

The complaint

Miss C complains BW Legal Services Limited, trading as BW Legal, are asking her to repay a debt for a loan which has been written off. She doesn't think they should contact her any further.

What happened

I issued a provisional decision on 16 September 2021, setting out what'd happened, and what I thought about that. I've copied the relevant sections of the provisional decision below, and this forms part of my final decision.

Miss C had a loan with another company. The loan wasn't fully paid off, and ended up being bought by a company I'll call P. They asked BW Legal to collect the debt on their behalf, and contacted Miss C about it. Later on, the original lender went into liquidation, and a scheme was set up to provide redress for loans which were irresponsibly lent.

Miss C complained about this contact in December 2019. She said she'd received a letter from the administrators of the original lender to say the account had been irresponsibly lent. She said this meant the debt had been written off, so asked BW Legal to stop contacting her as it was causing her a lot of stress.

On 24 January 2020 BW Legal replied and said on 4 January 2017 they'd been instructed by their client P to recover the outstanding balance of the account of £457.50. BW Legal said they couldn't consider the conduct of the original lender. They added that, even if Miss C did make a complaint to the lender, it'd have no bearing on the debt itself – and if she has an outstanding balance then she remains responsible for paying it off.

Unhappy with this Miss C asked us to look into things.

One of our investigator's did so. He explained Miss C's original loan becoming part of the scheme didn't mean it'd been paid off. But he felt BW Legal saying the scheme would have no bearing on the outstanding loan wasn't correct – because it was possible the interest would be refunded, or the loan could be paid off. So, he felt that'd clearly impact the debt itself, and said he would have expected BW Legal to have queried this. Instead, he felt BW Legal dismissed Miss C's claim saying it wouldn't have an impact which was unfair. Because of this, he said BW Legal should place any collection activity of the debt on hold and pay Miss C £75 compensation for the distress caused.

Miss C accepted this, but BW Legal didn't. In short, they felt that the approach of saying the scheme outcome would have a bearing on the outstanding debt was wrong. BW Legal also felt our investigator was interfering with the way the scheme worked by telling them to put any collection activity on hold.

I've deliberately been brief when summarising BW Legal's response to the view – because since that happened things have moved on.

Miss C has been given an outcome from the scheme which has agreed she was mis-sold the loan. On 25 March 2021 the scheme confirmed what the payment was likely to be – and that because the debt had been sold to another party, they'd need to pay these monies directly to her – rather than offsetting it against the loan. The amount of redress wasn't enough to settle the loan – so a debt remained outstanding.

Following some further conversations and investigations it seems Miss C has accepted the loan wasn't written off – as most recently she's agreed to repay £12.50 a month towards it.

BW Legal say Miss C agreeing this means she has accepted the balanced is owed by her, as such they think it's fair and reasonable to conclude this complaint is frivolous and should be dismissed without considering the merits of it. They've also previously argued this was a dispute rather than a complaint and made reference to legislation which supports their claim – meaning we didn't have authority to look into it.

I addressed BW Legal's concerns about whether we had authority to look into this complaint in a separate decision – finding that we did. I also covered their points about whether the case should be dismissed, finding that I wouldn't dismiss the case, and it was appropriate for me to consider the substance of Miss C's complaint.

In their response to this decision, BW Legal added some further points. These primarily related to Miss C now seemingly accepting that the debt was properly owed by her. They said they can't be held responsible for Miss C's misconception about this – and reiterated it wasn't right for us to interfere in a court appointed scheme. BW Legal also asked whether we'd spoken to Miss C about her case, because they felt it was unlikely she'd want to go ahead with it as she's now agreed a repayment plan.

Miss C said in response to the decision BW Legal weren't prepared to hear her mitigating factors, and just fobbed her off when it's now been proven she was owed redress.

I noted BW Legal's question about whether we'd asked Miss C if she wanted to continue with this complaint. Given how much had changed from when she first raised it, I thought this was a reasonable question from BW Legal and was something I was going to make sure we asked anyway.

In response, Miss C said yes, she does want to continue with the complaint. Miss C explained she thought when the scheme went through the court, BW Legal would have contacted the original owner to understand what'd happen with the debt, and how much she was owed. Miss C said as far as she's concerned, BW Legal knew she might be refunded a small amount but didn't give her any information.

As Miss C has brought a valid complaint, which I've already decided is one we have the power to consider under our rules, and shouldn't be dismissed, I've issued this decision on the substance of her concerns.

What I've provisionally 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.

As a reminder, Miss C's original complaint was that BW Legal were asking her to repay a loan that she thought had been written off.

To address this firstly, I don't think that was the case at the time Miss C made her complaint and has since been proven not to be true. The account BW Legal were asking Miss C to

repay wasn't written off. It seems Miss C has interpreted the email she received about the loan as saying it would be written off due to the loan potentially being irresponsibly lent. But, even if there was an issue with that letter, I can't say that's BW Legal's responsibility – they didn't send the letter. And the sale of the loan itself was the responsibility of the original lender.

Where BW Legal's responsibility sits is in the information they gave to her when she got in touch. So, I've looked at this.

They explained in their response to Miss C's complaint on 24 January 2020 that they were instructed by P to collect £457.50. In respect of Miss C's main concern about being asked to repay a debt which had been written off due to irresponsible lending, their first point was they couldn't look at any concerns regarding the original lender. And their second statement was that any assessment on the lender wouldn't have a bearing on the debt itself, and Miss C would remain responsible for any outstanding balance.

BW Legal, as a debt collector, wouldn't be responsible for the advice given by Miss C's lender in this case – so I agree with that. As for BW Legal's second statement I don't fully agree with it. As no one knew how much redress was due, or what was going to happen to it, then it's possible it could have been paid by the scheme administrators direct to BW Legal. So, in that sense I don't fully agree it couldn't ever have any bearing on the debt – it could have reduced it or paid it off. But until anything was decided by the scheme then the debt was properly owed by Miss C. So, in that sense BW Legal were correct in saying Miss C would remain responsible for any outstanding balance. And, what BW Legal said has since been proven true, as the redress from the scheme wasn't enough to clear the debt, and was paid direct to Miss C.

Miss C also said she was feeling overwhelmed with stress. BW Legal address this in what I think is a fair and empathetic way – by acknowledging how she's feeling, giving details of debt charities who can help her, and saying she could ask someone else to represent her. I can understand why Miss C would have felt stressed. But I think BW Legal gave a fair response to this and tried to help her.

Miss C's overarching complaint was originally that she was being asked to repay a debt she shouldn't have been, and she feels BW Legal should have done more – by for example contacting the court about the scheme. While I know Miss C will be disappointed, I don't agree with that.

BW Legal's role here was to ask for the repayment of the debt. Based on the above, they've given her the correct information about what's happening, and offered a number of other suggestions to help her. I'm not aware of any requirement for BW Legal to contact the court and find out how much could potentially be repaid towards the debt if the scheme does pay out – and at that time I can see nothing had been decided about the scheme anyway. So, even if BW Legal did this (which I don't think they were required to – and probably didn't have authority to do so), I think it's unlikely they'd have been given any information to pass on to Miss C.

I realise our investigator felt BW Legal should have done more – by pausing repayments due to the scheme potentially writing off the loan and paying out £75 compensation for poor communication. I won't comment on whether he was right to talk about the scheme, as that's no longer relevant because the scheme has paid out – and Miss C has begun repayments with BW Legal. For the £75 compensation he recommended I can't agree it's appropriate. I say that because I'm satisfied BW Legal did give Miss C the right information about her debt when replying to her complaint – and any issues about what the scheme were going to do were more properly directed to the scheme administrators. I think it's fair to say Miss C may have been confused, and potentially a more detailed response from BW Legal could have helped her with that – but broadly what they've told her is accurate and fair.

Taking all of that into account, I don't currently plan to uphold this complaint or award any compensation.

Responses to my provisional decision

BW Legal replied, and said they were broadly pleased with the possible favourable outcome I'd come to. They wanted to address one issue though, where I'd said it was possible any redress from the scheme could have been paid direct to BW Legal, or their client P, rather than Miss C. They said the scheme rules specifically say any payment has to be paid directly to Miss C – so, because of that, their statement when they said the scheme outcome wouldn't have any bearing on the debt was entirely accurate. They provided links to the scheme rules, and evidence from previous schemes run by the regulator the Financial Conduct Authority (FCA) in support of this.

Miss C replied, and said BW Legal have said she's due redress, and asked what happened with that. We asked her to clarify what she meant, as we weren't aware of any redress BW Legal had said she was owed by them. She forwarded a copy of an email from BW Legal dated 24 June 2021. The email explained she was due to be paid redress from the scheme of £149.76 and said, "*our client would also like to assist you with this matter further and has reduced your current balance outstanding by the redress amount of £149.76*". In addition, BW Legal offered Miss C a discount on the remaining balance, and said if she couldn't pay the whole amount, then a payment arrangement of £12.50 per month could be set up.

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've noted BW Legal's point here – that the scheme rules specifically say any payment needs to be made directly to Miss C. But the point I was making was BW Legal's statement to Miss C that the scheme would never have a bearing on the loan wasn't something I could fully agree with – and still don't. The email Miss C has forwarded in response to my PD shows the scheme did have a bearing, as they'd reduced the outstanding debt by the redress amount – even though it was paid to Miss C directly.

I think BW Legal's point is that the scheme itself would never have paid the money direct to them to settle the debt – and they've provided enough when looking at the scheme rules and the FCA to support that. But, again, this for me goes back to the clarity of BW Legal's reply.

Again though, I need to emphasise I'm satisfied that broadly the information they gave was right. I don't think Miss C has materially suffered by this because she did have an outstanding debt BW Legal wanted her to repay, and the scheme did pay the redress directly to her, so I don't think BW Legal need to do anything further.

I have noted Miss C's comments about BW Legal saying they'd pay her redress as well. But the email she's forwarded doesn't say that. The email says the scheme is paying her redress, not BW Legal.

Overall, I've not found any reasons to depart from my provisional conclusions and won't be awarding Miss C any compensation.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 5 November 2021.

Jon Pearce
Ombudsman