

complaint

Mr and Mrs B complain that 1st Credit Limited (the business) is pursuing them for a debt they say is statute barred. They say that they have been given incorrect information about the timing for a debt being statute barred and given different information about the outstanding balance.

background

Mr and Mrs B entered into a fixed sum loan agreement in 2005. Regular repayments were made up to and throughout 2008. Further payments were made during in 2009. After this payments were made in April 2010, September 2011 and November 2013.

The business has provided evidence that a default notice was issued on the account in April 2010 and says a default was recorded that year.

The business acquired the debt from the previous owner in June 2013. The balance acquired was £8,965.76. Information provided by the previous owner shows the account as being closed in June 2008 stating "SETT BY CUST" and "REBATE A". The business says that these were internal entries by the previous owner and confirmed the account was not settled.

Mrs B says she does not know why she stopped making the payments and that she thought the loan had been paid off.

Mr B was contacted by the business about repayment of the loan. He contacted the business in October 2013 asking for a loan statement. This was not provided until October 2015.

Mr B says that the debt is statute barred as the first missed payment was in 2005. He also says that the default should have been recorded at that time not years later.

The business says that the account is not statute barred as a payment was received in September 2011. It says that it contacted the previous debt owner following Mr B's contact in 2013. It says the statements it received in October 2013 did not reconcile with the balance they had on their records. Because of this they went back to the previous owner. It says the correct statements were provided to Mr B in October 2015.

The business says that Mr and Mrs B's account defaulted with a balance of over £12,000. It says this balance included all future interest and that after the relevant rebate was applied the balance was £9,206.07. A payment was then received in September 2011 which reduced the balance to £8,965.76. This is the amount the business acquired in June 2013.

The adjudicator said that Mrs B had provided copies of her bank statements which showed a number of payments being made after June 2008, when the previous owner's statements showed the account as closed. She said that excluding the September 2011 payment which had been acknowledged, Mrs B had made payments totalling £4,085.44 and that these did not appear to have been credited to her account. She said that these payments should be deducted from the outstanding debt.

The adjudicator also recommended that the business pay Mr and Mrs B £100 compensation for the long delay in providing the statement after Mr B's request.

The business agreed to pay £100 compensation. It said it would need to establish with the previous debt owner what had happened regarding Mrs B's payments. It contacted the previous debt owner which said that all the payments identified by the adjudicator apart from the payment made in November 2013 had been included in the sale balance. The business said it had not received the November 2013 payment.

It was agreed that this case would go to an ombudsman for review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconsistent or contradictory, I have made my decision based on the balance of probabilities - that is what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The business acquired the debt in June 2013. Mrs B has provided copies of her bank statements which show that there was one payment after this date, in November 2013. The business has said it has not received this and the previous owner has also said it has not received this payment and so this has not been credited to the account. Mrs B's statement noted the payment was made to the previous debt owner. Based on this I find that this amount should be credited against the outstanding balance on Mr and Mrs B's account.

I have looked at the evidence provided by Mrs B and this shows that she made regular payment through 2008 and further payments in 2009. After this payments were made in April 2010 and September 2011 (as well as November 2013 which has been dealt with above).

The correspondence regarding this debt notes the last payment received by the previous debt owner was in September 2011. However the loan statement provided shows regular payments up to June 2008 at which point there is a balance of £12,977.85. There are then entries which the previous owner says were internal entries.

The business has said the information it has been provided with show that when the account was defaulted the balance was £12,977.85 and that this included all future interest. Deducting the future interest and the payment which was received in September 2011 gave a balance of £8,965.76 and that this was the balance it acquired.

The information in this case is contradictory as the previous debt owner has said all payments were received up to and including September 2011 but the loan statement provided shows the acquired balance (less the rebate for future interest and the September 2011 payment) as being achieved in June 2008.

Mrs B has provided evidence of her payments after June 2008 and based on the evidence I have seen, I find, on balance, it is more likely than not that these payments were not credited against Mr and Mrs B's debt.

I accept that the payment apart from the one made in November 2013 occurred before the business acquired the debt. However I find that the payments Mrs B has shown she made after June 2008, excluding the one made in September 2011 which has been acknowledged, should be offset against the outstanding debt.

Mr B has also raised concerns about when the default was recorded. Evidence has been provided supporting that a default notice was issued in 2010 and the default applied after this. Payments were being made during 2009 but then stopped (apart from the three additional payments made in April 2010, September 2011 and November 2013). The default was not applied by the business but by the previous debt owner and so I do not find that the business is required to do anything further in this regard.

my final decision

My final decision is that 1st Credit Limited should credit the outstanding account of Mr and Mrs B with the £4,085.44 of payments that were made by Mrs B and have not been evidenced as being credited to the account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 18 August 2016.

Jane Archer
ombudsman