

complaint

Mr P complains that Lowell Portfolio I Ltd (the business) instigated legal proceedings against him when it had no right to.

background

Mr P says that the business instigated legal proceedings against him for a debt it had not provided evidence that it owned. He says prior to the legal proceedings he had not been contacted by the business about the debt.

Mr P requested copies of documents to prove the business owned the debt. He says these were not provided and that although the business made reference to the deed of assignment it later admitted that this did not exist.

He says that the court case was dismissed as the business failed to provide the required documents.

Mr P says that the business failed to comply with Financial Conduct Authority (FCA) regulations which state that a firm must not suggest or state that action can or will be taken when legally it cannot be taken. He also says that he told the business that any debt was statute barred. He says that the business failed to provide evidence this was not the case and so under FCA rules it should not have demanded payment from him.

Mr P says he suffers from a mental health issue and he alerted the business to this. He says the actions of the business placed him under unnecessary stress. He wants to be compensated for this.

The business says that Mr P was sent a notice of assignment in October 2012 saying it was the owner of the debt and that this was all it was required to do.

It says that it made several attempts to contact Mr P over the following three years. It says after no contact had been made in May 2015 it transferred the matter to its legal agents to initiate legal proceedings. It says a letter before action was issued on May 2015 and as no response was received a claim was issued in June 2015.

The business says that the debt was not statute barred. It says the account was defaulted in June 2010 and a payment was made in August 2010 which was the last action on the account. It says that the claim was issued in June 2015 which was within the six year period.

It says Mr P was told that as a claim had been issued the business was not required to provide the documentation he had requested and said that documentation would be provided as directed by the court. It says Mr P was told it would not provide a copy of the deed of assignment as this was commercially sensitive.

The adjudicator said that it was agreed that Mr P had a credit card account which defaulted in 2010. She said that although the business did not provide the deed of assignment to the court the evidence showed that Mr P's account had been sold to the business in 2012. She said that it was normal that the business started legal proceedings after it had not been able to make a repayment arrangement. She said that the business said that it was usually asked for the notice of assignment not the deed of assignment.

Mr P said that the issue was whether the business was legally allowed to make a claim against him given it did not have a deed of assignment. He said that his case was dismissed by the courts because the relevant documentation was not provided. He said that this shows the business had no right to make a claim and that this goes against the regulations.

my findings

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

It does not appear to be disputed that Mr P had a credit card account and that this was defaulted in June 2010.

I have looked at the evidence provided about the activity on Mr P's account. The information provided shows that the account was defaulted in June 2010 and the last action was a payment to the account in August 2010. Given the timings here I do not find it was unreasonable for the business to seek repayment of the debt.

Mr P requested that the business provide documentation to show ownership of his debt. While I understand Mr P's wish to receive this, I find that he was sent a notice of assignment to inform him that the business was the new owner of his debt. Based on this and that he was informed by both the previous owner and the business about the ownership of his debt I find he was provided with the information he needed. As the account was in default the business also took over the reporting to the credit reference agencies which is as would be expected.

Mr P's main complaint is that legal proceedings were brought against him when he says the business had no right as it did not have the required documentation to support its claim. As mentioned above, I find that the business provided enough evidence to show it was the legal owner of the debt. Its notes show that it tried to make contact with Mr P in regard to the debt but this was unsuccessful. Based on this I do not find it unreasonable that his account was passed to its legal agents to start legal proceedings.

The business says Mr P was sent a letter before action in May 2015 and then a claim was issued in June 2015. Based on the letters I have seen, I find Mr P was provided with the opportunity to work with the business before court proceedings were instigated.

The business' legal representatives told Mr P that a copy of the deed of assignment would not be provided due to the commercially sensitive information it contained. It later said this was not available. The question is whether the business knew this would be required for the debt to be enforceable and if so whether it should have started the legal proceedings if it knew this would not be provided.

The business has said it was not aware that the deed of assignment would be required for the court proceedings. The letter from its solicitors to the court after the deed of assignment had been required stated that there was no deed of assignment and instead provided a copy of the account sale agreement. The court case was dismissed.

While I understand Mr P's comments about why the claim should not have been made, I also appreciate that the business had exhausted its process for making contact with Mr P before his account was passed to its legal agents. I do not find that the business was aware the

case would fail before the claim was made. Therefore, on balance, I do not find it did anything wrong by starting proceedings.

The business's legal agents did provide information about the deed of assignment being commercially sensitive and then said this was not available. However, as I understand the debt has now been written off I find this is a reasonable solution for this case.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 June 2016.

Jane Archer
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