DRN-3675265

The complaint

Mr and Mrs D are unhappy with how Ascent Performance Group Limited have handled the management of a debt.

What happened

The background to this complaint and my provisional findings were set out in my provisional decision to both parties. For ease, this is copied below and forms part of this final decision.

Provisional Decision

On 5 May 2008 a secured personal loan was arranged between Mr and Mrs D and a finance provider I'll call Company W. The loan was for £15,390 to be repaid over 180 months with monthly payments of £283.23. The loan was secured on Mr and Mrs D's home, which I'll refer to as Address V.

In July 2014 Company W sold the outstanding debt of £15,039.53 to Company C.

Ascent was asked by Company C in April 2016 to take over management of the debt.

Ascent say they were unsuccessful in trying to get Mr and Mrs D to engage with them about the debt and so they submitted a claim to court in February 2017. Mr and Mrs D defended the claim to say they had no documentation in relation to the debt and they requested original loan documentation from Ascent. There is little detail from Mr and Mrs D about what happened after 2017. And Ascent's records show their attempts to obtain information from their client, Company C.

Ascent have said that on 20 January 2020 Mr and Mrs D were issued with a letter which referenced enclosing a copy of the loan agreement and a default notice dated 2 July 2011 (which I have not seen a copy of) – so they say Mr and Mrs D were provided with information about the debt.

A few months later, on 21 May 2020 Mr and Mrs D were sent separate letters from Ascent's legal department to say the debt had been satisfied. However, Mr and Mrs D say Ascent contacted them again on 1 July 2020 requesting that they complete an income and expenditure form in relation to the debt. Given the letters they'd received, Mr and Mrs D contacted Ascent to query the request for an income and expenditure form. Ascent then confirmed the satisfaction letters had been sent in error. Around this time a statement of the account was also sent to Mr and Mrs D to show the payments made towards the debt.

Mr and Mrs D told Ascent the debt was statute barred, but Ascent disagreed with this as they said payment had been made towards the debt in 2014 and a legal claim had been raised in 2017. In reply, Mr and Mrs D disagreed and said they wanted proof the debt was enforceable. They also said mistakes were being made around the payment dates Ascent was referring to.

As a resolution couldn't be reached, Mr and Mrs D asked our service to review Ascent's

investigation and told us the account had been poorly managed, with Ascent not acknowledging their mistakes. Mr and Mrs D said they wanted the account closed.

In their submissions to this service, amongst other things, Ascent said the debt was not statute barred as the loan was secured.

There were several exchanges between all parties during the course of our investigator's review of the complaint, and rather than repeat them in detail here, I've provided a summary.

Our investigator concluded Ascent could have better handled their engagement with Mr and Mrs D about the debt. One of the reasons our investigator gave was that Ascent should have told Mr and Mrs D sooner that the debt was not statute barred because it was secured. To recognise the overall poor handling of events in relation to the debt, our investigator said Ascent should pay Mr and Mrs D £225. However, the investigator said the debt was still outstanding and it wasn't unfair for Ascent to approach Mr and Mrs D for payment of the debt. Ascent agreed to the investigator's findings, but Mr and Mrs D did not.

Mr and Mrs D could not accept that the debt should still be paid given how they felt they'd been treated. They said administrative errors by Company C and Ascent went back to 2014 and there had been systemic failures. Mr and Mrs D said that aside from this debt, they'd managed to engage with all their other creditors in 2013/2014 when they were struggling financially and had tried repeatedly to communicate with Ascent. Mr and Mrs D felt the business was profiting after all this time and it was unfair to chase the debt now.

Mr and Mrs D also raised concerns about how Ascent had handled matters with the court in 2017 and were unhappy that it had taken until 2019 for Company C to place their charge on the property – which Mr and Mrs D said was done without their knowledge.

What I've provisionally decided – and why

I'll begin by explaining that while the above is only a summary of what's happened, I've reviewed all the available submissions. I'm aware Mr and Mrs D have raised various complaint points, but I'm not required to answer each individual point, rather it is for me to decide what is a fair and reasonable resolution to this complaint. And as our investigator has previously explained to Mr and Mrs D, their concerns about Ascent's legal claim in 2017 and the charge registered against their home should be taken up separately and against the responsible entity.

So to be clear, this decision is only concerned with Ascent's actions in relation to this complaint. And any new complaints Mr and Mrs D may now have about Ascent should be directed to Ascent as separate matters to be considered.

It may also help Mr and Mrs D to know we're not the regulator of financial businesses, so we don't fine or punish businesses or monitor how they are operating in general. That's the job of the Financial Conduct Authority. We are also not a court, so this office cannot say if a law has been breached or interfere with the court's business. Our role is to resolve individual disputes between firms and their customers.

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

I've considered the concerns Mr and Mrs D have raised about Ascent's general handling of the debt.

Ascent took over management of the debt in April 2016. Their records show unsuccessful

attempts to engage with Mr and Mrs D about the debt, including speaking to Mr D on the phone where the notes suggest he hung up on Ascent.

The claim form papers were issued on 8 February 2017. Mr and Mrs D defended the claim, and Ascent say they sought further documentation from Mr and Mrs D – without success – and they tried to contact Company C, their client, for further documentation about the debt.

To date, I am not aware that a county court judgement (CCJ) has been registered. I would also note that Mr and Mrs D's defence at this time made no mention of the statute of limitations as they suggested to our investigator.

Ascent's correspondence references that a copy of the loan agreement and default notice were sent to Mr and Mrs D in a letter dated 8 January 2020. And on 7 August 2020 there's reference to an email attaching a statement of the account, which shows the last payment towards the account was made on 6 July 2014, for £10. So, I think information was provided to Mr and Mrs D about the debt – albeit it took some time for this to reach Mr and Mrs D.

I understand Mr and Mrs D's frustration in terms of trying to obtain information from Ascent about the debt. And from what I've seen, I think Ascent could have kept Mr and Mrs D better informed about what was happening after submitting the claim to the court in 2017.

However, I have also seen no records of Mr and Mrs D attempting to contact Ascent for information or record of them engaging with Ascent about the debt to sort the matter out as they have suggested.

Ascent accept the letters of satisfaction were issued in error and they apologised for this as it hadn't been possible to stop them from being sent. I think if Ascent had known beforehand that they could not stop the letters from being issued, then it would have been good customer service to let Mr and Mrs D know what had happened in order to better manage Mr and Mrs D's expectations - so I think Ascent's actions in relation to these letters was unhelpful.

I realise receiving these letters would've raised Mr and Mrs D's expectations that they would no longer be contacted about the debt. However, having reviewed the letters I'm also mindful the letters referred to a payment being made, but there was then no detail of the sum paid to satisfy the debt and no date was given to confirm when such a payment was made - these parts of the letters don't appear to have been completed. I think it follows that it's reasonable to assume Mr and Mrs D would've known if they'd made a payment to clear and satisfy the debt. And I think it's also reasonable to question what may have led Mr and Mrs D to believe the debt would be settled without any payment.

I've also considered that while it was unhelpful for these letters to have been sent to Mr and Mrs D, the request for an income and expenditure form was made on 1 July 2020, so it appears any confusion around the debt still being outstanding was not prolonged.

It might also help Mr and Mrs D to note that it doesn't automatically follow that because the letters of satisfaction were issued, that the loan should therefore be considered satisfied. So simply because there's been a misrepresentation, it doesn't automatically follow that to put things right the misrepresentation should be treated as if it were true.

Mr and Mrs D have made submissions about the 'last payment' dates. And it does appear there were two last payment dates highlighted to Mr and Mrs D by Ascent – which I think was once more unhelpful information for Mr and Mrs D. As noted earlier, a statement of the account to support when the last payment was made was eventually provided to Mr and Mrs D for their information.

Mr and Mrs D told our investigator they didn't know about the charge on the property and they say this is something Ascent should've told them during Ascent's investigation. But the charge was Company W, and then Company C's responsibility. I would note that the loan agreement provided to Mr and Mrs D showed at the top of the agreement the loan was secured on Address V.

Taking everything above so far into account, I think there were times Ascent could have been clearer with Mr and Mrs D regarding information about this debt.

Reviewing all the submissions I can see Mr and Mrs D have challenged knowing anything about this debt as they've said they had no records and they've asked for it to be closed. They also asked Ascent for evidence the debt was enforceable. More recently, I can see they've told us they're not trying to remove the debt, they just believe it's unfair that they should still be pursued for the debt – mainly due to their view about how Ascent have treated them.

The evidence submitted includes a copy of the loan agreement which is signed by Mr and Mrs D and the application for the loan shows that the funds were, in part, being used to clear mortgage arrears. Other available evidence shows documents relating to registering a charge against Address V when the loan was first taken out, and Mrs D signing an occupier's waiver form.

I realise Mr and Mrs D's submissions have hinted at saying this is not their debt, but based on the available evidence I think it's reasonable for Ascent to conclude this is Mr and Mrs D's debt. So having established I think it's reasonable to say this debt belongs to Mr and Mrs D, I've next considered whether Ascent can fairly seek repayment from Mr and Mrs D.

As I've already explained above, I don't think the satisfaction letters wrongly sent out in May 2020 are enough to say the debt should no longer be payable. And I don't believe it's reasonable in this case to conclude any poor customer service should equate to writing off the debt.

During this matter, Mr and Mrs D have said they believe the debt to be statute barred.

It's not for this service to say whether a loan is enforceable or whether it is statute barred – only the court can decide that. As I'm unaware that the court has ruled on these matters for Mr and Mrs D, I'm satisfied I can comment on what's happened as I won't be interfering with the court's business - but I can only consider what I think is fair and reasonable in the circumstances of this case. If it later comes to light the court has issued any direction on these matters, I will have to review my involvement with this part of the complaint.

I'm aware our investigator, along with Ascent, said the debt was not statute barred because it was secured, but I believe they have mis-directed themselves here.

Secured debts are not excluded from the statute of limitations, but there are some differences to note between these types of debts and other types of debt. The statutory limits for secured and unsecured debts are not the same. The law allows six years for unsecured debts and twelve years for secured debts (albeit in the latter case there is industry-wide acceptance that six years is good practice). The limitation period starts from the date the borrower last made a payment or acknowledged the debt in some way.

As the available statement shows, the last payment made towards the debt was 6 July 2014. Ascent have been trying to contact Mr and Mrs D about this debt since they took over management of it in 2016, and they issued a claim to the court in February 2017. These

actions all fall within the six-year period from the date of the last payment. I've also noted that the claim to the court is within six years of the default notice Ascent have said is dated 2 July 2011.

From what I've seen so far, I think it's fair to say this debt belongs to Mr and Mrs D. And I believe it's reasonable for Ascent to engage with Mr and Mrs D to arrange repayment of this debt.

I'm aware Ascent have already agreed with our investigator to pay Mr and Mrs D £225 to recognise that the debt could have been better managed.

While I think it's fair to say Mr and Mrs D have a responsibility to engage with Ascent about the debt, Ascent's error with sending the letters of satisfaction was unhelpful as I realise this would have given some expectation to Mr and Mrs D that the matter was resolved and it would have been upsetting to have been told otherwise. So I think it's reasonable for Ascent to pay something to recognise the upset this would have caused Mr and Mrs D. Ascent have already agreed to pay Mr and Mrs D £225 to settle this complaint - I think this is a fair sum given the circumstances of this case, as it is more than I would be minded to award in the circumstances.

Responses to my provisional decision

Both parties were invited to provide any further comments or evidence for me to consider in reply to my provisional decision.

Ascent replied to my provisional decision and confirmed they had nothing further to add.

Mr and Mrs D did not reply to my provisional 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.

As there are no further submissions for me to consider, I see no reason to alter the conclusions as set out in my provisional findings above.

That is, I think based on the submissions available to me I think it fair to say this debt belongs to Mr and Mrs D and it is reasonable for Ascent to engage with Mr and Mrs D about repayment of the debt.

And while Mr and Mrs D have a responsibility to engage with Ascent about the debt, Ascent should pay Mr and Mrs D £225 to recognise that issuing the letters of satisfaction was unhelpful and caused upset to Mr and Mrs D for the reasons described above.

Putting things right

If they have not already done so, Ascent Performance Group Limited should pay Mr and Mrs D £225.

My final decision

For the reasons above, I uphold this complaint and Ascent Performance Group Limited should pay Mr and Mrs D £225.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 10 October 2022.

Kristina Mathews
Ombudsman