

complaint

Mr F complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance) (CFS) says he's liable to repay a car loan that it told him was settled years ago.

background

Mr F took out this loan in 2004. He had trouble meeting the repayments and CFS defaulted the account in 2010. The debt was placed with debt collectors (that I'll call A) in the early part of 2013. Mr F made some payments to A but the debt was returned to CFS near the end of 2013. Mr F contacted CFS then but it couldn't locate the debt. Mr F believes the loan was written off – or repaid with some GAP insurance he had at the time. He heard nothing more until 2017 when another third party (that I'll call H) began to chase payment. Mr F thinks this is unfair and the debt should be written off.

CFS accepts it failed to contact Mr F about the loan between 2013 and 2015. It says this was due to a system error and the debt wasn't repaid or written off. It apologised to Mr F, sent him some statements that should have been provided previously and reduced the loan balance by £250, as a goodwill gesture. The debt has been sold to H and CFS says the loan balance of over £13,000 remains outstanding.

Our investigator thinks it is unlikely that GAP insurance would have paid out, in this situation. He's not persuaded the debt was written off or repaid but he's satisfied Mr F experienced distress and inconvenience as a result of mistakes CFS made. And he recommends CFS should pay Mr F another £100 compensation for that.

CFS accepted our investigator's recommendations. Mr F doesn't agree. He says CFS has a duty of care not to make negligent misstatements – and there are inconsistencies in its correspondence. He was told he was no longer liable for this debt in 2013 and relied on that. He heard nothing more until 2017 and thinks it is wrong that he's being chased to pay back the money now. He asked for an ombudsman to review the matter.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm sorry to disappoint Mr F but I've reached broadly the same conclusions as our investigator for much the same reasons.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr F doesn't dispute that he borrowed this money but says he was told by CFS he didn't have to pay it back. He thinks this was because the loan was settled by insurance or written off.

Like our investigator, I am not persuaded it's likely that GAP insurance would have covered what happened here and repaid this loan. If the loan had been settled or written off for some reason, I'd expect there to be some evidence of that – in CFS's records or in the form of paperwork Mr F would have been sent CFS and/or his insurers. I appreciate Mr F thinks he probably did receive some such correspondence at the relevant time. But, he's been unable to supply that now – as this was some years ago.

I've reviewed CFS's records very carefully. I am satisfied these cover the relevant period and I think they seem to be reasonably detailed and consistent with events. I haven't seen anything to indicate that CFS agreed with Mr F that it would write off this debt and there's nothing to suggest that the loan was paid back in some other way.

I can't be certain what Mr F was told when he contacted CFS in 2013. But, even if I accept he was led to believe the account balance was nil, I think it's more likely than not that was a mistake. I can see CFS has written off this debt for its own internal purposes. I don't think it is unusual for a lender to do that when an account is in default. And I can't rule out the fact that the person Mr F spoke to may have misinterpreted this as a nil balance.

I accept CFS should have given Mr F accurate information about his account. But, I can't fairly find the fact that it didn't do so means this debt should be written off. When we look at complaints where a financial business has told a consumer something that's not right, our usual approach is to put the consumer back in the position they would have been in if the false statement had not been made.

We don't however require the business to put consumer in the position they would have been in if the misrepresentation been true. In this case I'm afraid that means Mr F remains liable to repay the correct balance on his loan account.

I have no doubt it must have come as something of a shock to Mr F to be contacted by H earlier this year when he hadn't heard from CFS about the debt for such a long time. CFS should have kept him up to date about the account. I think it's entirely understandable that Mr F feels frustrated. And I can see he has been distressed and inconvenienced by what's happened.

Taking everything into account, I agree with our investigator it is fair and reasonable for CFS to pay Mr F £100 compensation – on top of the £250 goodwill payment it has made already – for the distress and inconvenience caused by its actions. I realise this isn't the outcome Mr F wanted and he's likely to feel let down by my decision. But, for the reasons I've given, I can't fairly require CFS to write off this debt or do anything further.

my final decision

For the reasons I've given above, my decision is I uphold this complaint. In full and final settlement I require Clydesdale Financial Services Limited (trading as Barclays Partner Finance) to pay Mr F an additional £100 compensation for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 February 2019.

Claire Jackson
ombudsman