

## **complaint**

Mrs Q has complained that Creation Financial Services Limited did not treat her as they should when she told them she was unable to repay her debt. This has resulted in lots of charges being added to her account which she doesn't feel is fair.

As Mrs Q is seriously ill, she is represented in her complaint by her husband, Mr Q.

## **background**

Mrs Q has held a store card operated by Creation for a number of years. She last used the card in September 2011. For the following two years, interest, charges and fees continued to be added. This resulted in the debt rising considerably. Mrs Q was ill and she authorised Mr Q to deal with Creation on her behalf. Although a repayment plan was agreed, not all the payments were made.

Mr Q complained that Creation was phoning him regularly about the debt and asked them to correspond in writing only. He then asked for information to help him get a better understanding why the debt remained so high. As he was unhappy with Creation's response, he brought his wife's complaint to the ombudsman service.

Our adjudicator reviewed the history of Mrs Q's account, including customer records and statements. She noticed that Creation had continued to charge Mrs Q late payment fees of £20 well past the time that the industry standard said that fee should not exceed £12. Creation agreed to refund £112. However she also felt that Creation were aware of Mrs Q's financial difficulties before 2013 when the repayment plan was set up. She therefore asked them to repay Mrs Q all the interest and charges which had been added to her account from 2 May 2012 onwards. She had evidence to show that this amounted to a minimum of £667.49 up to October 2013. She felt that £300 compensation for the distress caused should also be paid to reflect that Creation had not helped Mr Q when he had phoned them and, on occasion, said they could not speak to him. They also continued to phone him about the debt.

Creation did not agree with this proposal as they felt that there was no indication that Mrs Q was in financial difficulties before entering a repayment plan. This complaint has therefore been referred to me for a decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rules, guidance and standards, and codes of practice. Where appropriate I will also consider good industry practice at the time.

So it's worth stating upfront that industry best practice is very clear about what helps to show a customer may be in financial difficulty. This includes when customers continue to only ever make minimum repayments on a credit card and regular cash withdrawals being made on that card. I am satisfied that both of these practices are clear on Mrs Q's account prior to all use stopping in September 2011. Not only that but there are regular notes on Creation's customer records that indicate Mrs Q is a high risk customer. I accept that Creation say this

indicates that she's at high risk of not paying regularly and that they would be considering passing the account to an external agency for the debt to be collected.

Creation has told us that the onus is on the customer to contact them when they are in financial difficulties. I don't agree and neither is this reflected in industry practice. I am satisfied that there is an obligation on a business to be proactive when they know that customers are showing signs of financial distress. As evidenced by Mrs Q's statements showing cash withdrawals and minimum repayments, I believe that Creation should have acted earlier to help Mrs Q.

Even when Mrs Q entered into a repayment plan, Creation were still charging her 1.178% interest per month so I'm not surprised that the debt continued to rise. Any payments were barely making an impact on the amount Mrs Q owed Creation.

On this basis alone, I broadly agree with our adjudicator's conclusions and the redress she considered fair. So to clarify, I also believe it is fair and reasonable that Creation refund all interest, fees and charges which were added to Mrs Q's account from 2 May 2012 onwards. This will be on top of Creation's offer to repay late payment fees of £112 which they accept they should not have charged. And Creation have also agreed that they are willing to refund all charges since March 2013, when they believed they knew that Mrs Q was in financial difficulties.

I have also considered the other aspect of Mrs Q's complaint which was about Creation continuing to phone her when they'd been asked to communicate in writing. I was surprised that Creation felt there was no evidence, other than Mr Q's "*hearsay*" that this had ever been mentioned to them. In fact our adjudicator had already quoted from Creation's own customer records which state "*he is not happy about the fact we are calling him*". I believe the evidence is clear. There is also a note that Mr and Mrs Q's telephone number was removed from Creation's system in November 2013.

However in July 2014, as attempts were being made to collect the debt by an external agency, further calls were made to Mr Q. I am sure this is the case as I see no reason to dispute his verbal evidence. I appreciate these calls were not made by Creation directly but by this stage, they were fully aware of the state of Mrs Q's health and they should have made all this information available to the external agency. I believe that Creation have taken Mrs Q's account back in-house.

I contacted Creation recently to let them know I was considering increasing the money offered to Mrs Q to compensate for how they had treated her and distress caused. I appreciate they didn't agree with my assessment but I believe it is fair that they pay her an additional £500 for the distress she has suffered. She is very ill and I'm sure that having something like this hang over her will not have helped how she feels. I know that her husband is very worried on his wife's behalf.

### **my final decision**

For the reasons stated above, my final decision is to uphold Mrs Q's complaint and instruct Creation Financial Services Limited to:

- Refund all interest, fees and charges added to the account from 2 May 2012 to date;
- Repay £112 collected on fees which should not have been added following industry guidance;
- Add 8% interest to this amount; and
- Pay Mrs Q £500 compensation for the distress caused.

Interest should be calculated at 8% simple per year from the dates that Mrs Q paid the money to Creation until the date of settlement.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs Q to accept or reject my decision before 10 March 2015.

Sandra Quinn  
**ombudsman**