

The complaint

Mrs N complains that Creation Consumer Finance Ltd registered a missed payment marker on her credit file in relation to a fixed sum loan agreement.

What happened

I issued a provisional decision setting out what had happened and what I thought about the complaint. I've copied the relevant parts of that decision below – and they form part of this final decision.

Mrs N took out a loan agreement in April 2022 with a repayment term of 12 months. Repayments of £80.82 were made on the 19th of each month via direct debit. On 23 August 2022, the direct debit for that month was returned due to insufficient funds. A late payment fee of £30 was charged, and a payment was made to clear the arrears on 5 September 2022.

In July 2023, Mrs N discovered that a missed payment marker had been registered on her credit file as a result of the August 2022 payment being returned. She contacted Creation to query this. She said she called Creation to warn it that the payment would be returned, and offered to make the payment manually over the phone. She recalled being told that she didn't need to take any further action.

Creation responded and said the missed payment marker was correct, as the scheduled payment was missed and not paid for a further two weeks. Unhappy with this response, Mrs N raised a formal complaint. Creation responded to the complaint in October 2023. It agreed that Mrs N had called in August 2022 – but was unable to listen to the call recording as they were only held for 12 months. It said that Mrs N's account had fallen into arrears – and that it was correct for this to be reflected on her credit file.

Because Mrs N didn't agree, she referred her complaint to this service. One of our Investigators looked into the complaint and upheld it. They said Mrs N made Creation aware of her concerns in July 2023 – within 12 months of her call – and that it could have obtained a recording had it looked into the matter at the time. On that basis they thought Mrs N likely offered to make a payment on the phone – so it wouldn't therefore be fair to charge a late payment fee or record adverse information. They recommended removing the missed payment marker and refunding the £30 charge.

Mrs N accepted the Investigator's conclusions, but Creation didn't. It said it had provided evidence to show the payment wasn't made on time – so didn't agree to amend Mrs N's credit file or refund the charge. It asked for an Ombudsman to consider the complaint – so it's been passed to me to decide.

What I've provisionally 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.

I appreciate it would have been upsetting for Mrs N to discover that her credit file had been impacted by the missed payment – especially as she feels she took reasonable steps to make sure the payment was made on time. Lenders have a responsibility to report accurate information about how customers manage their borrowing. It's not in dispute that Mrs N's direct debit was returned as unpaid – so the payment wasn't made on the day it was due. I've considered whether this was due to an error on Creation's part.

Both parties agree that a call took place on 19 August 2022 – and that Mrs N told Creation she expected the payment to be returned. Mrs N says this is because she hadn't moved her funds in time to meet her bank's deadline for the payment to be taken. She recalls offering to make the payment manually over the phone – but was told she didn't need to, and that Creation would make a further attempt to collect the funds. She says she was under the impression she didn't need to take any further action. Creation has no record of this being said – just that Mrs N was told to wait and see if the payment would be returned - as it hadn't been at the time that she called.

Mrs N raised her concerns with Creation in July 2023 – around 11 months after the call took place. Creation says it only holds call recordings for 12 months, so the recording is no longer available. I can appreciate Mrs N's frustration here – as the call might have been available had Creation investigated her concerns when she originally raised them. Where evidence is missing, incomplete or contradictory – as it is in this case – I need to consider what more likely than not happened based on the information that is available.

Creation has provided an extract from its system notes, which contains a brief note taken at the time of the call:

“CUST SAID DD MAY COME BACK UNPAI (...) ADVISED DD NNOT COME BACK UNPAIND ALOW UNTIL NEXT WEEK AND CALL BCK”

Although the note is very brief, it's a contemporaneous record of what was said during the call. While Mrs N's version of events is slightly different, I need to consider that memories can fade with time, and that the call took place nearly a year before she had reason to query it. That's not to say I doubt what Mrs N has said – but that I need to decide what's more likely than not based on the available evidence.

I've considered the possibility that the call note doesn't contain everything that was discussed. Mrs N's phone records show that the call lasted just over six minutes – but that doesn't necessarily mean the conversation lasted that long. Mrs N would likely have been on hold for at least some of the call's duration. The call note is brief, which I think suggests the conversation wasn't a long one.

The call took place on 19 August 2022, which was a Friday – but the payment wasn't returned to Mrs N's bank until the following Tuesday. So at the time of the call, as far as Creation was concerned the payment had been made successfully. Although Mrs N said it may be returned, it hadn't been at the time. This is reflected in Creation's call note – where it says the payment hasn't yet come back as unpaid. Because Creation had already received the funds due, I wouldn't expect it to take a manual payment over the phone. Had the payment not then been returned, this would have resulted in an overpayment.

The call note says Mrs N was asked to wait and see if the payment was returned and call back the following week. As the payment hadn't been returned at the time, I think it's reasonable this would have been agreed as a next step. I can't see that Mrs N contacted Creation again to follow this up after the payment was returned.

Creation has provided records to show it sent Mrs N two letters after the payment was

returned – on 25 August 2022 and 1 September 2022. It's provided examples to show what those letters would have said. The first notified Mrs N that her account was in arrears and that it had applied a £30 charge. It asked her to get in touch either online or over the phone to make the outstanding payment. The second letter asked Mrs N to make the payment within seven days to avoid a default sum being added to her agreement.

A payment was made to clear the arrears on 5 September 2022. Mrs N recalls that this payment was taken by Creation via direct debit as agreed on the phone. Creation says the payment was made manually by Mrs N via an online link. Based on the payment codes included in its account statements, I'm satisfied the payment was made manually rather than via direct debit. This seems consistent with Mrs N having received one or both of the letters from Creation and following the instructions in them.

Although Mrs N called Creation to warn it that the payment would be returned, the notes don't reflect what she remembers of the call. The notes show she was asked to get back in touch 'next week', but she didn't call again after the account fell into arrears. While the payment was made, this was more than two weeks after it was originally due. And I don't think it's likely on balance that Mrs N was told she didn't have to take any further action, or that her account and credit file wouldn't be impacted if the payment wasn't made when it was due.

On that basis, I don't think Creation has acted unfairly by recording a missed payment – as the payment wasn't made when it was due. I don't find that the payment was missed due to Creation's error – so it was entitled to apply a fee in line with the terms of the agreement. For these reasons, I don't intend to uphold the complaint – and this means I don't plan to tell Creation to remove the missed payment marker from Mrs N's credit file, or refund the £30 charge.

Responses to my provisional decision

Creation said it accepted my provisional decision. Mrs N also said she accepted my provisional decision. She commented that she recalls her conversation with Creation very clearly and remembered writing a note of it – but she doesn't recall what happened after that conversation took place. She says she accepts that from Creation's perspective the payment was still in their system when she called – so can understand how my outcome is fair. Overall, Mrs N said she accepts the outcome I reached.

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.

I appreciate Mrs N says she clearly recalls her conversation with Creation – and I don't disregard her testimony around this. But I've considered what's more likely than not – taking all of the available evidence into consideration. Considering the contents of Creation's call note outlined above, as well as the fact that the payment hadn't been returned at the time of the call, I'm satisfied Creation more likely than not asked Mrs N to wait and see if the payment was returned and call back the following week.

This didn't happen – and the payment ultimately wasn't made when it was due. So for the reasons I've explained above, I think Creation was entitled to apply a charge in line with the terms of the agreement and report details of the payment to credit reference agencies.

Both parties accepted the outcome I reached. So, I've seen no reason to change my decision that Creation does not need to remove the late payment marker from Mrs N's credit

file or refund the £30 late payment charge.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 30 July 2024.

Stephen Billings
Ombudsman