

complaint

Ms B complains that DLC continued to pursue her to pay a debt which she had already settled after she had told it this was the case.

background

It appears that in 2001, Ms B took out a loan of £2,361 from a lender. After a few months, she fell into arrears, and in January 2003 a court judgment was entered against her for the balance and costs. The lender did not enforce the judgment, and no payments were made under it.

However, in August 2007 the lender offered to accept £1,400 in settlement of the debt payable by 14 monthly instalments of £100 each commencing on 15 September 2007. Ms B agreed to this. The lender sent her a letter dated 31 August 2007 confirming the arrangement. Under this arrangement, the last payment would have been due on 15 October 2008.

On 6 October 2008, DLC wrote to Ms B to say that the lender had assigned her debt to it, and that she owed it £1,615.85. Ms B protested to DLC that she had an arrangement with the lender under which she had to make one more payment and her debt would then be cleared. DLC's internal notes record her phone calls on 7 October 2008. From the notes, it appears she gave DLC a contact name at the lender. The note says:

"He advised she has one more payment to make and they will contact us to advise sold in error. Advised OK will set [revue] and wait to hear from them."

From DLC's notes, it does not appear that the lender did contact DLC. DLC says it attempted to confirm with the lender that the debt was settled, but received no response and did not pursue this further with the lender. Instead, in spite of Ms B's protests, it continued to press her to pay the balance of the debt and threatened enforcement of the court judgment by warrant of execution and by bailiffs entering her home and removing goods.

Eventually in October 2009 DLC decided to write off the debt and wrote to Ms B accordingly. It declined Ms B's request for compensation.

The adjudicator recommended that this complaint should be upheld. She said that it was contrary to the Office of Fair Trading's guidance on debt collection, and could constitute an unfair or improper practice, for a business to pursue debtors for outstanding debts without taking reasonable steps to verify the accuracy and adequacy of relevant data. She considered that DLC had not acted in line with this guidance, and should pay Ms B £150 compensation for the distress and inconvenience caused by pursuing her for a debt she disputed.

DLC responded to say, in summary, that while Ms B had produced evidence of the arrangement with the lender, she had not produced evidence that the agreed payments had been made. It had now located a statement of account from the lender dated 12 March 2009 which it said showed that a balance of £1,415.85 still remained due at that date. It would honour its previous decision to write off this balance. However, it did not feel that any compensation was warranted.

The adjudicator said that although DLC could now apparently show that the debt was not discharged, this did not alter the fact that it did not provide this evidence at the time it was pursuing Ms B, or take other steps to prove it was collecting a legitimate outstanding balance. It had not acted fairly or reasonably, or in accordance with the Office of Fair Trading's guidance on debt collecting, and should compensate Ms B for the distress and inconvenience it had caused her.

DLC did not accept the adjudicator's recommendation, and asked for the complaint to be reviewed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First of all, like the adjudicator, I consider that even if DLC could now show that Ms B had not settled the debt in October 2008, this would not alter the fact that its conduct in pursuing her for payment of the debt without properly checking her claim that it had been settled was unreasonable and contrary to the Office of Fair Trading's guidance. However, I am not persuaded that the statement which DLC has now produced does in fact prove that the debt was not settled.

Ms B says that after reaching her agreement with the lender, she set up a standing order to make 14 payments of £100 each on the 15th of each month, commencing on 15 September 2008. The statement shows 13 standing order payments, the first on 18 September 2008, and the last on 16 October 2008. Payments are made, and on time, in each of the intervening months except for April 2008.

It seems unlikely that Ms B would fail to pay one payment in the middle of the sequence of 14 standing order payments, but pay all the others in full and on time. She has consistently maintained that she made all the payments in accordance with the agreement. Furthermore, the message recorded in DLC's notes seems to confirm she was told by the lender on 7 October 2008 that on that date she had only one more payment to make. Accordingly, I consider it more likely than not that the April standing order payment was received by the lender, but for some reason was not credited to Ms B's loan account. Accordingly, I conclude that the debt was in fact settled in October 2008.

my final decision

For the reasons stated above, my final decision is that I uphold this complaint. In full and final settlement of it, I order Hillesden Securities Limited (trading as DLC) to pay Ms B compensation of £150.

Lennox Towers
ombudsman