

complaint

Miss S complains that Creation Financial Services Limited (“Creation”) didn’t carry out a balance transfer request.

background

I issued a provisional decision on this complaint on 1 March 2019, a copy of which is attached as it forms part of this final decision. Both Miss S and Creation were happy with my provisional findings. However, Miss S has made us aware that Creation have chased her to make payment on her credit card account while we have been looking into her complaint.

Miss S says she complained to Creation about this and they offered her £25 as a gesture of goodwill. However, they have now told her that they can’t pay the £25 to her at the moment because of her account status.

my findings

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

Because the parties both accepted my provisional findings, my final decision will be along the same lines. However, it’s not reasonable that Creation have been chasing Miss S for payment while this service has been investigating the complaint. Creation have acknowledged this and offered £25 as compensation. I think that’s a fair amount in the current circumstances. So I shall add this to the overall amount of compensation which Creation must now pay to Miss S, making it £175 in total.

my final decision

For the reasons above, and as set out in my provisional decision (attached below), my final decision is that Creation Financial Services Limited must:

- write off the balance of £2,400 from Miss S’s Creation credit card (“the Balance”);
- refund any interest and charges which Miss S has paid to Creation arising from the Balance (if they have not done so already);
- provide confirmation that they have removed any adverse entries relating to the Balance from Miss S’s credit file;
- refund to Miss S the interest she has paid to L (as referred to in my provisional decision) on credit of £2,400 from 31 January 2018 to date (“the L Interest”);
- pay to Miss S simple interest of 8% per year on the L Interest from the date it was paid by Miss S until the date of settlement; and
- pay compensation of £175 to Miss S for the distress and inconvenience caused to her.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss S to accept or reject my decision before 30 April 2019.

Katy Kidd
ombudsman

copy of provisional decision

complaint

Miss S complains that Creation Financial Services Limited (“Creation”) didn’t carry out a balance transfer request.

background

Miss S has a credit card with another business, which I’ll call L. In January 2018, she arranged to transfer the balance of £2,400 from that card on to a credit card she has with Creation. The balance was added to the Creation card, but the funds weren’t credited to her account with L. Miss S queried the situation with L, who said they hadn’t received the money. So the balance of £2,400 is currently showing on both cards.

Miss S is still paying off the balance on her card with L. She isn’t paying it off on the Creation card as she says she hasn’t had the funds from them. Creation applied late payment charges to her account and she says they marked on her credit file that she had missed payments. She says she wasn’t able to get an overdraft for the amount she wanted because of this.

When Miss S complained to Creation, they said they had sent the funds to L as per her request. So they said they hadn’t done anything wrong. But they have placed her account on hold and removed the late payment fee as a goodwill gesture. Miss S wasn’t happy with their response and the fact that the situation is unresolved, leaving the balance of £2,400 showing on two credit cards. So she brought her complaint against Creation to this service.

Creation told our investigator that they sent the transfer using the destination account details which were entered by Miss S on her online account. They say they have received numerous complaints from customers who have accounts with L and who are experiencing similar issues with payments not being credited to their accounts. Creation say they can’t be sure what has happened to the funds, but they did send them. They believe the money is with L and sitting in a suspense account. However, I note that when Creation tried to recall the funds, it seems they contacted another bank by mistake and not Lloyds.

Both Miss S and our investigator have contacted L to see whether they have the funds. L have confirmed not only that the funds didn’t reach Miss S’s credit card account, but also that they haven’t been able to locate the funds.

Our investigator wasn’t satisfied that Creation had sent the funds to L. They had provided screenshots showing the balance transfer was approved, but he didn’t think that amounted to proof of the money being sent. Creation provided further information which they say confirms the transfer was made. But our investigator still didn’t think it was proof of the funds being sent to L.

He upheld the complaint and made recommendations as to how Creation should resolve it. He also considered the way in which the situation had impacted on Miss S and asked Creation to pay her compensation of £150. Miss S was happy with the recommendations but Creation didn’t agree. They asked for the complaint to be reviewed by an ombudsman.

my provisional findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete or inconclusive, as some of it is here, I reach my decision on the balance of probabilities – that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

The first issue I need to consider here is whether there has been a typing error when the destination account details were entered, either by Miss S initially or subsequently by Creation. But that doesn't appear to be the case here. Creation say they used the details as they had been input by Miss S using her Online Account Manager. And Miss S has confirmed that those details are the correct details for her account with L. So I think I can rule out an inputting error here.

So this is a situation where the problem lays between two banks. Creation say they sent the money. But L say they haven't received it. In this scenario, I would expect the sending bank to take responsibility for sorting out the problem. They are the ones who have details of where they sent the money and how their systems work. So they will be more easily able to find out what has happened. It would be very difficult for the receiving bank to get to the bottom of things in this situation.

The Payment Services Regulations 2017 are relevant here. The Regulations say that Creation are liable for the correct execution of the balance transfer, unless they can prove that L received the money. To date, L have said they don't have the money. The onus is on Creation to prove they do, but I haven't seen any evidence of this from Creation. I believe Creation were going to try and recall the funds from L but that doesn't seem to have happened. So what this means here is that Creation must refund Miss S and restore her account to the position it would have been in but for the failed transfer.

Whilst the funds never arrived in Miss S's account with L, the transfer did take effect on her Creation credit card, to the extent that £2,400 was added to that balance. This seems to have happened on 31 January 2018. So the effect of the Regulations here would be for Creation to put Miss S's account back to the position it was in before that.

The Regulations also say that Creation are responsible for any charges and interest which Miss S has to pay as a result of the failed transfer. I understand that Creation have refunded the late payment charges and interest on Miss S's account with them which arose from the balance transfer. They have also put the account on hold, so it is not currently incurring charges. And they say they have corrected her credit file so that there are no late payment markers connected with this situation. That all seems to be fair. But they also need to pay the interest and any charges which have accrued on Miss S's credit card with L as a result of the funds not being credited to that account.

In addition, I agree with our investigator that Creation should pay some compensation to Miss S to recognise the impact this situation has had on her. It has been very stressful and an ongoing source of worry for her over a long period of time. She feels the onus has been put on her to sort things out. I would have expected Creation to know what the Regulations say and to have implemented them before now. Because they didn't, the situation has been prolonged for Miss S. I think compensation of £150 is a fair amount to reflect what's happened here.

So I'm planning to uphold this complaint.

my provisional decision

For the reasons above, and subject to any further information I receive from the parties, Creation Financial Services Limited must:

- write off the balance of £2,400 from Miss S's Creation credit card ("the Balance");
- refund any interest and charges which Miss S has paid to Creation arising from the Balance (if they have not done so already);
- provide confirmation that they have removed any adverse entries relating to the Balance from Miss S's credit file;
- refund to Miss S the interest she has paid to L on credit of £2,400 from 31 January 2018 to date ("the L Interest");

- pay to Miss S simple interest of 8% per year on the L Interest from the date it was paid by Miss S until the date of settlement; and
- pay compensation of £150 to Miss S for the distress and inconvenience caused to her.

Katy Kidd
ombudsman