

The complaint

Miss O complains that Creation Financial Services Limited ("Creation") have wrongly asked her to pay £1,182.95 to settle her car finance account.

What happened

Miss O acquired a car in February 2018 through a fixed sum loan agreement provided by Creation. In early 2019, Miss O was looking to part exchange this car for a different car and requested a settlement figure from Creation for her existing loan. Creation have provided evidence that she contacted them on 13 January 2019 and was provided with a settlement figure of £8,924.71. It was confirmed at that time that this was valid until 10 February 2019.

After the direct debit payment due on 28 January 2019 was made, for £262.07, there is no indication of further contact between either party until an amount of £8,662.64 was paid to the account on 4 March 2019.

Miss O has told us she believed this meant the account was settled. She's also provided evidence from the car dealer involved who said that Creation had removed their financial interest in the vehicle once they had paid this figure of £8,662.64 to Creation, so they assumed the balance had been successfully cleared. They had been given this figure by Miss O, as they said only the account holder can request a settlement figure from Creation.

There's been no evidence provided of any further contact between the parties until late in 2021, when Miss O was in contact Creation and was given a settlement figure for the account of £1,182.95. She complained shortly after this to Creation, and in their FRL they said that she hadn't settled the account with the right amount or within the correct timescale in 2019, so the payment she made for £8,662.64 had been treated as an overpayment, putting the account into a credit balance position at the time.

They said that only when an account falls into arrears would their system alert them to an issue and require further payments. They also said that Miss O would have received annual statements for the account, and that on this basis, she still owed the money.

Unhappy with this, Miss O brought her complaint to our service. The investigator here upheld the complaint. They said Creation hadn't been able to provide any evidence of contacting the customer about the account between February 2019 and late 2021 either verbally or in writing, and didn't feel it was fair therefore to expect the customer to pay the interest/charges, when they believed the account to be closed.

Miss O accepted this, but Creation didn't agree with this view, and asked an Ombudsman to make a final decision. They said that Miss O was aware of the correct settlement figure and hadn't made the settlement for the correct amount, or within the timescale required, so they felt they had handled the account fairly.

I issued a provisional decision on 17 February 2022. I made the following provisional findings:

Whilst I agree broadly with the investigator view here, their view did not explain what they were asking Creation to do to put things right. I initially reached out to Creation to confirm that as it appeared that Miss O had paid £262.07 short of the settlement figure, I didn't feel it was fair for her to now be expected to pay £1,182.95. I asked if Creation would accept a payment of £262.07 to close the account, and they agreed that they would, provided it was made in a timely fashion.

I then reached out to Miss O and put this to her. She didn't feel this was fair however, didn't agree that she owed that money, and felt that after this long without hearing from Creation, it wasn't fair for her to have to pay and had caused her distress.

I am satisfied that Miss O did still owe Creation £262.07 in 2019 after she tried to settle the account. From looking at the statement of account and the early settlement figure provided, Miss O appears to have made an error. When she was quoted £8,924.71 on 13 January 2019 to settle the account, this will have accounted for the fact she also needed to make the upcoming direct debit payment on 28 January of £262.07. I say this, because the settlement figure was valid until 10 February 2019, after this direct debit was due to have been paid.

Miss O understandably can't remember the details of conversations about this from four years ago. It would seem most likely to me that she assumed she could take that £262.07 payment off the settlement figure she'd been given, and so has come up with an assumed settlement figure of £8,662.64, which she's given to the car dealers for them to pay off the finance. She's cancelled the direct debit due in February 2019, and Creation have received this settlement figure from the car dealership in early March 2019, so it was also late.

There's no evidence of any contact about a settlement figure with Creation after 13 January 2019.

Both parties have made errors here. Miss O has made an error in her calculations of what to pay to settle the account. However, I'd have expected Creation at some point to confirm this to Miss O. They've said they would have supplied annual statements but haven't been able to provide these to our service. Also, it's confusing that Creation appear to have released their financial interest in the vehicle, despite the finance not being settled.

This has ended up with Miss O thinking the agreement was settled, and Creation leaving the account in credit for over 2 years and cancelling the direct debit, before beginning to require payments again resulting in the complaint.

Creation haven't been able to show that they contacted Miss O, but I don't think this means she shouldn't owe them the shortfall to clear the account. I am satisfied that it is fair for Miss O to make the shortfall payment to them of £262.07 still. But I don't feel that she should have to pay a figure of £1,182.95, which is based on the account not being cleared, and them using the payment she made to service the account including further interest for more than two years before asking her for payment again.

I also feel that Creation should recognise the distress they've caused Miss O. They didn't contact her for over two years, and then asked her to pay £1,182.95. They haven't explained why she owes the money, and after such a long time, it's understandable why she would get upset about this. It seems she made an honest mistake, which has been compounded by lack of communication from Creation. On this basis, I think Creation should pay Miss O £100 for the distress and inconvenience caused.

When I spoke to Creation, they said they would accept a payment of £262.07 in full and final settlement to close the account, provided it was paid in a timely fashion. I think this is fair and would look to ask Miss O to pay them within 28 days of her accepting my final decision.

When she's done this, I would expect Creation to remove all adverse information from her credit file regarding this agreement.

I intend to uphold this complaint, and intend to ask Creation Financial Services Limited and Miss O to do the following:

- Reduce the balance owing to settle this account to £262.07, which Miss O will need to settle within 28 days of accepting my final decision.*
- Pay Miss O £100 for the distress and inconvenience caused. If Miss O requests it, this amount can be set against the balance of £262.07, but if not they should arrange to pay it to her directly.*
- Remove any adverse information regarding this agreement from Miss O's credit file, provided she has settled the remaining balance of £262.07 within 28 days of accepting my final decision.*

My provisional decision

For the reasons explained, I intend to uphold this complaint and ask Creation Financial Services Limited to put things right as detailed above.

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.

After issuing my provisional decision, Miss O came back to me to say she believed she had been given another settlement figure, which she had passed onto the dealership where she was part exchanging her car. She said she hadn't deducted any amount from the settlement figure and hadn't paid it three weeks late.

I went to Creation and asked them to provide all contact notes with Miss O for the period, to investigate whether this might have been the case. There was contact with Miss O in early February 2019, although it's not noted as having included a settlement figure. I've thought about this, and whether it might have included a settlement figure, and if it did, would this change my opinion on the case.

I'm not persuaded that it would. I say this because even if Miss O was given the reduced settlement figure at this date of £8,662.64, she would still have had to make her normal monthly payment of £262.07 later in February, and this being paid would have been included in the settlement quote. It's clear that the direct debit due on 28 February 2019 for £262.07 was cancelled and wasn't paid. So, when the settlement balance was sent on 4 March 2019 to Creation of £8,662.64, it would still have been short of that February 2019 payment of £262.07.

Whichever way around this occurred, I am satisfied that Miss O did still owe Creation £262.07, when she believed she had settled the account.

Unfortunately, Miss O also came back to me since I issued my provisional decision, to say that she had been contacted by a third party company who said that her debt of £1,182.95 with Creation has been sold to them to collect.

I have shared this information with Creation and informed them that they will need to unwind this and allow Miss O to settle the account with them directly.

I'm satisfied that my provisional decision is fair, and still intend to ask Creation to put things right in the same way. They will also now need to ensure no detriment occurs for Miss O from them selling her debt on while we were resolving her complaint.

Putting things right

I uphold this complaint, and instruct Creation Financial Services Limited and Miss O to do the following:

- Creation should reduce the balance owing to settle this account to £262.07, which Miss O will need to settle within 28 days of accepting my final decision. This needs to be able to be done directly with Creation, not through the third party company.
- Creation should pay Miss O £100 for the distress and inconvenience caused. If Miss O requests it, this amount can be set against the balance of £262.07, but if not they should arrange to pay it to her directly.
- Creation should remove any adverse information regarding this agreement from Miss O's credit file, provided she has settled the remaining balance of £262.07 within 28 days of accepting my final decision. This includes removing any reference to the third party company Creation have sold the debt to since my provisional decision.

My final decision

I uphold this complaint, and instruct Creation Financial Services Limited to put things right as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 7 April 2023.

Paul Cronin
Ombudsman