

The complaint

Miss M complains about Studio Retail Limited ("SRL") and their decision to sell her account to a third-party debt management company ("L"), leading to a default being placed on her credit file.

What happened

Miss M held a credit account with SRL. But Miss M exceeded her credit limit and was unable to meet her minimum monthly repayments. So, in 2010, Miss M entered into an arrangement with SRL where she agreed to make a token payment of £20 a month. Miss M continued with this arrangement until 2017, when SRL took the decision to sell her account and its outstanding balance to L. And when L received the account, they took the decision to default it, reporting this to Miss M's credit file. Miss M was unhappy about this, so she raised a complaint.

Miss M didn't think SRL were fair to sell her account to L. And she was unhappy that this decision led to a default being placed on her credit file in 2017. Miss M thought her account should've been defaulted by SRL years earlier, in line with guidance from the Information Commissioner's Office (ICO) who state an account should be defaulted when an account is between three and six months in arrears. Miss M thought that, had SRL followed this guidance, the default would no longer be reported on her credit file as more than six years would've elapsed. So, she wanted the default placed by L to be removed.

SRL responded to Miss M's complaint and didn't agree. They didn't comment on Miss M's unhappiness with the default and the impact on her credit file. But they did think they had sold Miss M's account to L fairly, in line with the terms and conditions of the agreement Miss M entered into. So, they didn't think they needed to do anything more. Miss M remained unhappy with this, so she referred her complaint to us.

Our investigator looked into the complaint and upheld it. They thought SRL had acted fairly, and in line with the terms of the account, when selling Miss M's account as this was a business decision they were allowed to take. But they thought SRL should've defaulted Miss M's account by December 2013 at the latest, based on the evidence they had available. So, they thought SRL should amend Miss M's credit file to back date the default to December 2013, meaning it is no longer reported to credit reference agencies. And they thought they should arrange with L for them to amend Miss M's credit file, so any historic data is removed and that no further information is reported.

Miss M accepted this recommendation. But SRL didn't. While they didn't think our investigator's recommendation was unfair, they didn't think it was one they could action. They explained that, as they didn't default Miss M's account, they didn't believe there was anything on Miss M's credit file to amend as they had reported the management of her account accurately. Our investigator re-iterated their belief that SRL hadn't reported to Miss M's credit file fairly as a default should've been placed sooner and said that, should SRL encounter issues when asking L to amend the credit file, then SRL should buy back the debt in order to make the amendments themselves. SRL didn't agree, so the complaint has been passed to me for a decision.

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 done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

I've first thought about SRL's decision to sell Miss M's account, as this led to L defaulting the account once they'd purchased it. I can see in the terms and conditions of Miss M's account it states that SRL *"may transfer to any other party any or all of our rights and duties under this credit agreement and any time"*. So, I think SRL acted within the terms of Miss M's account when deciding to sell it and I think it up to them when to do so. Because of this, I can't say their decision to sell the account was unfair.

But I've also thought about the impact the decision to sell the account had on Miss M. And it's been accepted that L defaulted the account shortly after they received it, reporting this default to Miss M's credit file. But I don't think L should've been able to do this.

In SRL's final response letter, they have confirmed Miss M was making a token payment to the account of £20 from 2010. But I don't have statements to payment information to confirm this. The earliest evidence I have available is from July 2013, where it showed Miss M's outstanding balance was £2,901.42, which significantly exceeded her account limit of £1,500. Due to the balance on Miss M's account, I think it's likely that her minimum monthly repayment would've been around £80-90, based on it being calculated on 3% of the balance. And I've seen at this time, Miss M was only making a payment of £20. So, I'm satisfied that, based on the evidence available to me, Miss M's account would've been building arrears from at the very latest July 2013.

The ICO's guidance explains that a business such as SRL should register a default with credit reference agencies when an account is between three and six months in arrears. So, based on this guidance, I would've expected SRL to have defaulted Miss M's account by at the very latest December 2013. And I can't see they did. So, I don't think the way SRL managed Miss M's account, and reported to her credit file, was fair or reasonable. Because of this, I've thought about what I think SRL should do to put things right.

Putting things right

When thinking about what I think SRL should do to put things right, any award or direction I make is intended to place Miss M back in the position she would've been in, had SRL acted fairly in the first instance.

In this situation, had SRL acted fairly, I think they would've defaulted Miss M's account by December 2013. So, a default would've been reported to Miss M's credit file at this time. As an account can only be defaulted once, this would've meant that, when L purchased Miss M's account, they wouldn't have been able to report a default to Miss M's credit file in 2017. And due to the length of time that has elapsed since 2013, the default would no longer be showing on Miss M's credit file.

So, to put things right, I think the default placed by L needs to be removed. And I think SRL need to backdate the default on Miss M's credit file to 2013, so a default for this account no longer shows on her credit file if she attempts to apply for additional credit in the future.

I recognise SRL believe they are unable to follow this direction. But I don't agree. If SRL are unable to work with L to ensure the removal of the default, I think SRL should have the ability to buy the account back and to make the credit file amendments themselves. I also appreciate SRL's comments surrounding their belief they reported to Miss M's credit file accurately. But reporting Miss M's situation accurately doesn't mean this was a fair representation. As I've explained above, I am of the view that Miss M's account should've been defaulted sooner and so, I can't say the information currently being shown on Miss M's credit file is a fair representation. So, I think this needs to be amended.

My final decision

For the reasons outlined above, I uphold Miss M's complaint about Studio Retail Limited and I direct them to take the following action:

- Amend Miss M's credit file to back date the default to December 2013, which should result in it no longer being reported to credit reference agencies; and
- Arrange a plan that ensures L remove the default from Miss M's credit file and that no further reporting is undertaken.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 29 July 2022.

Josh Haskey
Ombudsman