

complaint

Ms D complains that Black Horse Limited sold her debt from a credit agreement on to a third party, when she was maintaining an agreed repayment plan.

background

Ms D took out a credit agreement with Black Horse (then Lloyds Bowmaker) in 1998. The money was to pay for replacement windows that Ms D was having installed at her home.

Ms D was unhappy with the quality of the work done in replacing the windows and asked Lloyds Bowmaker to withhold paying the balance of the agreement. However, the money was paid to the supplier on the understanding that an inspection would be carried out on the completed work and a report would outline any remedial work needed.

The supplier responded to a number of the disputed issues that Ms D had raised and agreed to carry out some of the remedial work and further investigations. Ms D made the decision to withhold any repayments to Lloyds Bowmaker until the work on the windows was completed to her satisfaction.

Unfortunately, the original supplier of Ms D's windows went into liquidation. The remedial work to her windows was then carried out by a company appointed by Lloyds Bowmaker.

But Ms D remained unhappy with the quality of the windows and their installation, and so made no further payments towards her finance agreement. In 2003, Black Horse sent Ms D a demand for repayment of the debt, and asked her to make a proposal of repayment.

As no repayment plan was agreed, the matter went before the courts in 2004. Black Horse obtained a court order for the outstanding balance of the debt from Ms D. It was then agreed that she would repay the balance in instalments of £20 a month, rather than the full amount in one go in accordance with the terms of the court order.

Ms D maintained this agreement until 2011, when Black Horse made the decision to sell the balance of Ms D's debt on to a third party company. Ms D stopped her repayments and complained that Black Horse had disregarded the court ruling.

Black Horse said that it was legally entitled to sell the debt without referring back to the court as there had been no variation to the court order. It said that the third party company had confirmed it would deal sympathetically with the payments owed to it, and Black Horse said Ms D should contact it.

Our adjudicator did not recommend that the complaint should be upheld. She explained that the Financial Ombudsman Service cannot consider complaints about consumer credit activities that occurred before 6 April 2007, or comment on matters that had already been decided by a court of law. She said that Black Horse had the commercial discretion as to whether it wanted to assign the debt to another party, and it did not need to refer back to the courts in order to do this. The agreement for Ms D to repay the balance of the debt at £20 a month had not formed part of the court order.

Ms D did not accept the adjudicator's findings.

my findings

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

As the adjudicator has explained, my jurisdiction in relation to considering complaints about consumer credit activities means that I can only consider events that happened after 6 April 2007. This part of our jurisdiction came about under the Consumer Credit Act 2006, and extended it to include all businesses that hold a standard consumer credit license. However, it is not retrospective, so I am unable to consider any events that happened before the date this came into effect.

For Ms D, this means that I am unable to consider the aspects of her complaint that happened before 6 April 2007. Although I fully appreciate that many of her concerns stem from actions before this time, my decision here will relate solely to Black Horse's assignment of her debt to a third party company.

Black Horse made the commercial decision to assign responsibility for managing Ms D's outstanding debt onto a third party company. In these circumstances, I am unable to conclude that it was not entitled to do so. Although Ms D continued to maintain her agreement repayments before the debt was sold, this did not mean that Black Horse was unable to make such a decision.

The arrangement for Ms D to repay £20 a month did not form part of the terms of the court order, and was agreed after it was issued. I do accept that there was a delay in the third party company contacting Ms D. But I am unable to find Black Horse responsible for this.

I understand that the third party company has agreed to Ms D continuing to repay the balance of the debt at £20 a month until it is repaid in full. I am therefore unable to conclude that Ms D has been disadvantaged by the reassignment of her debt.

my final decision

My decision is that I do not uphold this complaint.

Cathy Bovan
ombudsman