

complaint

Mr E complains that Creation Financial Services Limited has not treated him positively and sympathetically regarding arrangements to repay a debt.

background

For a number of years Mr E has been paying off various debts through a debt management plan. He has succeeded in paying off or reducing other debts significantly, but his debt to Creation had reduced by less than £350 in over nine years, even though he had paid in over £2,000. For a period he paid no interest but then interest was applied and the rate later varied.

The adjudicator recommended that Creation should reverse all interest applied to the account since 6 April 2007, freeze the application of further interest and pay Mr E £75 for distress and inconvenience. He did not consider that Creation had acted reasonably when at times it had charged as much as 15% interest despite being aware of Mr E's financial difficulties. A second adjudicator commented that when Creation started charging interest again in 2008 (after an interest free period) the effect was that it would have taken Mr E 45 years to pay off the debt. Although that period had reduced, after Mr E became able to pay less and the rate was reduced, by 2013 it was still over 20 years.

Mr E agreed with the recommendation but Creation did not. Initially it said that the balance had not decreased because Mr E had been charged a PPI premium each month. It also said that Mr E would only have been charged the contractual interest if he had broken his repayment arrangements. It proposed a temporary repayment arrangement for the next 12 months. After we queried that response, and the interest rate changes, Creation said that if a customer was able to make a higher monthly repayment, then the interest rate would be amended because that would suggest the severity of their financial situation had lessened. If a customer overpaid against their temporary repayment arrangement then that suggested they were able to afford more than previously stated, and the arrangement would expire.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First I must explain that I am only able to consider events from 6 April 2007, when this service acquired power to deal with complaints of this sort, about consumer credit.

Creation only provided account statements from August 2008 (which seems to be the point at which it began charging interest again). But certainly by then Mr E was not paying for PPI. If he did earlier, any issues about that would need to be considered separately. But PPI does not account for the very slow rate of progress in paying off the debt since 2008: that is due to the fact that most of the repayments Mr E has made have been taken to cover interest, with only a smaller proportion paying off any of the debt.

I can see that if a consumer no longer had financial difficulties, then (depending on the exact circumstances) it might be reasonable for a business to begin charging interest again, possibly up to the contractual level. However I do not believe that is the situation here. Mr E has acted responsibly in gradually paying off his debts over a number of years as his situation allowed, and has succeeded in reducing his total debt considerably. But it seems

he still has significant debts and a debt management plan and is not yet out of financial difficulty.

While Creation is not obliged to freeze or refund interest, it continues to be required to treat Mr E's situation positively and sympathetically. Reapplying interest in 2008 with the effect that it would potentially take Mr E another 45 years to pay off the debt was not a positive or sympathetic response. Nor was increasing the interest rate in 2009, after Mr E had made the effort to pay slightly more off the account each month. Although the interest rate was reduced again in late 2012, when Mr E was able to pay less again, the effect still was that he would be paying off the debt for nearly 20 more years. By 2012 the Finance and Leasing Association's Lending Code said that interest would not continue to be taken if that would result in the repayment period being excessive, given the type of loan and the consumer's personal circumstances. I consider that the repayment period was excessive in the situation here. The debt in 2003 had been less than £1,500, on a store card. I consider that it was unreasonable to charge interest when that meant Mr E would potentially have to continue paying that debt off for over 25 years in total.

In the particular circumstances here, I agree with the adjudicator, that it was not fair and reasonable for Creation to re-impose interest charges on this account in 2008 and that Mr E should receive a refund of the interest together with a small amount of compensation in respect of the distress and inconvenience caused by the way matters were handled.

my final decision

My final decision is that I uphold this complaint. In full and final settlement I order Creation Financial Services Limited to:

- recalculate the outstanding debt, having deducted all interest charges imposed since 6 April 2007;
- charge 0% interest on any remaining debt, so long as Mr E's financial situation does not improve very significantly and he maintains regular payments;
- pay Mr E £75 in compensation.

Hilary Bainbridge
ombudsman