

complaint

Miss H complains that Creation Financial Services Limited ("Creation") sold her accounts to a third party unfairly and have since refused to help her settle her debts.

background

Miss H had three accounts with Creation. This service looked into a previous complaint about those accounts and directed Creation to pay compensation to Miss H and to conduct financial reviews of the accounts each year.

After that decision was made, Creation sold the accounts to a third party which I'll call "L". Miss H contacted L and found that they weren't aware of the previous complaint or the requirement for annual reviews. This all happened at a very difficult time for Miss H and she found it very distressing. The accounts have since been recalled by Creation and Miss H has made a reduced settlement offer to pay off the accounts, but this has been rejected.

She made a second complaint about the fact that her accounts were sold to L and the stress this caused her. She's also unhappy that Creation didn't accept her offer to settle and close the accounts and that her credit file continues to be affected.

Creation agreed that Miss L's accounts shouldn't have been sold to L and also accepted that they hadn't made L aware of the need for an annual review. In order to put this right, they recalled the accounts from L and paid compensation of £300 to each of the accounts (so, a total of £900).

But, Creation say Miss H hasn't provided the information they need to allow them to assess the reduced settlement offer and its fairness. So they think they've acted reasonably and within their rights in not accepting Miss H's offer. And even if they do accept a reduced figure, they say they would still need to show how the accounts have been managed so the credit file would need to show a partial settlement in that situation.

Miss H wasn't happy with Creation's offer. She says that Creation had originally rejected her complaint and only looked at it again when she pursued it further. This all happened at a very distressing time and has caused Miss H a great deal of stress and upset. She says that Creation should now write off all three accounts, confirm that the accounts won't be noted on her credit file and pay her compensation for the distress caused to her by Creation's handling of the accounts and their delay in responding to her complaint.

Our investigator thought that Creation had acknowledged their mistake in selling the accounts to L and that their offer of compensation was fair. He thought it was reasonable for them to expect Miss H to provide information that allows them to fully understand her personal situation. So, they were fair to reject her offer of a reduced settlement until that information had been provided. He also explained that, as the accounts remain open, they will show on Miss H's credit file and that Creation has an obligation to record accurate information about the accounts.

Miss H didn't accept our investigator's findings. She didn't think the compensation offered was enough in the circumstances here and didn't reflect the impact the situation has had on her. So, the complaint has been passed to me for a decision.

my findings

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 don't uphold the complaint for broadly the same reasons as the investigator.

Firstly, I'm aware that Creation have already agreed the accounts shouldn't have been sold to L and they've credited each of Miss H's accounts £300 to recognise this. So, this error isn't in dispute. But, Miss H doesn't think the offer Creation made is enough to compensate her for the trouble and upset this caused her so I've focused on whether I think it does.

I'm aware that Miss H was going through a difficult time when her accounts were sold. I don't doubt that Miss H was handling some difficult personal situations which in turn impacted her health. So, I do think Creation making this error would've added to her distress.

While I can't consider L's actions during the time they managed the accounts, I do think Miss H has had to endure unnecessary stress by having to take action to bring the accounts back to Creation. This is something she shouldn't have needed to do.

I've seen that Creation did resume usual collection activity after the accounts were initially transferred back to them. But, as the accounts were brought back from L, a new repayment plan needed to be agreed with Miss H. That said, had Creation not sold the accounts incorrectly, a new plan wouldn't have needed to be agreed. So again, I think their error has impacted Miss H negatively and added to her frustrations.

Miss H has said she put forward a reduced settlement offer to Creation in an attempt to prevent any further stress arising from the accounts. So, I've also taken this aspect into account when considering the offer Creation has already made.

I've seen Creation explained they won't accept this offer without medical documentation that allows them to fully understand Miss H's current situation. Miss H thinks this is an unreasonable request and that Creation should be able to accept this offer based on her financial information alone, which she says other lenders have done.

While I understand Miss H is reluctant to provide the medical information due to its sensitive nature and the effort it would take, I don't think this is an unreasonable request for Creation to make. I think it's important to note that Creation didn't say an offer wouldn't be considered but instead gave Miss H an opportunity to provide more information to explain why this offer should be accepted.

I appreciate Miss H has taken steps to offer an amount she feels is affordable in order to show her willingness to settle the accounts as best she can. But, Miss H has benefitted from the lending she received from Creation. So, I think Creation are entitled to ask for information they feel they need to make a decision as they would be writing off a significant amount that is owing. So, I don't think it's unreasonable for them to ask for medical information to satisfy themselves that Miss H's health will prevent her from being able to repay the full outstanding amount.

I also understand Miss H's frustration as other lenders have accepted her offers on financial information alone. But, there isn't a set process any lender needs to follow so it would be unfair for me to decide Creation have acted unreasonably as they are able to make their own business decision on reduced settlement offers, and what they need to consider. Creation have maintained that they would be willing to consider a reduced settlement figure if medical information is provided and they've also confirmed none has yet been received.

So, while I recognise the frustration Miss H has experienced by not being able to agree a reduced settlement figure for the accounts as it leaves her with a debt outstanding, I don't think this because of anything Creation has done wrong.

As a settlement hasn't been agreed, Creation are obligated to continue to report the way the account is being managed. So, I don't think they've done anything wrong by continuing to record this against Miss H's credit file. I'm aware Miss H's comments about whether the account has been defaulted is being handle as a separate complaint by this office so I won't comment on that further.

Because of this, I think the £900 Creation have offered Miss H to recognise their error when selling accounts to L is a reasonable one. I'm aware Miss H hasn't received this payment directly and it's instead been used to credit her three accounts. But, I think this was a fair way for Creation to make the payment. Crediting the accounts has helped to reduce Miss H's debt and Miss H has made it clear this is what she wants to do by asking for a reduced settlement.

I think this amount takes into account the error and the stress it caused Miss H when she had to raise complaints for it to be brought back as well. It also recognises the upset caused by Creation's collection activity when attempting to arrange a new payment plan. It also accounts for the difficulties Miss H was experiencing in her personal life and the subsequent impact on her health, which I think Creation were aware of at the time.

As I don't think Creation were unreasonable to request supporting medical information, unfortunately I don't think any upset Miss H has been caused by this should be included in any offer of compensation. So, after considering the circumstances carefully, I don't think Creation need to take any further action.

my final decision

For the reasons outlined above, I don't uphold Miss H's complaint about Creation Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask [insert anonymised name here] to accept or reject my decision before 24 February 2020.

Josh Haskey
ombudsman