

complaint

Mr R complains that Debt Managers (Services) Limited (DMS) are wrongly chasing him in relation to a disputed balance with a third party business. He asks for the debt to be written off, his credit record amended and an apology.

background

On 15 August 2016, a third party business, I'll call Business N wrote to Mr R to advise him it had assigned an outstanding balance on Mr R's account of £1,104.09 to DMS. It began contacting Mr R in an attempt to secure payment.

Mr R says he wasn't aware he had an outstanding balance and although he acknowledged he had ordered from Business N, he didn't enter into a credit agreement with it. He asked DMS to provide evidence that the outstanding balance was his.

DMS says it responded and provided copy statements it had requested from Business N. Throughout 2017, Mr R requested more evidence that this debt was in his name. DMS provided all the information provided by Business N, but Mr R remained dissatisfied.

In April 2018, DMS sent the account to its solicitors for legal action. In August 2018, Mr R's representative complained to the solicitors. She said there was no evidence this debt was owed by Mr R and asked it be written off. On 11 August 2018, a final response was issued. Mr R's complaint wasn't upheld. It provided Mr R with statements detailing order dates, payment dates and amounts, items ordered and a copy of the signed credit agreement.

Mr R remained dissatisfied and referred his complaint to this service. An investigator looked into things for Mr R. She looked carefully at all the information provided by both parties and requested information from Business N. She explained she was only looking at whether DMS had acted fairly and reasonably in pursuing Mr R for the outstanding balance. She could see DMS had been attempting to contact Mr R since 2016. She looked at all the documentation it provided to Mr R including the credit agreement, statements and payment amounts. She found, on balance, there was sufficient evidence that the outstanding balance was Mr R's and DMS hadn't done anything wrong in attempting to secure payment.

Mr R raised a number of concerns. He said Business N hadn't sent him any correspondence to suggest it had sold the debt to DMS. He also didn't agree the statements provided enough detail at best he feels they were vague with missing information.

Our investigator responded. She explained she had seen a copy of the letter sent from Business N, advising Mr R the outstanding balance would be sold to DMS. She confirmed it had been sent to the address it had on file. She also had seen copies of contact records which showed Mr R had been in April 2011, to change his contact details and again in September 2011 to explain he was in financial difficulty. Business N invited Mr R to make an offer of payment but Mr R didn't enter into a repayment plan with it. Concerning the statements, she explained this service can't look at how a business writes a statement, as that is a commercial decision. She said the purpose of the statement is to show how much is owed and when payment should be made. She found the statement to be correctly addressed and had all the relevant information and so she remained of the view DMS had provided enough evidence the debt was owed by Mr R and it was pursuing him fairly for payment.

Mr R raised a number of concerns. He queried the date on the Notice of Assignment (NOA) and why the statement he'd received from DMS was different to the one sent by Business N. He also challenged the validity of the debt given the solicitors decision to return it to DMS for collection rather than issuing a legal claim in court.

Our investigator issued a further view addressing Mr R's concerns. She agreed the date on the NOA was incorrect, but after further investigation, she concluded this was an administrative error and as it had been sent to, Mr R, at the correct address she remained of the view Business N had notified Mr R of the assignment. With regard to the difference on the statements and whether this constituted a data protection breach, she explained this was a matter for the Information Commissioners Office and not this service. She also explained the decision taken by DMS and the solicitors about whether or not it would issue legal proceedings were a matter for them. She remained of the view, that DMS had acted fairly and reasonably in pursuing Mr R for the outstanding balance and so didn't ask it to do anything further.

Mr R disagreed. He asked for an ombudsman 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. I've looked at all the information provided by both parties, and Business N afresh. Having done so, I've reached the same view as the investigator. I appreciate this will come as a disappointment to Mr R, I'll explain why.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

At the outset, I think it's important to say that as the complaint is about DMS, I'm only looking at whether DMS have fairly pursued Mr R for an outstanding balance. I'm not looking at any of the actions of Company N, although it has provided copies of the documentation it sent to DMS.

From what I've seen, I'm satisfied that when the account was sold to DMS, the outstanding balance on Mr R's account was £1,104.09. This relates to an outstanding balance on an account held by Company N. DMS has said that it relied on information supplied by the original creditor and that it acted in good faith.

I'd expect DMS to take steps before pursuing a debt, such as (amongst other things) completing a proper person trace and checking what the debt relates to. In circumstances where the debt is disputed, such as this one, I'd expect DMS to make further enquiries of the original creditor to satisfy itself that the debt is justified before it took steps to pursue it.

I'm persuaded that it has done so. It has provided both Mr R and this service with copies of documents R including the credit agreement, statements and payment amounts. I'm in agreement with the investigator that on balance, there is sufficient evidence that the outstanding balance was Mr R's and DMS hadn't done anything wrong in attempting to secure payment

While the ombudsman service takes account of the relevant law etc., we're in the end obliged to decide complaints by reference to what we think is fair and reasonable. My understanding is that Mr R doesn't deny he had an catalogue account with Company N. The available evidence has persuaded me, on the balance of probabilities, that the debt was assigned to DMS and that the amount said to owe is correct. That being so, I can't fairly require DMS not to ask Mr R to repay the debt or write it off.

As I have already said my decision is with regard to the actions taken by DMS, this doesn't prevent Mr R from raising a complaint with Company N, should he wish to do so.

my final decision

For the reasons I have given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 August 2020.

Wendy Steele
ombudsman