

complaint

Mr S complains that despite Clydesdale Financial Services Limited, trading as Barclays Partner Finance ("BPF") writing to him to say his debt had been written off and this being confirmed by the debt management company, he later received a letter to say he still had the outstanding debt.

background

Mr S took out a hire purchase agreement with BPF to finance a car deal. He missed several payments and eventually BPF terminated his agreement, repossessed the car and pursued him for the balance of payments.

Mr S says that he received a statement from BPF in which his balance had been reduced to zero because of what BPF referred to as a "*write off debt sale*". He says that when he contacted the internal debt collection company they agreed that the debt had been written off. But later he was disappointed to find that BPF hadn't cancelled the debt and were still pursuing him for it. He said they were going back on their word and that he shouldn't have anything to pay.

But BPF explained that the debt was passed to their internal debt collection department but later recalled by BPF as the payment plan was insufficient. BPF then set the debt for a provisional "*write off debt sale*" which meant they'd sell the debt to an external debt collection company. This meant the debt disappeared off Mr S's statement but that he'd be chased by an external company who would now own it. They said there'd been no agreement with Mr S to cancel his debt and it was clear the money was still owed and they explained that they had found no evidence their internal debt collection business had told Mr S his debt was cleared. In a bid to settle the issue they paid Mr S £100 as a gesture of goodwill.

But Mr S disagreed with BPF and he was even more annoyed when 11 months after the first statement showing the "*write off debt sale*" and the zero balance, he received a further statement from BPF again saying the balance was zero. He said they were doing all they could to demonstrate he owed nothing but to dispute this later. So he referred his complaint to this service.

Our investigator agreed with BPF. She didn't think there was any automatic right to have the debt written off even if there had been a mistake by BPF. She explained that the debt would still be due. But she didn't think it was fair of BPF not to explain what the "*write off debt sale*" was and she felt they should have notified Mr S of this. So she thought it would be reasonable for BPF to pay Mr S a further £150 to compensate him for the distress and inconvenience the issue had caused him. BPF agreed to this but Mr S didn't. He wanted an ombudsman to make a final decision on his complaint.

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 know it will disappoint Mr S but I agree with the investigator's view. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

I'm satisfied with BPF's explanation of what the "*write off debt sale*" meant. They appear to have decided to sell the debt, which they are able to do, but the confusion has arisen because they didn't keep Mr S informed about their plans. This would have been distressing for Mr S and I therefore agree with the investigator that further compensation is reasonable. I note that BPF has agreed to pay an additional £150 and I'm going to be asking them to do so.

But I don't think the fact the statements showed a zero balance means that the debt should be written off. When looking at cases involving an alleged false representation, our usual approach is to put the consumer back in the position they would have been in, had things happened as they should have done (i.e. that Mr S would have only had confirmation of the outstanding sum he was expected to pay). Our approach isn't to put the consumer in the position they would have been in, had the misrepresentation been true. That is, it doesn't necessarily follow that because BPF's documents showed a zero balance this means Mr S's debt should be written off.

I've not seen anything to suggest BPF agreed with Mr S that the debt would be written. In fact, it appears any direct communication with BPF has been to confirm otherwise.

So I think BPF is entitled to claim the monies due and has not lost their right to do so because of the paperwork Mr S refers to. I therefore think Mr S still owes this money under the terms of his agreement with BPF.

my final decision

For the reasons I've given above I uphold this complaint in part and tell Clydesdale Financial Services Limited to pay an additional £150 to compensate Mr S for the distress and inconvenience their actions have caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 January 2019.

Phil McMahon
ombudsman