

complaint

Mrs K complains that 1st Credit Limited unfairly sent letters chasing her debt, including the threat of court proceedings, far too early and without first assessing her situation properly.

background

1st Credit bought Mrs K's debt from her previous lender. It sent a notice of assignment about the debt to Mrs K on 16 May, and on the same day sent Mrs K a letter asking her to contact it about making payment.

A few days later, 1st Credit sent a second letter to Mrs K, with the heading 'County court Proceedings Being Considered'. Mrs K received a telephone call from 1st Credit, and asked it to contact her in writing only.

Mrs K wrote to 1st Credit to complain and told it she had been in dispute with the original lender about the debt. She attempted to fax the letter three times to 1st Credit, before using the post.

1st Credit sent a further letter to Mrs K, again mentioning court proceedings and also legal costs and interest. Mrs K wrote again to complain, and 1st Credit sent a final response to her complaint in June.

1st Credit did not accept that it had done anything wrong, and felt it had given Mrs K a fair opportunity to contact it with her repayment proposals. As matters remained unresolved, Mrs K brought her complaint to this service where it was investigated by an adjudicator.

The adjudicator gathered additional evidence about what had happened. After considering the overall evidence, she concluded that Mrs K had not been unresponsive and that 1st Credit's correspondence was, in part, inappropriate. The adjudicator felt that it would have been better if 1st Credit had made more effort to take steps to find out Mrs K's financial position and work with her towards a suitable repayment before plan, before mentioning court proceedings.

The adjudicator did not, however, consider that the letters had been intimidating. Overall, she considered that 1st Credit should pay Mrs K £75 for the additional trouble and upset caused by the way the correspondence had been handled.

1st Credit did not accept the adjudicator's conclusions. It wrote with detailed further representations, the main points of which I summarise:

- Mrs K did not respond promptly to its letters, and it tried on numerous occasions to engage with her. It was willing to work with her. It received many faxes during the period in question, and cannot see why Mrs K's fax would not have been received if sent. There was probably a sending problem with the fax at Mrs K's end and a finding of fact should be made about that.
- Mrs K would not discuss her debt over the phone, even though she had the chance to do so and could at least have asked for the debt to be put on hold.
- Saying that it was considering court proceedings was not disproportionate, given the significant length of time since Mrs K had made a payment towards this debt to her

original lender. Mrs K had chosen not to engage and it was entirely reasonable to mention court proceedings.

- The ombudsman service should be looking into whether there was any evidence that Mrs K had previously made proper efforts to repay her debt, whether she submitted income and expenditure information and if she had sought debt advice. The adjudicator seems to have focussed only on 1st Credit's responsibilities and failings – not on Mrs K's.
- 1st credit was not trying to pressure Mrs K into paying more than she could afford. It is wrong and damaging for the adjudicator to suggest it did. 1st Credit cannot be held responsible if a customer does not respond promptly to letters, and will not say anything on the phone.
- The ombudsman service should be impartial, and should comment on all actions relevant to the complaint – which would include Mrs K's inaction on the debt and whether she made enough effort in the matter.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Once 1st Credit bought Mrs K's debt, and told her about that, it was allowed to communicate with her about the debt. Here, 1st Credit seems to have got off to a slightly difficult start by also notifying Mrs K about the assignment of another debt which was nothing to do with her.

1st Credit was entitled to ask Mrs K about repaying the debt she owed, with a view to finding out about her financial position and arriving at a suitable repayment arrangement. Mrs K was entitled to ask that those communications be in writing, rather than by phone.

Mrs K has provided persuasive evidence that she attempted to fax her response on three occasions, though these evidently did not reach 1st Credit. Whether that was because of a fault at Mrs K's end, or at 1st Credit's end, is not material and I do not need to make any finding on that. The point is that I am satisfied Mrs K did not simply ignore 1st Credit.

The length of time since Mrs K had last made a payment to the original creditor did not, in my view, mean that 1st Credit had no responsibility to ask about her financial position and attempt to arrive at an arrangement, before making such clear references to court proceedings and the attendant costs and consequences of that.

It is 1st Credit, and not Mrs K, that is the professional in this matter and is required to act within the relevant regulatory rules and principles. That said, the adjudicator accepted that 1st credit's letters had not been intimidating or threatening, and was satisfied that 1st Credit could lawfully pursue the debt. The adjudicator also made it clear that she would expect Mrs K and 1st Credit to work together to deal with the debt. So the adjudicator considered acts and omissions of both parties, when arriving at her suggested settlement.

Overall, I consider that the adjudicator's recommendation represents a fair and proportionate settlement in this particular case.

my final decision

My final decision is that I direct 1st Credit Limited to pay Mrs K £75.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs K to accept or reject my decision before 15 December 2014.

Jane Hingston
ombudsman