it. It should email Mr M to tell him when it has given the instruction for the default date to be changed to 1 May 2017.

#### *interest and charges*

Creation told us that interest and charges were suspended on the account in July 2016. I've not seen evidence to show that any interest or charges were added to Mr M's account – the balance outstanding remains £18,336.62.

*rejection of lump sum offer*

I don't dispute that a member of staff may have suggested to Mr M that he might like to consider making a lump sum offer in full and final settlement. But I'm afraid that doesn't change my conclusion – when Mr M made his offer, Creation wasn't under any obligation to accept it.

*recent correspondence*

During our investigation, Creation said it would put its collections activity on hold, although certain letters would continue to be automatically sent. I can see Mr M was sent a letter last month asking for him to call to arrange a repayment plan. In response to my provisional decision, Creation told us it has now passed his account to its specialist consumer support team so all communication should now be from that team.

*documentation required by Creation*

I've set out above what Creation said in response to my provisional decision about the information it now requires from Mr M. It should contact him direct to obtain this information. Although Mr M has provided information about his financial position in the past, it's reasonable that Creation wants to see up to date information.

Mr M sent Creation a GP's letter dated 11 August 2018 about his medical condition which should be sufficient for Creation's records – it includes the GP's stamp. But it's not unreasonable for it to ask for up to date information about Mr M's condition and, if it requires this, it has told us it will reimburse Mr M for any costs involved.

**my final decision**

My final decision is that Creation Consumer Finance Ltd should:

1. Pay Mr M £200 compensation for the distress and inconvenience caused. This should be paid directly to Mr M and not used to reduce the outstanding debt.
2. Amend Mr M's credit file to show the default being applied to his account on 1 May 2017 and email Mr M to confirm this has been done.
3. Pass the management of Mr M's account to its specialist team for reassessment and communicate with Mr M by email.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 April 2019.

Elizabeth Dawes  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr M complains that Creation Consumer Finance Ltd provided him with poor service and hasn't treated him fairly. He wants it to write off the remaining balance on his account.

### **background**

Mr M signed a fixed sum loan agreement with Creation in August 2014. Under the terms of the agreement, he was required to pay £510.99 each month for five years.

In July 2016 Mr M contacted Creation to tell it he was experiencing financial difficulties. Creation placed a hold on the account and suspended all interest and charges. A few weeks later, Mr M said he could afford to pay £200 a month and Creation agreed to this for three months.

After three months – in October 2016 – Mr M advised of a further change in circumstances and, once he had provided up to date information about his income and expenses, Creation agreed to monthly payments of £80.

The following year, Mr M received a lump sum following the sale of his house and wanted to settle all of his debts. In March 2017 he wrote to all of his creditors offering partial settlement and asking for the remaining debt to be written off. The amount outstanding on his account with Creation was around £18,500. Mr M offered £9,000. Creation declined to accept this and Mr M continued with the £80 monthly payments.

In July 2017, Mr M wrote to Creation explaining his current circumstances and offering to pay £3,570 to settle his account. Creation didn't reply and Mr M phoned it around two months later. Creation declined Mr M's settlement offer and told him, if he could pay £14,669.30, it would write off the remaining balance. Mr M couldn't pay this amount so Creation offered to put the account on hold for six months, with no payments. Mr M said this wouldn't help because there wouldn't be any change in his circumstances during this period.

Around two months later, Mr M wrote to Creation again with his offer of £3,570. Creation didn't reply. It contacted Mr M to seek up to date financial information and asked him to provide evidence of his medical condition. In June 2018, it passed the account to a debt collection agency, although I understand it has now been passed back to Creation. Creation recorded the account as in default in August 2018.

Creation didn't uphold Mr M's complaint.

Mr M told us that:

- He has no way of repaying the debt. His circumstances haven't changed in over two years and are unlikely to do so.
- He provided evidence of his financial circumstances on four occasions and has provided medical evidence. He didn't understand why he was required to continue to provide this information when Creation hadn't responded to his complaint.
- Creation didn't respond to his second lump sum offer until he chased it. It then made a counter offer which it knew he couldn't afford.
- The default should have been recorded at an earlier stage.
- Creation has acted unreasonably and this has impacted on his ability to settle with other creditors at an already difficult time for him.

Our investigator concluded that Creation acted reasonably in putting Mr M's account on hold, suspending interest and charges and in trying to recover the debt. And she thought it hadn't unfairly delayed the account default. But she recommended Creation should:

- Assess Mr M's situation following receipt of his doctor's letter.
- Recall the debt from the debt collection agency.
- Arrange for Creation's dedicated team to liaise with Mr M by email (Mr M's preferred method of communication) regarding the account and the options available to him for repayment.
- Pay Mr M £100 for the inconvenience caused following the breakdown in communication when his account was referred to a debt collection agency.

Neither party agreed with our investigator's conclusion. Creation didn't explain why it didn't agree.

Mr M said, in summary, that:

- Creation delayed the default process when there was no reasonable chance of him repaying the debt.
- Its failure to provide any reason for rejecting his first lump sum offer prevented him settling his other debts, causing him considerable worry and stress.
- Creation failed to respond to his second lump sum offer. When it finally responded it didn't give any reason for rejecting his offer and it failed to indicate what figure might resolve the matter.
- Creation didn't respond to his complaint in a reasonable timescale, bearing in mind his circumstances.
- After he'd referred his complaint to this service, Creation passed his debt to a debt recovery agent. It didn't provide that agent with any information about Mr M's situation. This led to aggressive recovery action and the sum of £100 isn't enough to reflect the distress caused.
- Creation's delays means it gives it more time to pursue the debt later and penalises him by having the default on his credit file for longer than could have been.

### **my provisional findings**

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

I'm sorry to hear about the problems Mr M has been experiencing, financially, personally and with his health. I can understand how this has been a very difficult time for him.

And I can see that he told Creation about his financial difficulties in July 2016 and that he's been generally proactive in contacting it and trying to agree affordable payments. And that he's managed to meet the monthly payments agreed under two short term repayment plans.

Creation has an obligation to treat consumers in financial difficulty fairly and the Financial Conduct Authority gives some examples of steps a business might take in these circumstances, such as suspending interest and charges and agreeing reduced payments. I find that, overall, Creation has fulfilled its obligations. It became aware of Mr M's financial difficulties in July 2016 and it placed his account on hold. It suspended all interest and charges – and these remain suspended. It agreed a three month repayment plan of £200 a month. Later, when Mr M told it his circumstances had changed again, and after he'd provided evidence of his income and expenses, it agreed a six month repayment plan of £80 a month. Mr M seemed hopeful that his circumstances would change for the better by the end of the six months, although sadly this wasn't the case.

Creation wasn't under any obligation to accept Mr M's offer of a partial lump sum settlement of £9,000 in March 2017. And I think it was reasonable for it to conclude that Mr M's circumstances could still change for the better. It would've been helpful if it could've explained why it declined Mr M's offer and told him what sum it would accept in full and final settlement. Although, had it done so, I don't think it would've changed anything overall – Mr M was unlikely to be able to pay back more than the amount he offered.

In August 2017, Mr M made a second offer of £3,570. In his letter he gave Creation more information about his personal and medical circumstances. I find that, from this point on, Creation were aware that Mr M should be treated as a vulnerable customer and that it had an obligation to deal with him sensitively. I don't think it was unreasonable for it to ask for medical evidence and it's unfortunate that there was a long delay in Mr M being able to obtain this – he didn't provide it until around a year later, and after he'd referred his complaint to this service.

During this period of around a year, I think Creation's communication with Mr M could've been better. It didn't respond to his offer of £3,570 until Mr M contacted it. It didn't respond to his letter in November 2017 when Mr M repeated his offer. It acknowledged his complaint, but didn't provide a final response until seven months later. And it passed his account to its debt collection agency which led to Mr M being telephoned several times a day. During this period, it did contact Mr M several times to ask for the medical evidence and to ask for up to date financial information. But, in the absence of the evidence, it should still have been able to respond to his letters and give him the reassurance he needed that his account remained on hold and that interest and charges remained suspended. I don't think it was appropriate to pass Mr M's account to the debt collection agency, without it being put on notice that he was a vulnerable consumer.

The poor communication – and the decision to pass the debt to the debt collection agency – added to Mr M's distress, at an already very stressful time for him and I think he should be compensated. I think £200 is fair and reasonable in the circumstances.

I also think Creation's lack of action during this period means the default wasn't applied to Mr M's account as early as it should have been. Although it was right to ask for evidence to confirm what Mr M had told it about his financial and personal position, I think it was reasonably clear by August 2017 that Mr M's circumstances were unlikely to change in the foreseeable future. So I think the default should've been applied then.

Since referring his complaint to this service, Mr M has been able to provide Creation with the medical evidence it requested. So it should ensure its specialist team is now in contact with Mr M by his preferred method of contact which I understand is email.

I would remind Creation of its obligation to treat Mr M fairly and sensitively. I understand it now has evidence of Mr M's up to date financial position and his medical condition, although it may need to ask Mr M further questions about his income and expenses. But it should then be able to assess whether Mr M's circumstances have changed and whether they are likely to change in the future. And it will then be in a position to reconsider whether Mr M is likely to be able to make any further payments to repay the debt.

**my provisional decision**

My provisional decision is that Creation Consumer Finance Ltd should:

1. Pay Mr M £200 compensation for the distress and inconvenience caused. This should be paid directly to Mr M and not used to reduce the outstanding debt.
2. Amend Mr M's credit file to show the default being applied to his account in August 2017.
3. Pass the management of Mr M's account to its specialist team for reassessment and communicate with Mr M by email.

Elizabeth Dawes  
**ombudsman**