

The complaint

Mr J complains that BW Legal Services Limited pursued him for a debt that wasn't his. He's also unhappy that incorrect information was recorded on his credit file.

Mr J's father has been dealing with the complaint on his behalf. For ease, I'll refer to anything he's told us as being said by Mr J.

What happened

In early 2018, Mr J brought a complaint about BW Legal to our service. BW Legal was pursuing Mr J for a debt on behalf of its client, who I'll refer to as "C". The debt related to a payday loan that had been taken out with a lender I'll call "L". C had purchased the debt from L.

Mr J said he'd first been contacted by BW Legal in March 2017. He'd told BW Legal that he'd never taken out a payday loan. He found out that the loan had been taken out by someone with the same name and date of birth as him. But the other Mr J lived in a different part of the country. Mr J said he'd gone into a branch of the bank the loan had been paid into and had confirmation the account belonged to a different person.

Mr J was unhappy about being pursued for a debt that wasn't his and about markers being applied to his credit file.

An investigator looked into Mr J's complaint but didn't think BW Legal had done anything wrong. He concluded that the issue lay with the original lender (L) and suggested Mr J raise his concerns with them.

Mr J then made a complaint against L, which he also brought to our service. The investigator looking into this complaint liaised with L, BW Legal and the bank the payday loan had been paid into. She concluded that Mr J was being pursued for a debt that didn't belong to him. The loan was taken out by someone with the same name and date of birth as Mr J who lived in a different part of the country. But she didn't think L was responsible for Mr J being pursued for the debt or the information on the credit file. Mr J had been linked to the debt after L had sold the debt on to C. BW Legal had linked Mr J's address to the debt after doing a credit reference agency trace.

After our investigator's involvement, BW Legal agreed to ask its client (C) to arrange for Mr J's credit file to be amended. It also agreed to stop pursuing Mr J for the debt.

Following this, in mid-2019, Mr J decided to raise a second complaint against BW Legal. He was unhappy that BW Legal had linked the debt to him. He said BW Legal had known from the beginning the other Mr J lived in a different part of the country to him. It had been provided with solid evidence he wasn't the responsible debtor on numerous occasions. The incorrect information on his credit file meant he wasn't able to get a mortgage. And BW Legal had threatened Mr J with court action in March 2019, before agreeing to get his credit file amended in April 2019.

BW Legal said this matter had previously been addressed through the ombudsman service and it had concerns about us re-opening it. It said C had deleted the entry associated with Mr J on his credit file as a gesture of goodwill and it was no longer affecting his ability to obtain credit. It also said it wasn't responsible for any incorrect information on Mr J's credit file

A third investigator looked into the concerns Mr J raised in this complaint. He didn't think Mr J's complaint should be upheld. He felt that the points Mr J raised had already been covered when his original complaint against BW Legal was investigated in 2018.

Mr J disagreed with our investigator's view. He said he hadn't received a formal response to his initial complaint from BW Legal. The information BW Legal had disclosed to the ombudsman service in March 2018, wasn't disclosed to him until nearly a year later. If he had seen it, he wouldn't have agreed to direct his complaint towards L. This was because the letter of March 2018 showed that BW Legal knew everything required to cast doubt on its initial choice of Mr J as the debtor. It acknowledged receiving Mr J's bank account statement from the time the loan was taken out, showing him living in a different part of the country to the debtor and banking with a different bank. It had the original credit agreement for the defaulted loan. And it acknowledged that Mr J had previously told it bank staff had confirmed his photo ID didn't match that of the debtor's bank account.

I issued a provisional decision on 23 April 2020 where I explained why I intended to uphold Mr J's complaint. In that decision I said:

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

Based on what I've seen so far, I intend to uphold part of Mr J's complaint.

I'd like to start off by acknowledging that this has been a protracted dispute, involving three complaints and various parties. The situation will have been very frustrating for Mr J who was pursued for a debt he didn't owe and says he's had difficulty obtaining credit because of information that was showing on his credit file.

As this complaint is against BW Legal, I can only consider its obligations as the debt collector. It also wouldn't be appropriate for me to consider issues that were previously dealt with as part Mr J's previous complaint against BW Legal in 2018. But I can consider BW Legal's actions after Mr J's initial complaint was concluded, in May 2018.

The relevant industry rules required BW Legal to take reasonable steps to verify the accuracy and adequacy of the available data so as to ensure that the true customer was pursued for the debt.

I can see BW Legal sent Mr J two letters after the first complaint concluded. These are dated December 2018 and March 2019. The second letter said that court action would be considered if payment wasn't made within 14 days.

BW Legal says that during this period it understood that it was pursuing the correct person and so contact was for legitimate reasons. It says it issued a response to our service in April 2018 and didn't hear from us again until March 2019, when the investigator of the complaint against L asked for information about a potential mistrace.

BW Legal says it responded a couple of weeks later saying it was satisfied that Mr J was the correct customer as confirmed by credit reference agencies and no further trace was

required. If the data did prove to be incorrect, it was because the data sourced from the credit reference agencies was incorrect.

A few days later a representative from the bank the loan was paid into attempted to call BW Legal to advise that in light of Mr J visiting the branch and the evidence provided, it was pursuing the wrong individual. BW Legal says it was unable to act on this information because of its obligations under the Data Protection Act and the caller being an unverified and unauthorised third party. So, it could only note it on file.

BW Legal says that when our investigator sent it an email saying that the bank had been in contact with the ombudsman service and she believed BW Legal was pursuing the wrong person, no further collections based correspondence or calls were made to Mr J.

I've considered BW Legal's points, but I don't think it took sufficient steps to ensure it was pursuing the right person for the debt in late 2018 and early 2019. I say this because Mr J had previously contacted BW Legal several times to say that it was pursuing the wrong person. He'd sent bank statements from around the time that the loan was taken out to show that his address didn't match the address on the credit agreement, and that he lived in a different part of the country. He'd also told BW Legal that the bank branch had confirmed the loan had been paid into the account of a different Mr J.

BW Legal has relied on the information from the credit reference agencies. But from what I've seen, the reason Mr J was linked to the debt was because of the trace BW Legal had done in early 2017.

It's an unfortunate coincidence that the person who took out the loan had the same full name and date of birth as Mr J. But I think that Mr J had given BW Legal enough information to at least cast doubt that it was pursuing the right person. And I don't think BW Legal gave proper consideration to the information Mr J had provided before it began to pursue him for the debt again.

While the investigator who looked into Mr J's first complaint didn't think it should be upheld, he hadn't concluded that BW Legal was pursuing the right person. This matter hadn't been resolved when BW Legal started to send letters to Mr J again in December 2018. So, I feel BW Legal should have done more to make sure that the true customer was being pursued for the debt.

I appreciate that BW Legal only sent two letters to Mr J in the timeframe I'm considering. But I think this caused Mr J a fair amount of additional distress and frustration. He was being chased for payment and threatened with court action, when he'd already contacted BW Legal several times to try to prove he wasn't the debtor.

So, I intend to award Mr J £200 compensation for the trouble and upset he experienced because of BW Legal's actions in late 2018 and early 2019.

I understand that Mr J is also unhappy about incorrect information on his credit file as a result of the debt being linked to him. He's told us a mortgage application was turned down for this reason. But as the debt collector, BW Legal isn't responsible for recording data on Mr J's credit file. This responsibility belonged to the owner of the debt, C. So, I can't consider the impact of this as part of Mr J's complaint against BW Legal."

I gave both parties the opportunity to send me further information or comments they wanted me to consider before I issued my final decision.

BW Legal's response

BW Legal said given that Mr J's first complaint hadn't been upheld, it would suggest BW Legal hadn't been responsible for any wrongdoing. There was no reason for BW Legal to conclude the wrong party was being pursued and prevent any further contact. There was no change in circumstances which required additional consideration before BW Legal decided to pursue Mr J for the debt again.

It said the link to the debt was not created by BW Legal as the link already existed at the time of the trace. BW Legal did not furnish the credit reference agencies with this information.

Mr J's response

Mr J provided a summary of what had happened over the last few years, including his dealings with BW Legal, the ombudsman service and the other businesses involved. He felt that everything needed to resolve his first complaint was contained within a letter from BW Legal to the ombudsman dated March 2018.

He said there are a number of quantifiable costs he's had to face as a result of BW Legal's actions. These include a declined mortgage, the lump sum purchase of a new vehicle and time taken off work. He holds BW Legal entirely responsible for the costs he incurred from April 2018 to April 2019, when his credit file was repaired.

Mr J has had to take time off work to deal with corresponding to BW Legal and for two visits to the main bank branch (of the account the loan was paid into). He estimates he's lost around £300 of wages because of this.

Mr J also feels he would have been in a better position on the property ladder if he'd been able to move into a shared ownership property in early 2018.

He also commented on the relationship between BW Legal, C and L. He questioned how BW Legal can claim not to be responsible for the information on his credit report when it is C's representative and it instructed the credit reference agency to both place and remove the report from his credit file.

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.

BW Legal has given the outcome of Mr J's first complaint as a reason for its actions following this. But the investigator who looked into Mr J's first complaint didn't make a finding as to whether or not BW Legal was pursuing the wrong party. BW Legal already had information to suggest there might be another Mr J with the same name and date of birth as him and that they were likely to be pursuing the wrong one. Mr J had made contact with BW Legal several times regarding this.

It's unclear why BW Legal decided to pass this information on to the original creditor rather than dealing with this itself. But I think it could have resolved the issue if it had properly considered this information and liaised with the other parties involved.

BW Legal says it didn't link Mr J to the debt. But it's previously sent us screenshots of the trace it sent to a credit reference agency in December 2016 and what was returned in January 2017. The information it provided to the credit reference agency was Mr J's name and date of birth. But the address BW legal provided was the one on the credit agreement (belonging to the other Mr J) and what came back was Mr J's address.

It's understandable that BW Legal concluded the two Mr J's were the same person, given their shared date of birth. But I think BW Legal should have paid more attention to what Mr J was saying, when he repeatedly told it that someone with the same name and date of birth as him (but who lived in a different part of the country) had taken out the loan and the information he'd provided to support this.

As the debt collector, BW Legal's obligation was to take reasonable steps to verify the accuracy and adequacy of the available data to ensure the true customer was pursued for the debt. I don't think BW Legal met this obligation when it started to pursue Mr J for the debt again - in December 2018.

I'd like to reassure Mr J that I've considered all of the points he's raised, even if I haven't referred to them individually. I don't doubt that this has been a lengthy and distressing experience for him. And he's likely to have suffered financial loss because of this situation. But I'm limited to what I can consider within the scope of this complaint.

Mr J is particularly unhappy about the wrong information appearing on his credit file and the impact this has had on his ability to borrow. But as I said in my provisional decision, it's the owner of the debt (C) who was responsible for the information showing on Mr J's credit file. While BW Legal might have provided the information used to update Mr J's credit file, I'm unable to hold it responsible for what was on there because the obligation to ensure it was correct belonged to C.

Mr J has made various points about BW Legal's actions since it first started to pursue him for the debt. I appreciate Mr J's frustrations regarding this. But it wouldn't be appropriate for me to consider issues that were previously dealt with as part of Mr J's previous complaint against BW Legal. This means I'm limited to looking at BW Legal's actions from May 2018. And as I've said, this would only be in its role as the debt collector.

Having considered the comments by both parties, I haven't been persuaded to change the conclusions I reached in my provisional decision. I don't think BW Legal took sufficient steps to ensure it was pursuing the right person for the debt in late 2018 and early 2019. And I think £200 would be fair compensation for the distress and frustration Mr J experienced because of this.

Putting things right

BW Legal must pay Mr J £200 for trouble and upset.

My final decision

I uphold Mr J's complaint and direct BW Legal Services Limited to pay him £200 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 26 June 2020.

Anne Muscroft
Ombudsman