

The complaint

Mrs M complains that Creation Financial Services Limited didn't default her account when she went into a payment arrangement. She also complains that Creation charged fees to her account after she had notified it that she was in financial difficulties.

What happened

Mrs M says she first contacted Creation on 5 November 2018 to let it know that she was in financial difficulties, and she was working with a debt management firm to come to an agreement with her creditors. At this time, she made a token payment of £5.

In November 2018, Creation applied three separate charges to Mrs M's account – two overlimit fees and one late payment fee, totalling £36.

In December 2018, Creation accepted a payment arrangement – the arrangement was intended to be on a temporary basis. And Creation agreed to freeze interest on the account for a 12 month period. Mrs M maintained reduced repayments at the agreed amount for around six months. After this time, Creation sold the debt on to a debt purchaser.

Mrs M says that Creation has treated her unfairly by not defaulting her account. She says that arrears on the account had built up to a stage where the account should have defaulted – which is in line with guidance published by the Information Commissioners Office (ICO). She said that Creation were unfair to have charged her a £99 annual fee for the account when she got into difficulties shortly after this and so had no use of the account. She also thought it was unfair that she had been charged £36 in fees after she let it know that she was in financial difficulties.

Creation responded to Mrs M's complaint and upheld it in part. It agreed to refund the £99 annual fee as it could see that Mrs M had entered a repayment plan not long after this and so had no use of the account. It didn't agree to refund the £36 of fees because these had been applied to the account prior to the payment arrangement having been set up. It also thought it had treated Mrs M fairly by not defaulting the account.

The Investigator considered what both parties had said, and in their most recent view, they said Creation should also refund the £36 worth of fees, because Mrs M had let Creation know that she was in financial difficulties prior to the fee being charged. The Investigator maintained that it wasn't unfair of Creation to not default the account.

Mrs M accepted that the refund of the fees should be applied. But she still didn't agree that she had been treated fairly in relation to the account not having defaulted prior to it being sold to the debt purchaser. And so, she asked for an Ombudsman's decision on the matter.

Creation also responded to say that it had applied the fees fairly and so didn't agree these should be refunded. The Investigator sent Creation evidence that Mrs M let it know she was in financial difficulties prior to the fees being charged. Creation didn't respond to the Investigator's most recent email – so it isn't clear whether or not it had accepted the Investigator's view that the fees should be refunded.

Because an agreement couldn't be reached on how to resolve matters, the complaint has been passed to me to decide on the matter.

What I've decided – and why

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

Having considered all of the evidence available to me, I will be partially upholding Mrs M's complaint – for much of the same reasons to that of the Investigator. I'll explain how I have come to my decision below.

Account charges

Mrs M has provided this service with a copy of a letter she sent to Creation on 5 November 2018. The letter explains she was in financial difficulty and working with a debt management firm, who she says Creation would hear from soon. Mrs M asked for breathing space until it had heard from the debt management firm.

After this, on 13, 14 and 22 November, Creation applied fees to Mrs M's account because she had gone over the agreed credit limit and was late making a repayment.

I only have a copy of the letter provided by Mrs M, so I can't know in all certainty whether it was sent or received by Creation. However, I can see that the letter was correctly addressed, and Creation hasn't disputed receiving the letter. So, I'm of the view that it was likely received by Creation, which means it ought to have been aware at the time it added the charges to Mrs M's account that she was struggling financially.

I accept that the charges Creation applied to the account were in line with the terms and conditions of the account. But given Mrs M had let Creation know she was in financial difficulty, prior to the charges being applied, I think it would be fair in the circumstances, for Creation to refund these fees.

Account not defaulting

Mrs M has relied on the guidance set by the ICO, to evidence that it was unfair of Creation not to default the account. This guidance states that an account should default when it is between three to six months in arrears. And because Mrs M was making less than the minimum repayment each month, her account was in arrears to a point where it should have defaulted. Mrs M has also said that none of the correspondence she received explained that the account wouldn't default.

Creation has also provided guidance from the ICO to explain why it didn't default the account. Amongst other things, this guidance states that:

"A default should not be filed...:

- *If jointly with the lender an agreement is reached for an arrangement and you keep to the terms of that arrangement"*

Given that Mrs M had made an agreement with Creation to make reduced repayments, and taking into account this guidance from the ICO, I don't think it was unfair of Creation to not default Mrs M's account.

I accept that generally, when an account is in arrears of three to six months, then it would be fair to default an account. But in this case, given that Mrs M was in an arrangement with Creation to repay a reduced amount, and Mrs M had stuck to the arrangement, it wouldn't have been fair of Creation to default the account.

I can see that around six months after the arrangement was put in place, Creation sold the account to a debt purchaser. The terms and conditions of the account allow it to do this, so I can't fairly say that this was unreasonable. I take Mrs M's point that Creation had decided to end the arrangement by selling the account, and she feels that this means that it should have defaulted the account. But as I've explained, Creation had accepted a payment arrangement in an effort to help Mrs M, so wasn't required to default her account nor do I think it's acted unfairly by not doing so. And given the impact a default could have on someone's credit file, I wouldn't have expected Creation to default an account where it didn't need to.

I also think it was fair of Creation to refund the £99 annual fee given Mrs M entered into a payment arrangement shortly afterwards. It's unclear if this has been refunded, so I've included this in my overall outcome.

Putting things right

To put things right for Mrs M, Creation should:

- Refund £36 to the account. It should reduce the overall outstanding balance with the debt purchaser by £36.
- If it hasn't done so already, refund the £99 annual fee it applied to Mrs M's account. This should be used to reduce the outstanding balance with the debt purchaser.

My final decision

For the reasons set out above, I uphold Mrs M's complaint. I order Creation Financial Services Limited to put things right for Mrs M by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 20 November 2023.

Sophie Wilkinson
Ombudsman