

The complaint

Mr K complains that Debt Managers (Services) Limited is chasing him for a debt he doesn't recognise is his. He wants it to stop chasing him for this debt or provide documentary evidence it is entitled to collect it from him.

What happened

Mr K says that he was contacted by DML about this debt. And because he's previously been the subject of a fraud, he asked DML for a deed of assignment to prove it was entitled to collect the debt. He says that DML has refused to provide this information. But that it's continued to harass him and ignored a "*cease and desist*" letter he sent.

DML told us that it had bought the debt from the previous owners, "J", in September 2019. And that both it and J had notified Mr K. DML said that since it acquired the debt, it had taken account of Mr K's health concerns and had placed the account on hold or given Mr K breathing space. And that it had again placed the account on hold until 8 March 2021 whilst the outcome of this complaint was awaited.

Our investigator didn't recommend that the complaint should be upheld. She felt that DML had provided sufficient information to show that it now owned the debt. And she didn't find that it had contacted Mr K in any way that would be recognised as harassment.

Mr K didn't accept this outcome. And said that he wanted to avoid the stress that was being caused by him being chased for this debt. As it's not been possible to resolve this complaint an ombudsman's been asked to make the final decision.

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.

I understand that debt can be a very stressful experience. And I'm aware of Mr K's health concerns. And I empathise with the difficulties he's facing.

I accept that if he has been the target for fraud previously, Mr K would want to be particularly careful before engaging with any business seeking to obtain money from him.

I hope it might be helpful if I deal separately with the different aspects of Mr K's complaint. Broadly speaking, this concerns whether or not the debt is his; the information he's entitled to receive from DML; and the way in which DML has sought to recover the debt.

It's also important that I explain my role here. This service offers an informal, independent and impartial dispute resolution service. It's an alternative to a court. And we don't have the same powers as a court. But whilst I don't apply the law directly, I do take it into account.

As an example, I can't decide if Mr K is liable for this debt or if it's enforceable. Nor can I instruct DML to provide him with a deed of assignment.

What I'm deciding is if DML has reasonable grounds to believe that he is the debtor and - if so - has it acted fairly in the way it's sought to recover the money owed.

The terms of Mr K's initial complaint referred to his wish to see that DML had proof that it legally owned his debt and that it had been properly assigned. In other words, the debt itself wasn't being questioned. It was more that Mr K was requiring evidence that DML was entitled to collect it.

I've seen letters dated 17 September 2019 from J and DML to Mr K. J's letter notifies him that his debt with J has been sold to DML. It also refers to arrangements for the repayment of the debt which it said existed between J and Mr K. DML's letter confirms the assignment. Both letters refer to the same reference and debt amount. I've also seen details of the account activity.

Mr K also mentions having completed an income and expenditure form which it seems he was sent following a website contact he made with DML. It seems improbable he'd be providing such information if he didn't accept that he owed the debt.

I'm satisfied that DML has reasonable grounds for believing that Mr K is the individual who owes this debt and that it's entitled to seek payment from him.

I'm aware that Mr K has made a number of specific references to what he asserts are matters of law. Particularly in relation to his expressed entitlement to a deed of assignment.

I'm not able to say where Mr K obtained this information / advice. But I'm aware from dealing with many complaints of a similar nature, that there is a lot of misleading and inaccurate information which is published on such as the internet and social media platforms.

The Financial Conduct Authority (FCA) has set out rules which it expects businesses which are owed debts to follow. This includes information which a business should provide to a customer.

In terms of notifying a customer that a debt has been assigned the relevant rule is (my underlining):

CONC 6.5.2

(1) Where rights of a lender under a regulated credit agreement are assigned to a firm, that firm must arrange for notice of the assignment to be given to the customer:

(a) as soon as reasonably possible;

As the above indicates the FCA requires only that a notice – not the deed – of assignment is required.

A High Court case in 2019 (details of which I've provided separately to Mr K) also held that where the two parties to the assignment (being the existing owner and the new owner) consider the debt to have been validly transferred – and notify the debtor - that is sufficient for the assignment to be considered valid. And for the new owner to acquire the rights to collect the debt.

I find that the information provided by DML to Mr K is sufficient to show that it has reasonable grounds on which to seek to collect the relevant debt from him.

In terms of the manner in which a debt is collected, again there are rules which the FCA sets out and businesses are required to follow. In summary, a business is required to treat those in financial difficulties fairly and with “*forbearance and due consideration*”. And it must take additional safeguards if it’s aware of a customer’s vulnerability.

There is no fixed means by which this should be achieved. Every situation is different. But it wouldn’t be unusual for a business to consider putting payments on hold for a period; deferring or cancelling interest; agreeing a payment arrangement. This is by no means a complete list of options that might be tried.

But before being able to assess the best means to assist the customer the business would be expected to obtain details of income and outgoings. This is to ensure that any arrangements are affordable and sustainable for the customer.

I’ve seen that DML has responded to Mr K’s queries and his health concerns. This has meant the account had been on hold or a breathing space offered for most of the past twelve months. And during this time Mr K hasn’t made any payments. It’s also offered to deal with a relative of Mr K who made contact on his behalf – provided he gives consent for this.

We wouldn’t expect a business to stop contacting him just because Mr K has sent what he describes as a “*cease and desist*” letter. I’ve not been provided with any information which shows this letter had any legal force requiring DML to act upon it.

I don’t find that DML has done anything wrong in seeking to maintain contact with Mr K. And nothing I’ve seen in such contact either in tone or frequency would lead me to conclude there had been any harassment.

I’m aware from some of his comments that Mr K has also sought advice from a voluntary advice agency. It may be that this agency is able to assist Mr K with negotiating an affordable and sustainable means of repayment. If such a payment arrangement can be agreed and maintained, it would substantially reduce the need for further contact over the debt. And hopefully this might alleviate some of the distress and concern Mr K is currently experiencing.

In summary, I find that DML has reasonable grounds for believing Mr K is the person liable for this debt. And its shown forbearance and due consideration in seeking to recover the sum owed.

I empathise with Mr K in the difficult situation which he is experiencing. But here, it wouldn’t be fair and reasonable to find that DML had done anything wrong. Accordingly, I’m not upholding this complaint.

My final decision

For the reasons given above my final decision is that I’m not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 1 April 2021.

Stephen Ross
Ombudsman