

The complaint

Mrs H complains J D Williams & Company Limited trading as Simply Be (JDW) won't pay a refund for irresponsible lending on a store card directly to her.

What happened

Mrs H originally raised an irresponsible lending complaint to JDW.

JDW accepted they'd irresponsibly lent to her but said because of the rules set out by the Financial Conduct Authority (FCA) they were only required to go back six years when thinking about redress. This led to them saying they'd refund interest and charges applied from 28 December 2017 which came to £509.92. JDW said as the account was sold to a debt purchaser – who I'll call L – they'll contact L to adjust the outstanding balance.

Unhappy with this Mrs H contacted our service and asked us to look into things – initially saying she didn't agree JDW should limit her redress as she didn't think they'd applied the FCA's rules correctly.

An Investigator, and then an Ombudsman, both said Mrs H had brought her complaint too late for us to look back beyond 28 December 2017 for the purposes of redress. Our Ombudsman also said we couldn't look at an unfair relationship complaint against JDW, as Mrs H's account had been sold to L. And where a debt has been sold then it's the current owner who would be responsible for any unfair relationship complaint.

Our Investigator then issued an outcome on the substance of the issues we could look at – primarily whether JDW had acted fairly in the redress – both in terms of what they took into account when calculating it, and that they paid it to L. On both counts, our Investigator felt JDW had acted fairly.

Mrs H has provided a number of submissions since then. I've summarised what I consider to be her key points:

- L had tried to take Mrs H to court to obtain a County Court Judgment (CCJ) but wasn't able to.
- Mrs H said this is because they couldn't prove they were legally assigned the debt, so they discontinued the claim and relinquished any entitled or interest in the debt – because of that she disagrees L is the 'creditor' and thinks she should still be able to raise an unfair relationship complaint against JDW.
- Mrs H quoted Section 189(1) of the Consumer Credit Act 1974 which she says has the definition of a creditor as "the person providing credit under a consumer credit agreement" – but L didn't provide the credit.
- An assignment must be absolute under Section 136 of the Law of Property Act 1925 for the assignee to have legal rights to sue. Because of the way JDW assigned the debt, L can't be considered the creditor – so also aren't entitled to the refund JDW provided.

- The court ruled in her favour after the debt purchaser failed to provide proof of legal assignment when ordered to by the Judge – this invalidates L's status as the creditor.
- There is direct harm to her, as a result of the refund not being provided to her, because she was the person who experienced the irresponsible lending.
- The primary purpose of the refund is to compensate for the financial and emotional impact caused by the lender's actions.
- She has a copy of the default notice dated 19 November 2019 saying the amount she was in default by was £0.

In addition to the above, Mrs H has provided copies of the paperwork from the court action that took place. Overall, she didn't agree with our Investigators outcome, so the complaint's 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.

As a starting point, I want Mrs H to know I've read and taken account of her circumstances. She has my sympathy for the difficult situation she's in currently. But, being impartial means I have to step back, and reach the correct answer for both parties to the complaint.

With that in mind I think it's helpful to set out the way in which I'm required to decide cases. The FCA sets this out in the DISP rules – the relevant ones being:

DISP 3.6.1R

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case

And DISP 3.6.4R

In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.

In summary then, I'm required to take into account the laws Mrs H has mentioned, but I'm not bound by them. If I depart from the law, then I need to explain why. But, I also need to make it clear my findings and outcome are based on what I consider to be fair and reasonable in all the circumstances of this case.

I should also explain this is a complaint against JDW – not L. I can't make any findings on anything L may or may not have done.

For context though, I think it's important I explain my view on what seems to have happened in court – as I think it's relevant to the outcome I'll be reaching.

Mrs H has characterised L's discontinuing of her claim in court as evidence L no longer have any interest in her debt. I've seen nothing that explicitly says this. I accept L have withdrawn their court action, but I've seen nothing which says they no longer have an interest in the debt.

Nor have I seen anything which shows or suggests the debt itself has been extinguished or no longer exists.

With all of that in mind, it seems to me there is still a debt, and L haven't given up their interest in it.

The next important issue to address is whether the debt was assigned from JDW to L or not. I say that because, if the answer to that question is 'no' – then clearly L shouldn't be in receipt of the refund applied.

Mrs H has quoted a number of laws she says supports her assertion the claim wasn't assigned in law. As I've mentioned above, it's not my role to decide if the law has or hasn't been broken. My understanding is that a Notice of Assignment (NOA) is sufficient to show a debt has been transferred.

I appreciate the court wanted the Deed of Assignment. I don't know precisely why the court wanted this, and why L didn't provide it – but again I come back to this case being against JDW.

Our long established approach is that a NOA is sufficient to transfer a debt from one party to another. I've seen a copy of the NOA which JDW sent to Mrs H. The NOA is addressed to her, at the same address she's given our service. So, it seems more likely than not she was told about this and had received this notification. The NOA tells her the account has been passed from JDW to L.

So, in transferring the debt to L, I'm satisfied JDW have fulfilled their obligations by ensuring Mrs H received the NOA. Whether in law JDW has acted correctly or not I can't say – but I can say I'm satisfied they've acted fairly and reasonably up to this point.

I can't comment on whether L is the creditor or not for the purposes of any unfair relationship complaint as this complaint is about JDW. But I remain satisfied, like my colleagues, JDW aren't the right respondent for that complaint issue because the debt was sold on.

With that in mind, the next question then becomes if there was a debt outstanding or not – taking into account Mrs H's comments about the default notice of 19 November 2019 showing £0 amount in default.

Mrs H said in her complaint form when contacting us *"they increased my credit limit on multiple occasions when I had missed payments and even whilst my account was in arrears."* So, I think Mrs H accepted there were arrears. I don't know how much, but I'm satisfied there was an outstanding balance owed. The total amount owing on the agreement at this point was £3,269.18.

In the circumstances, I think it's more likely than not the £0 figure showing on the default notice is an error – or it's a reproduced copy without the specific figure in. Either way, I'm satisfied it's fair to say there was a defaulted balance outstanding.

Finally then, I need to think about whether the refund should be paid directly to Mrs H or not. Again, bearing in mind I'm only looking at JDW's actions, I think they've acted fairly and reasonably.

I say that because, as I've established, there was an outstanding debt – and I'm satisfied that was fairly passed on to L. In the circumstances, Mrs H still owes this money, as I've seen nothing to suggest she doesn't. And JDW explained the amount of refund didn't return her account into credit. Given the amount of over £3,000 was sold, and the refund was for just over £500 – this sounds correct.

If Mrs H's account with JDW was never in a credit balance with them when applying the refund, that means the refund is essentially made up of interest and charges. These aren't amounts Mrs H has actually paid, these are amounts added on to her debt for her borrowing which she hasn't paid back. So, to refund the money to her would effectively be giving her back the interest and charges on borrowing she hadn't paid in the first place. That doesn't seem fair and reasonable to me.

I have noted Mrs H's comments that the refund is compensation for the irresponsible lending and the damage that's caused. In one way she's right – but it's the interest and charges that is being refunded, because the lender shouldn't have allowed their customer to borrow. The consequence of borrowing is to incur interest and charges – and if someone couldn't afford to borrow in the first place, then they also can't afford the interest and charges that come with it. So, it's right for the interest and charges to be removed, but it's not right when there is still an outstanding balance for that to be refunded to the customer – because it's not money they ever paid themselves. And I think it's fair that where a person borrows money, they should repay it as they have received the benefit of items purchased with the money.

So, while I understand Mrs H will be very disappointed, I won't be requiring JDW to return the refund direct to her.

My final decision

For all the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 April 2025.

Jon Pearce
Ombudsman