

complaint

Mrs R complains that Intrum UK Limited is chasing her for a debt which was settled. She wants the record removed from her credit file and confirmation she does not owe the debt.

background

Mrs R is represented by Mr R, a relative, and as he has been actively involved in issues which are directly relevant to the complaint I'll mostly refer to him.

Mr R tells us that the debt originally belonged to a company I'll call B. And that some years ago it had been the subject of complaint, against B, to this service. Subsequently, Mr R tells us that he believed the debt to be settled as a result of a conversation he'd had - when acting as Mrs R's representative - with a director from B. In that conversation Mr R says he was told the debt was settled. And he says B has since admitted making mistakes and had agreed to pay £300 compensation for poor service. On behalf of Mrs R he wants Intrum to cease collection activity and accept the debt has been settled.

Intrum told us it had been assigned the debt, by B, in September 2015. In October 2015 it said Mrs R had informed it she believed the debt was settled. Following enquiries, it said B had confirmed that the debt was not settled and that a balance of £3,461.52 remained. Intrum said that in September 2018 it had offered Mrs R the chance to settle the debt with a discount of 50% but this had been rejected. It said the default, first recorded by B in 2013, would remain until November 2019. But that if the debt was settled the entry would be updated to reflect this.

Our adjudicator did not recommend the complaint should be upheld. She said the debt had been subject of a complaint to this service. And that a final decision had been issued, in 2014, which had meant the debt would still need to be repaid. She saw the debt had been sold to Intrum in September 2015. In her view, B had always stated the debt was still payable. She accepted B had paid £300 for service failures - but said there'd been no mention of the debt being marked as settled. So she wouldn't be asking Intrum to do anything else.

Mr R, on behalf of Mrs R, didn't accept this and insisted he'd been told by the director that the debt was settled. And he later queried that if the debt (still) exists if it would be statute barred. As it's not been possible to resolve this complaint an ombudsman has been asked to make a final decision.

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'm sorry that Mrs R is still having to deal with the issues surrounding this debt and I can understand her concern that - even after several years - the matter remains unresolved.

In order to fully explain my decision I need to give a brief summary of the historical background. And I also need to explain the limitations to which my decision is subject. I accept some of this will come as a disappointment to Mrs R.

The debt was originally owned by B and in 2014 was the subject of a complaint, by Mrs R, to this service. The complaint was not upheld and as far as this service was concerned the debt remained repayable. Subsequently the debt was passed on to collection agents but was recalled by B later in 2015. The debt was subsequently sold, in September 2015, to Intrum (which was then known by another name).

I've seen a letter sent by this service in March 2015 - addressed to B - which asks it to inform Mrs R of the status of the debt - that is whether it was settled or if there still remained an outstanding balance. Unfortunately that request was not actioned and B has subsequently agreed to pay £300 compensation to Mrs R for its error. But it has not accepted there was any agreement to treat the debt as settled.

I'm also aware that Mr R states he had a conversation with a director of B, in April 2015. And it's during that phone call that he says it was confirmed the debt was settled. Unfortunately, there does not appear to be any recording of this call - so I'm unable to say what exactly was said or agreed.

In trying to resolve complaints, we listen to what the parties tell us, and we look to documentary and other evidence to help us reach a decision. This is in combination with our fair and reasonable remit. Where evidence is unclear, incomplete or contradictory - as some of it is here - I make my decision on the balance of probabilities.

The origins of this debt are not in dispute and the main issue in this complaint is whether the debt has been settled (or deemed to be) and whether Intrum is entitled to continue to seek repayment.

I'll deal briefly with the issue of whether the debt has been settled. That's a matter which is not within my jurisdiction to determine. I don't apply the law - directly - although I do take it into account. So the validity of a debt and whether it is or is not enforceable is a matter for a court to decide.

What I have to determine in this complaint is if Intrum has acted reasonably in trying to collect the debt. And that obviously touches on the issue of whether I think it has reasonable grounds to believe that the debt exists and it's entitled to collect it. And I'll make it clear that I do believe it has such grounds. I'll explain why.

The key issue is whether the debt was settled or was to be treated as settled prior to it being sold and assigned to Intrum. And Mrs R's case is that Mr R had been assured, in his conversation with B's director, that the debt was settled. It's my understanding that the basis of this was that the amount that had already been paid exceeded the cost price of the item that had been acquired through a finance agreement. So I infer that interest and/or charges accounted for the additional amount owed.

I'm aware Mr R thinks that if his account of the contents of the telephone conversation is not completely accepted it amounts to accusing him of lying. But that's not the case.

It's quite a common feature of complaints dealt with by this service that issues turn on conversations which are not evidenced by any other means than what the parties recall. And I entirely accept that - following the conversation with the director - Mr R's *understanding* was that the debt had been settled. What I'm not able to accept is that this was a correct understanding.

Unfortunately the recollection of the other party to the conversation is not known. But as a director I wouldn't expect the individual concerned to have direct knowledge of - or to make decisions relating to - specific details of a case. So I'd expect they'd have to rely on business records and system notes - rather than personal knowledge - whenever they discussed an individual case. And there's evidence that B's system notes might have been misleading.

B offered £300 compensation, in 2017, to Mrs R following errors relating to this account. One of the errors it accepted was failing to properly process the recall of the debt from its collection agents prior to selling the debt to Intrum. And it said this might have led to confusion about the status of the debt. But in the same letter acknowledging that mistake, it also confirmed that the debt remained repayable. I'm not finding as a fact that Mr R might have been inadvertently given incorrect information - but it remains a possibility. But even if he was misled - and I'm not saying he was - that would not be the fault of Intrum.

I'm sure that when Intrum acquired the debt it did so reasonably believing it was able to properly seek repayment. And in my view, nothing that's happened since alters that. When Mr R complained, Intrum made enquiries with B. And it was told that as far as B was concerned the debt was still repayable. As it's not suggested the debt has been repaid I don't think that Intrum is being unfair when it still seeks to collect the debt.

I'll briefly deal with an issue raised by Mr R when he sought a final decision. That is the issue of whether the debt is now statute barred.

I've already explained that's not something that I can decide. But it may assist Mr R to be aware that the Limitation Act, 1980 is relevant legislation. And that it is not simply the date at which debt is incurred which determines if a debt is statute barred. Time limits are usually calculated from either the date the debt was incurred; the last payment or the last acknowledgement of the existence of the debt. And it is normally the latest of any of these occurrences from which calculations run. Given there seems to be an acknowledgement of the debt in 2015 - possibly later - I've no reason to believe the debt is statute barred. I'd also add that a statute barred debt does not mean a debt is not open to collection. It simply means it can't be enforced through the courts.

In summary, I don't find that Intrum has done anything wrong in seeking to collect this debt. And whilst I know it will be a disappointment to Mrs R I'm not upholding this complaint.

my final decision

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 26 July 2019.

Stephen D. Ross
ombudsman