

complaint

Ms M has complained as she thinks Paragon Finance Plc, trading as Idem Servicing, is chasing her for a debt that is unenforceable.

background

Ms M made a request to Idem Servicing under section 77/78 of the Consumer Credit Act 1974 (CCA) for information about the debt. Idem Servicing has accepted that it is unable to provide the required information, so Ms M thinks the debt is unenforceable and she shouldn't be chased for it anymore. But Idem Servicing says the balance of the debt is still outstanding and payable, so it will continue to pursue Ms M for it.

Our investigator didn't recommend that the complaint be upheld. Ms M didn't accept our investigator's recommendation and so 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.

Having done so, I've decided not to uphold Ms M's complaint. I'll explain why below.

The information I've seen on this case relates to the debt on four accounts that Idem Servicing has been communicating with Ms M about. Idem Servicing has said that two of these accounts, ending 1436 and 9617, have now been paid in full, and so I won't address these further.

For the remaining two accounts, ending 7268 and 5608, Ms M's representative says she has disputed the debt. She's also made a request under section 77/78 CCA for a copy of the credit agreement.

Under section 77/78, when asked to do so, the creditor must supply the debtor with a copy of the executed credit agreement, as well as certain other information about the state of the account and amounts due. If the creditor can't do so, section 77/78 says it can't enforce the agreement.

Idem Servicing accepts that it can't provide a copy of the agreement for accounts 7268 and 5608. But it isn't the role of the Financial Ombudsman Service to decide whether a debt is legally enforceable. Only a court can decide this. We can look at whether it's fair for a debt collector to continue asking for payments or to continue taking steps to recover the money though.

In this case, Idem Servicing has provided a reasonable amount of information about the debts, including the dates the accounts were sold to them, the outstanding balances when they were sold and the most recent outstanding balances of the accounts. It's also provided statements for both accounts showing the payments made towards them going back several years.

And Ms M has said she's been making payments towards the accounts. So it doesn't appear that she disputes that the debts were owed by her at some point. But she has said that,

given the payments she has made, she thinks the debts should have been settled some time ago.

The statements for both accounts show regular payments being made, both by cheque and then through a debt management company, which suggests that Ms M felt the balances were correct, at least initially. These payments have been correctly reducing the outstanding balances on the accounts. And I can't see that any interest or charges have been applied to the accounts, or any other errors have been made affecting the balances, since Idem Servicing has been responsible for them. So I think it's likely that the current outstanding balances shown are correct.

Given the information Idem Servicing has provided about the accounts, and the fact that Ms M has been making payments towards them for a number of years, I think it's likely that Ms M is responsible for the debts. And, from the statements Idem Servicing has provided, it also seems likely that Ms M's previous payments have been correctly added but that there are still outstanding balances on the accounts.

As I explained above, I can't comment on whether the debt is legally enforceable. But as I think Ms M is responsible for the debt and there is still an outstanding balance, I think it's reasonable that Idem Servicing is requesting payment from her. While Idem Servicing can't provide copies of the agreements, I don't think this has disadvantaged Ms M or means that it would be unreasonable for Idem Servicing to continue to pursue her for the debt.

Idem Servicing has said that the debt for account 5608 has now been sold to another company. And so it will now only be pursuing Ms M for the debt for account 7268.

Ms M hasn't given us much detail about why she feels Idem Servicing has acted aggressively when pursuing the debt. And I don't think that the letters I've seen from Idem Servicing to Ms M about the debt are aggressive in their tone. They simply explain that no repayment plan has been agreed and ask Ms M to contact it about the debt.

As I feel Idem Servicing is still entitled to chase Ms M for repayment of the debt, I don't think the fact that it is sending letters is unreasonable. And I don't think the letters I've seen are frequent enough to amount to harassment. Idem Servicing has also said that the last time it phoned Ms M about the debt was in October 2017.

Ms M has asked that Idem Servicing send all communication about the debt to her representative, rather than her. But her representative can't make repayments on her behalf. So I think it's reasonable that Idem Servicing has continued to contact her directly about the debt.

I don't think there's enough evidence for me to say that Idem Servicing acted aggressively or unreasonably when chasing the debt. Or that it should have to pay Ms M any compensation as a result.

my final decision

For the reasons given above, I don't uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms M to accept or reject my decision by 10 October 2019..

Alan Millward
ombudsman