

## complaint

Mr C is unhappy that Creation Financial Services Limited has said he can't change the date his direct debit for his credit card is paid.

## background

In 2007 Mr C took out a Creation credit card. In October 2016, Mr C set up a monthly direct debit with Creation for the minimum payment due on the card. In January 2017 Mr C spoke to Creation again and the direct debit was amended to make a payment of £40 a month instead of the minimum payment.

Mr C then contacted Creation as he wanted to change the date the direct debit came out. He said that he wanted to make the payment earlier to coincide with his income. Mr C has explained to us that he wanted to make the payment between the 20<sup>th</sup> and 24<sup>th</sup> of each month. Creation said it wasn't possible for him to do this. So he put in a complaint.

Creation didn't uphold Mr C's complaint. It said that the direct debit couldn't be amended to be taken when Mr C wanted. Creation sent Mr C his terms and conditions ('T&Cs') and said that these didn't say he could change the payment due date. Mr C was unhappy with Creation's response as he said the T&Cs also didn't say he *couldn't* change the payment due date. He felt that they should set out how the account had to be managed in full – including the fact there was a limit to dates a direct debit could be taken. He was also unhappy that Creation hadn't proved it was contractually allowed to limit the dates his direct debit could be taken. And that even if this were the case, as this wasn't set out in the original T&Cs, Creation was varying his contract but hadn't given him the required notice for this.

Our investigator didn't uphold Mr C's complaint. She acknowledged that the purpose of T&Cs was to set out the actions Mr C had to take/agree to in order to get the credit and that the T&Cs couldn't set out everything that could and couldn't be done. She said that the Financial Conduct Authority ('FCA') has set out some rules on what does need to be included in T&Cs for credit card accounts. But that direct debit information wasn't included in this. So this meant Creation hadn't breached any regulatory standards by not including the information Mr C was asking about; and it also hadn't varied the T&Cs of the account by limiting the dates on which direct debits could be taken.

Our investigator looked into the direct debit scheme rules as these are how direct debits are regulated. She said these set out that a business can vary the dates on which direct debits are taken, as long as the appropriate notice is given. Taking this into account she didn't think Creation had done anything wrong. She said that even if Creation had let Mr C pick a date, it was then still entitled to change the date as long as it gave him notice. Creation also said to us that Mr C's payment due date is 20 days after his statement render date. And that this date can't be amended as this card has a specific statement render date. So it isn't in a position to allow him to have a varying direct debit date within the dates he's asked for. She also pointed out that there were other ways to make payments towards the credit card and that these could be done at any time. So Mr C was able to manage his account. He just couldn't do this by direct debit if he wanted to pay on varying dates earlier in the month.

Mr C didn't agree with the investigator's assessment, so 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. Having done so, I'm not upholding Mr C's complaint.

Mr C has made a number of points in relation to the fact that the T&Cs of his account don't say that he can't do certain things. And Creation has said that they don't say he can. I agree with our investigator that it isn't possible for T&Cs to set out everything a customer *can't* do. And I don't think it's reasonable for Mr C to expect Creation to allow him to manage his account however he wants, just because the terms and conditions don't say he can't do this. A contract is simply a legally-enforceable meeting of minds. And comprises of implied terms as well as expressly written ones – in order to give commercial efficacy to agreements. If both parties agree to collect the 'consideration' or payments via the direct debit scheme, the terms of that scheme would also form part of the contract.

I am mindful that Mr C says Creation failed to send him the appropriate letters when his direct debit was amended. So he says it hasn't met its duty under the direct debit scheme. But this issue is being dealt with as a separate complaint – so I won't comment on it here. And I'm satisfied that the outcome of that complaint won't alter the outcome of the matters before me now.

I've reviewed the direct debit scheme rules and the rules the FCA has set for credit cards (*Consumer Credit Act 1974* and *Consumer Credit Sourcebook - 'CONC'*). None of these set out that a customer *has* to be allowed to decide his own direct debit date. The direct debit scheme says that it's advisable for a choice of collection dates to be given. But as this is only guidance, Creation doesn't have to do this. I note *CONC 6.7.6* does set out that once a contract has been made, the business has to allow a consumer the option to pay on a regular basis. But a monthly date is, by definition, a regular basis. And in any event, considering the other payment options available to Mr C, I think Creation has met this obligation.

Creation has explained that due to the way this credit card is set up the statement render date is fixed. It's confirmed that for newer cards it does now have the ability to amend these dates, but unfortunately this isn't an option that's available for this card. The card brand went into administration in 2012 and whilst Creation then sent out new Creation branded cards, it didn't change the account T&Cs. When Mr C first took out the card it didn't have this option and this card isn't something that new customers can now apply for. It's reasonable for Creation not to amend the terms of accounts it's no longer offering to new customers. And as I've said above, in terms of what Mr C wants to be able to do, this also isn't something the regulator or the rules that govern direct debits say Creation has to do.

I appreciate it's frustrating for Mr C that he can't amend his direct debit date. But putting the regulations/rules aside, I also don't think it's unfair that this information wasn't included in the original T&Cs. Mr C had the credit card for nearly ten years before this became an issue for him. So this suggests that this information wasn't something essential for him to know in order to manage his account up until now.

Ultimately Mr C is the one who wants to use the credit card. And it's his responsibility to manage his finances and his outgoings. As I don't think Creation has done anything wrong, it's then for Mr C to decide what he wants to do to make payments to the credit card going forward.

Mr C has also said to us that the size of the font used in the T&Cs Creation is relying on is too small, making them illegible. I haven't seen anything to suggest Mr C raised this issue with Creation when he first spoke to it about this complaint. Or that he's asked Creation to provide the T&Cs in a larger font. Strictly speaking, we can't comment on issues that a firm hasn't been allowed to try and resolve informally first. Nevertheless, in order to help as far as possible, we've spoken to Creation about this. It's confirmed that it can provide the T&Cs in a larger font; it just needs time for this to be arranged. We've asked Creation to do this and send a larger print copy out to Mr C directly. Since Mr C's original complaint was that the card's T&Cs didn't say that he couldn't choose his direct debit date, I'm satisfied he has been able to read them at some point. And so I don't consider that he needed to be provided with these before this decision was issued.

### **my final decision**

For the reasons set out above, I don't uphold Mr C's complaint against Creation Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 September 2017.

Amy Osborne  
**ombudsman**