

The complaint

Mr C and Mrs G dispute a debt with Max Recovery Limited ("MRL") and feels it has treated her unfairly.

What happened

MRL says it bought this debt (relating to a credit agreement) from a bank in November 2014 and that it is for Mrs G to repay as it is now in her sole name. MRL accepts that due to not having the original paperwork from the time that Mr C and Mrs G took out the credit agreement (to have a loan) with the bank, it cannot enforce payment. Nevertheless it says Mrs G owes it money and that it is entitled to ask Mrs G to pay the money back.

Mrs G says that MRL has treated her unfairly. Mrs G disputes the sum owed and says MRL isn't entitled to collect the amount it says she owes it. Mrs G says MRL has been unfair in asking for money to repay the debt. She wants MRL to write off the debt or reduce the balance to an amount that it can show she owes. MRL feels it hasn't done anything wrong.

Mrs G complained to MRL's representatives and it said MRL hadn't done anything wrong. Mrs G disagreed, so she complained here. The Investigator did not agree with Mrs G. As Mrs G remains unhappy this complaint has been passed to me to decide.

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.

MRL and Mrs G don't agree on some of the key issues here. So I can only make my decision based on the evidence provided to me by the parties. In short I must decide what is most likely to have happened. Or in other words, what happened on the balance of probabilities.

Having considered all of Mrs G's arguments I'm not persuaded to uphold this complaint. I say this for the following reasons.

I have seen records from the bank showing it had a 'bad debt' in relation to Mrs G and a personal loan she had with it. I've seen statements from the bank showing this account with Mr C & Mrs G's name on it and monthly payments being made to the loan. I've seen a notice of assignment showing the bank sold the debt to MRL. And MRL has shown statements for most of the years since it bought the debt showing Mrs G to be the debtor solely. It has also provided an account history covering March 2017 to date. I've not seen anything persuasive from Mrs G to show she doesn't have a debt with MRL. And I note in her arguments that although she says she doesn't think the outstanding balance hasn't been demonstrated she doesn't deny that she had a debt with HSBC or that MRL didn't buy it. So I think on balance Mrs G has a debt with MRL.

I can see statements from the bank showing the loan being drawn down in December 2007- the amount advanced being £24,412.09. These statements show the regular payments

towards it starting to 'bounce' in 2009. In 2010 I can see the regular monthly payment to this account drops to £90.49. The balance in July 2010 is £15,464.66. From another automated print-out (post charge-off account) I can see payments of £90.49 being made twice in 2010 and then another payment of £971.85 in October 2013 (which I calculate to leave a balance of around £14,311). There is then evidence of an IVA being in place and then failing. So although I don't know what payments were made whilst the IVA was in place, I can see MRL stating the balance was £13102 in January 2015.

From MRL's records (and its representatives' arguments) I can see another payment of £504.83 leaving an outstanding balance of £12,597.31 in February 2019 (which is what is outstanding when this service last spoke to MRL's representatives).

So although out of the thirteen-year debt we have approximately fourteen months missing data, I can see that MRL bought the debt directly from the source bank of the debt and have administered it or been involved ever since. I can also see that Mrs G isn't arguing she didn't have a debt with the bank or that she's made any significant payments to MRL over the last few years. I can also see the Investigator asked Mrs G to provide evidence of any payments she thinks she's made which haven't been properly accounted for-but Mrs G has not argued this point or provided evidence showing payments being made. I can see the original debt was held jointly between Mrs G and Mr C-so both were jointly responsible and as such Mrs G could be held liable for the entire debt. It is not clear why it is solely in Mrs G's name now. But bearing in mind the progression of the account over time and no persuasive evidence to the contrary I'm satisfied the amount MRL says Mrs G owes is the amount owed and it's fair and reasonable for MRL to seek repayment of that amount.

MRL has accepted and told Mrs G that due to the circumstances it cannot seek enforcement of the debt. And it has said it has not described this account as being enforceable. It is not for this service to decide on whether or not a debt is enforceable-that is for the courts. However this service can decide on whether it is fair and reasonable for MRL to ask Mrs G to pay this debt and if so how much.

Having considered the evidence, on balance, I'm satisfied Mrs G owed £12,597.31 in February 2019 as MRL says. So I am not persuaded by what Mrs G says on the amount owed and think MRL are entitled to ask her to repay the amount she owes it. The fact that MRL accepts that this is not enforceable doesn't mean Mrs G doesn't owe the money or that MRL cannot ask her to repay it.

Mrs G says MRL has acted unfairly. I've considered the account history MRL has provided and the statements provided. From this I've not seen any persuasive evidence that MRL has treated Mrs G unfairly. She hasn't pointed to any particular incidents as being aggressive or unfair. And I can't see from the correspondence history any examples of her complaining about her treatment by MRL. All in all I'm not persuaded Mrs G has been treated unfairly here by MRL. And I don't think it has acted aggressively towards her.

So I don't see any reason for the debt to be written off or for MRL to cease collection activity. I don't think MRL need to take any further action regarding this complaint as I'm not persuaded it has done anything wrong. I'm not persuaded she has been treated unfairly by MRL in the circumstances. So, in short, this complaint does not succeed.

I note MRL has said it is willing to take a payment of £6,000 in full and final settlement of this debt (which is more than twice this offer amount). Mrs G has refused this. Accordingly I see no reason for MRL to not to try and get Mrs G to pay all the money owed.

I appreciate Mrs G would rather not pay this debt and that she'll be disappointed by my decision. However I'm satisfied she owes MRL and that it is entitled to ask her to repay it until either she does pay or MRL decides to stop trying to get her to pay it.

If she changes her mind about paying the offer amount she should speak to MRL to see if the offer is still open. It is up to MRL whether it is willing to take a lower amount in full and final settlement of the debt.

My final decision

For the reasons set out above, I do not uphold this complaint against Maximum Recovery Limited. It has nothing more to do with regard to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs G to accept or reject my decision before 22 October 2020.

Rod Glyn-Thomas
Ombudsman