

## **complaint**

Miss C complains that she's being pursued by Link Financial Outsourcing Limited for a debt that's unenforceable. She's being helped with her complaint by a representative.

## **background**

A debt that was owed by Miss C to a third party was transferred to the current creditor in 2004 and Link Financial was appointed to collect the debt. It wrote to Miss C in April 2017 because the repayment plan agreed in relation to the debt had been cancelled due to non-payment. Her representative asked for a copy of the signed credit agreement and an account statement. Link Financial said that it was unable to provide a copy of the signed agreement because the original creditor no longer had a copy of it but it said that Miss C was still liable for the debt. Miss C wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She said that:

- Link Financial isn't the creditor but is employed to collect the debt – and it had informed Miss C (and her representative) of the identity of the original creditor;
- she didn't think that the request for a signed copy of the agreement had been made correctly – but Link Financial had told the representative that it wasn't able to provide a signed copy of the agreement;
- only a court can decide whether or not a debt is enforceable - but even when a debt is unenforceable, a creditor can ask a debtor to pay what is owed and to take other actions about the debt;
- Link Financial had provided an account statement for the year to November 2017 and she considered it to be adequate proof of the balance outstanding;
- it doesn't have a copy of the notice of assignment that was sent to Miss C in 2004 but Miss C continued to make repayments after the debt was assigned to the current creditor; and
- she didn't believe that Link Financial's letters were aggressive – but were measured and appropriate for their purpose.

So she concluded that Link Financial hadn't acted incorrectly.

Miss C's representative – on her behalf - has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- Link Financial is clearly acting on behalf of the current creditor who has accepted that the credit agreement is unenforceable;
- Miss C doesn't agree that the alleged account balance is collectable, the amount sought is disputed and Miss C doesn't accept that there is a balance outstanding;
- Link Financial is unable to provide any evidence that the current creditor is contractually entitled to the sum sought;
- the statement of account doesn't provide any evidence of the sum outstanding and is just a statement of a sum Link Financial says is outstanding; and
- Miss C considers that the debt has now been repaid and Link Financial has been unable to prove otherwise.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We offer an informal dispute resolution service. We try to resolve complaints by customers about financial businesses by looking at

what we consider to be fair and reasonable in the circumstances. Although we do take account of applicable law and regulations we also consider the overall situation. So it is possible that a court would reach a different outcome to the decision that I've made.

The debt was owed to a third party and was assigned to the current creditor in 2004. Link Financial was appointed to collect the debt on behalf of the current creditor. The credit agreement would've been signed before 2004 and the third party says that a copy of the agreement is no longer available. That means that the credit agreement is unlikely to be enforceable in court. But that doesn't mean that the current creditor isn't entitled to take steps to recover the debt that is due. And I consider that it can continue to do so in these circumstances.

A copy of any notice of assignment that was sent to Miss C isn't available. But Miss C has made payments to the current creditor since 2004 – so I'm satisfied that she was aware of the debt and that it had been assigned to the current creditor.

Link Financial has provided Miss C with a statement of her account for the year to November 2017 which shows that she owed £1,272.55 at that time. It has also provided this service with a copy of the account history since 2004 and it has now been provided to Miss C's representative. I consider that Link Financial has provided enough evidence to show that Miss C owes that amount and that it's entitled to take action to recover the debt from Miss C on behalf of the current creditor.

I'm not persuaded that Link Financial's communications with Miss C (or her representative) have been aggressive or unacceptable. I consider them to have been fair and reasonable for the purpose of collecting the debt that she owed. And I'm not persuaded that there's enough evidence to show that Link Financial has acted incorrectly in its dealings with Miss C. So I find that it wouldn't be fair or reasonable for me to require it to take any action in response to her complaint.

### **my final decision**

For these reasons, my decision is that I don't uphold Miss C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 14 June 2018.

Jarrold Hastings  
**ombudsman**