

complaint

Mr C is unhappy with the way Kapama Limited has dealt with a debt it purchased from another business.

background

Mr C took out a loan in 2011 with a business I'll call M. He wasn't able to maintain his payments and fell behind on the loan. The outstanding debt of £1,047 was sold to Kapama in 2014.

Kapama contacted Mr C about the debt seeking repayment. In 2015, after some negotiation, it was agreed that Kapama would accept £100 in settlement of the outstanding balance.

Mr C got in touch with Kapama again in August 2017. He questioned whether the loan had ever been affordable and was unhappy with the charges that had been applied to the account. Kapama investigated and provided its response. It said it didn't believe there had been any wrongdoing either by it or M. Mr C was unhappy with this response and so complained to us.

Mr C has explained that in the course of complaining to Kapama he was informed that he still had an outstanding balance due. He didn't see how that could have been the case given the agreement in 2015 and so he included this point in his complaint. Mr C has said it's only after complaining to us that Kapama confirmed there was no outstanding debt. He's said he found this part of his complaint particularly distressing as it brought up all the past worries of being in debt when he thought he was in a much better position now.

One of our investigators looked into the complaint and recommended it be upheld. She said we weren't able to look at the original lending or administration of the loan as that was M's responsibility. But she did go on to look at what Kapama did when it bought the loan.

She felt Kapama should have realised the outstanding balance was predominantly charges and so shouldn't have bought or pursued the loan. She said Kapama should record the loan as having been settled in full in December 2014 (when Kapama bought it) and return Mr C's £100 plus 8% simple interest. She also recommended a payment of £50 for the distress and inconvenience caused.

Mr C accepted but Kapama did not. Instead it offered to say the loan had been settled in full, rather than partially, and remove the loan entirely from Mr C's credit file. As the parties didn't agree the case has been referred to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I believe the investigator's recommendations go too far and so I won't be directing Kapama to follow through on those. Instead, I suggest Mr C accepts Kapama's more recent offer. I've already written to Mr C separately to explain why I didn't feel I'd be able to support the investigator's findings. But I'll set out the key reasons again here.

the affordable lending complaint

Our investigator has explained why we can't look at this aspect of the complaint and this looks to have been accepted by Mr C. I don't intend to cover it in any further detail. I only mention it here for completeness.

the outstanding balance

Mr C has said it was when he contacted Kapama again in 2017 that he discovered there was an outstanding balance. I've asked him to clearly explain to me what it was that led to him to believe that was the case. He's said it was in the information they replied to his complaint with. But I've not seen anything that shows or suggests there is any more to pay.

I can see Kapama wrote to Mr C on 31 August 2017 in response to his complaint about the affordable lending and the charges added to the account. There isn't any mention of an outstanding balance in the body of this letter. Only the balance at the time the debt was acquired is stated. And at the top of the letter there's clearly a heading which says "outstanding balance: settled."

I'm then satisfied that Kapama clearly and correctly informed Mr C at this point that there was no outstanding balance it was pursuing.

There's been no further collection activity since 2015. That seems clear and neither party is suggesting there has been. If there was an outstanding balance due then I'd expect this kind of activity to continue. That it hasn't happened is a strong indicator that Kapama hasn't regarded there being an outstanding balance since 2015.

I've looked back to the complaint form and I can't see that the issue of an outstanding debt was actually included in Mr C's complaint points. This was signed in October 2017 and there was further correspondence with this service the following month. But this issue wasn't raised then either.

I'm aware there was a statement sent to Mr C in September 2016 which might have suggested there was an outstanding balance. But I also know Mr C didn't receive that statement as he'd moved house. So it doesn't seem to be a possible source of information for him. It may be that it was provided to him again when he complained to Kapama in 2017. But he also had the final response which confirmed there was no outstanding balance.

The first mention I can see of a query about a balance is in an email to Kapama in October 2017. Mr C seems to be chasing a copy of the final response to his complaint, though it had been issued a couple of months earlier. But there's nothing included in that chain of emails that actually talks about a balance. Only the final response as I've described it above. I can't then see that Kapama did ever tell Mr C he had an outstanding balance and so can't uphold a complaint about that.

settling the account

Mr C came to an arrangement to settle the account back in 2015. There's little correspondence about the arrangement though Mr C has provided some emails.

What seems clear though is that a mutually acceptable arrangement was made to settle the account. That settlement involved a significantly reduced payment of the outstanding balance.

Our investigator said she felt Kapama should have recognised the balance was made up predominantly of charges and so shouldn't have bought the debt. But I think that is going too far. We might say a business should look at the debt it's purchased and consider a much reduced settlement. That's what has happened here and so I don't find it would be fair to require Kapama to refund the £100 it accepted as settlement – and Mr C agreed to – back in 2015.

Mr C has said that he feels underhand tactics were used in getting him to agree to the £100 settlement. He's said Kapama told him he could either pay in full to have account removed from his credit file or pay just £100 but the account would remain, with the adverse information. He believes this amounts to blackmail.

I can't be sure exactly what was discussed; there's very limited evidence available. But it's true that the two options for settling the debt would lead to different outcomes in terms of how the account was recorded. It's understandable – and true – that Mr C's credit file would reflect more positively if the debt had been settled in full, rather than as a partial settlement.

I know Mr C believes Kapama have been underhand here but I'm afraid I can't see that's been the case.

resolving this complaint

I've explained above why I've departed from the investigator's findings. I can't see that Kapama has caused confusion over any balance. But over the course of our investigation Kapama has confirmed it's prepared to clear the account from Mr C's credit file where it's currently – and correctly – recorded as partially settled. This is more than I'd normally direct a business to do in such a situation. But as it's been offered by Kapama Mr C is free to accept.

my final decision

Kapama Limited should follow through with its offer and remove the account from Mr C's credit file, if he accepts this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 April 2018.

Ben Murray
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