

complaint

Mrs T has complained via a third party that Link Financial Outsourcing Limited has unfairly pursued her for a debt it was servicing for another company.

background

Mrs T took out a credit card with a bank and arrears accrued on the account of just under £3,000. Mrs T agreed to pay the debt off at the rate of £19pm via a third party in an informal arrangement.

In September 2016 the bank sold the debt on to another company who appointed Link Financial to service the account. The company wrote to Mrs T in October 2016 explaining the position and said that it would abide by the financial arrangement in place.

In January 2017 Link Financial received a letter from the third party that had been forwarding payments on behalf of Mrs T informing it that the arrangement had ended.

In September 2017 Mrs T's representative wrote to Link Financial asking for a number of documents including the credit agreement. Link Financial contacted the bank and asked for further information and documentation about the debt.

In December 2017 Link Financial wrote to Mrs T saying that at the current time it wasn't able to provide the credit agreement and that the debt was unenforceable until it could. Link Financial said that Mrs T was still liable for the debt.

Further letters were sent by Mrs T's representative disputing the balance and asking for copies of statements, documents relating to the management of the account, the notice of assignment and Mrs T's financial standing at the time the credit card had been taken out.

In July 2018 Mrs T's representative made a formal complaint to Link Financial on the grounds that the debt was unenforceable and the credit card account itself had been opened incorrectly, irresponsibly and unfairly as Mrs T had been a vulnerable consumer.

Link Financial didn't uphold Mrs T's complaint. It said that although it couldn't comply with the section 77/78 Consumer Credit Act 1974 request to provide the credit agreement meaning that the debt was unenforceable it was still able to ask Mrs T to clear the debt with an affordable payment plan.

Link Financial also said that the legality of the credit card agreement was a matter for the bank rather than itself to address.

Mrs T was unhappy at Link Financial's response and complained to this service via her representative. Mrs T representative also complained that Link Financial had been aggressive in its communications with Mrs T and it was acting unfairly in pursuing the debt. Our investigator didn't recommend that Mrs T's complaint should be upheld. He said it was a matter for the courts to determine whether a debt was unenforceable but this service could look at whether a company had acted fairly.

Our investigator said that Link Financial had contacted the bank and asked for various documents and while some had been provided the original agreement wasn't. Link Financial had then confirmed it was treating the debt as unenforceable which was reasonable.

However, as Link Financial was still able to ask informally about paying off the debt our investigator didn't think it had acted incorrectly in doing so.

Our investigator said that Mrs T's representative had requested documents that weren't relevant to Link Financial as the debt had been purchased several years after the credit card agreement had been taken out. Link Financial had properly provided the notice of assignment to Mrs T.

Our investigator said that Link Financial wasn't responsible for any complaint about irresponsible lending and that would be a matter for the bank to answer.

Mrs T disagreed with our adjudicator's view. Her representative said that due to the very limited information that was available about the credit card account it was unfair for Link Financial to pursue it. Mrs T's representative raised Paragraph 5 of the OFT Guidance on S77, S78 and S79 of the Consumer Credit Act 1974. This says that the OFT would first expect that a creditor or owner of a debt to take steps to check if there was an agreement in place and in particular whether there was in fact any monies outstanding under it.

As the parties were unable to agree the complaint has been passed 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.

Mrs T's representative has raised a number of issues on her behalf. I looked firstly at whether the credit card account should have been opened at all as Mrs T was financially vulnerable at the time. I have taken into account that the decision to lend was made by the bank and not Link Financial and so I can't reasonably say Link Financial holds any responsible for that.

I accept that there isn't much paperwork available about the credit card account and, where evidence is missing or contradictory, then I have to decide what I think is the most likely thing to have happened taking into account the evidence I do have available. Here, as outlined in the letter of complaint sent to Link Financial on behalf of Mrs T in July 2018, I've seen that it isn't disputed that Mrs T opened the account. And I've also seen that at the time the debt was sold by the bank Mrs T had agreed informally to make monthly payments to clear the outstanding amount. I think this shows Mrs T had accepted the debt was hers and I've seen no evidence that Link Financial has added any charges or interest to the debt.

I've seen that Mrs T's representative requested a copy of the original credit agreement and this couldn't be provided by Link Financial. It's a matter for the courts to decide whether or not a debt is enforceable so I'm not able to comment on that, but I don't think Link Financial has tried to mislead Mrs T about having a copy of the document when her representative asked for it. And, as on the evidence I've seen, I'm satisfied that Mrs T owed this debt which Link Financial was servicing on behalf of the company to which it had been assigned. I don't think it has acted unfairly in asking her to repay it.

I've seen that Mrs T's representative has said that Link Financial's contact with her has been aggressive in tone. I've looked at the contact notes provided by Link Financial and can see it has phoned her on one occasion when she informed it that she had instructed a third party to act for her. It also appears from the notes that it wrote once to Mrs T in February 2017

when it was notified the informal payment arrangements had ended, and wrote a further two letters in response to letters from her representative in December 2017 and July 2018.

I can't reasonably say on the evidence I have seen that Link Financial wrote an excessive amount of letters to Mrs T nor, from the letters that I have seen, were the contents of these letters inappropriate or aggressive. Mrs T also hasn't provided any details of contact or copies of letters which she says were harassing and bullying.

So for the reasons set out above I'm not upholding Mrs T's complaint.

my final decision

As set out above I'm not upholding Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 22 June 2020.

Jocelyn Griffith
ombudsman