

## **complaint**

Mr W complains Creation Financial Services Limited called him an excessive amount of times in relation to a finance agreement he had with it.

## **background**

In 2016 Mr W took out a finance agreement with Creation, which he paid each month by Direct Debit. However, the Direct Debit instruction due in April 2017 was returned unpaid.

Mr W says Creation began calling him excessively, with 82 calls in the first half of August 2017 alone. He says he didn't answer the first few calls but when he did start answering, he heard an automated message. Mr W says he tried calling Creation but couldn't get through to a person, and the calls continued. He says he started rejecting the calls because they were intrusive and inconvenient. Mr W paid the balance of his account on 18 August 2017 and he says the calls stopped at this point.

Later in August 2017 Mr W called Creation to complain about the excessive calls. Creation posted its final response letter to Mr W in March 2018. But it had incorrectly addressed the letter, and Mr W says he didn't receive it. In March 2019 Mr W contacted Creation for an update on his complaint, and it emailed him a copy of the final response it had posted.

In that final response, Creation rejected Mr W's complaint. It said it couldn't confirm how many times it had called Mr W, as it only held records for six months after an account in arrears was brought up to date. And that the time it had taken to investigate Mr W's complaint meant its records were no longer available. But Creation explained it can call each of the telephone numbers it holds for a customer up to three times a day. It said that as it held Mr W's mobile number twice on its system, it had potentially called him up to six times a day. Because of this, Creation said it would refund Mr W the £30 fee it had charged him in April 2017 for the unpaid Direct Debit.

Mr W didn't think this was right so he asked our service to investigate. He said that while he no longer had screenshots he'd taken of the calls at the time, and his mobile phone provider could no longer provide details of the calls, he did have a screenshot of a spreadsheet he'd made at the time about the calls. And he said that when he called Creation on 24 August 2017 he'd given it detailed information about the calls. For its part, Creation provided more information about the calls in the form of a system extract from Mr W's account, amongst other evidence. But it didn't provide any call recordings.

Our investigator thought that while the evidence available was limited, Mr W wouldn't have pursued things for so long if he hadn't had so many calls. So he gave Mr W the benefit of the doubt and asked Creation to pay him a further £50 in addition to the £30 it had already paid.

Creation disagreed because it said the system extract it had provided showed it hadn't called Mr W more than three times per day, which was the call limit it was entitled to. It said that in signing the finance agreement, Mr W agreed to be called if his account went into arrears.

I issued my provisional decision on 12 July 2019, in which I said as follows.

*'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 intending to uphold it. I realise this will be a disappointment to Mr W so I'll explain why.*

*Before I do, I acknowledge it's possible further evidence might have been available to our service if Creation had investigated Mr W's complaint sooner or correctly addressed its final response. However, I don't think this complaint was a pressing issue for Mr W as it seems he didn't chase things up with Creation until more than eighteen months after he first complained. So it's not something I'm intending to award compensation for.*

*Based on the evidence I've seen, Creation was calling Mr W because his account was in arrears. I don't think Creation was unreasonable to let Mr W know about that, as it might have had significant implications for his credit record. I've not seen anything to suggest Mr W told Creation he didn't want to be called. And Creation is entitled to take reasonable steps to obtain money owed to it.*

*The key issue here is the number of calls, with Mr W and Creation giving different versions of events about that. Mr W says Creation called him excessively, peaking at 82 times in the first half of August 2017. To support this, he's provided a screenshot of a spreadsheet he made at that time. For its part, Creation says it didn't call Mr W more than the three times a day it was entitled to. To support this, it's provided a system extract which suggests it called him a total of 38 times between May and August 2017.*

*Where each party gives a different version of events and there's limited evidence, I need to consider the evidence I do have and make a decision on the balance of probabilities. That is, what I think is more likely to have happened.*

*I'm minded to think Creation's version of events is more likely, on balance. I say that because its system extract gives detailed information about the calls it made to Mr W, including dates, times and what other activity was happening on Mr W's account around this time. While I don't doubt Mr W's sincerity, his spreadsheet contains very little detail – it's essentially a count of the calls he says he received between 2 and 18 August 2017. And this isn't enough for me to be able say Creation's system extract is incorrect.*

*As I've said, the system extract suggests Creation called Mr W 38 times between May and August 2017. It also suggests that days and sometimes weeks would pass without calls but that at other times one, two or three calls were made each day. Where three calls were made, they were made at exactly the same time, suggesting Creation had attempted to make one call on one occasion that was for some reason unsuccessful - perhaps because Mr W had rejected it, as he's explained he often did - rather than trying to call Mr W on three different occasions at different times of the same day.*

*Taking everything into account, I don't think Creation called Mr W an excessive amount of times. I note Creation has already paid Mr W £30 compensation, and I'm not intending to ask it to do anything further.'*

Neither Mr W nor Creation provided any comments on my provisional decision.

### **my findings**

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

As Mr W and Creation haven't provided any further comments or evidence, I see no reason to change my decision.

**my final decision**

For the reasons set out in my provisional decision and also above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 September 2019.

Ailsa Wiltshire  
**ombudsman**