

complaint

Mrs K complains that Robinson Way Limited (RWL) is harassing her to pay a debt she knows nothing about.

Mrs K is represented by a relative Mr K, but I'll refer to all submissions made on her behalf as if Mrs K had made them herself, for ease of reading.

background

The background to this complaint and my provisional findings are set out in my provisional decision dated 24 April 2017 – a copy of which is attached and forms part of my final decision. In my provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties.

RWL hasn't responded. And Mrs K is unhappy with what I've said. She thinks I haven't looked at the full picture. She says the basis of her complaint is the behaviour of a single organisation acting as a triumvirate. She feels RWL and two third parties appear to be operating independently but they're all directed and owned by one organisation - and this is clear from the limited documentation provided in response to her subject access request.

She says while these three companies appear independent they're being directed by a single organisation and this conduct can't be correct or acceptable for a regulated firm. Mrs C says there's been repeated use of a "straw man defence" - which is fundamentally wrong and unfair. She thinks the adjudicator recognised this but I haven't. And she would like me to acknowledge that the harassment has been continuous and deliberate.

Mrs K understands this service has limited powers where there is court involvement but she points out no court date was set until recently. She asks me to reconsider her overriding concern which is simply that no detail of the debt and no proof of ownership have been provided – and RWL has only produced information when forced to do so

my findings

I've re considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have no doubt it's been upsetting for Mrs K to be contacted by three different businesses about this debt. But, as I've explained already in my provisional findings, I can only look into RWL's actions in this complaint. I realise that's frustrating to hear and I sympathise with the situation Mrs K finds herself in. But I can't reasonably criticise RWL for accepting instructions to collect this debt from a third party.

I understand Mrs K is concerned because she hasn't received proof that the debt belongs to her or a statement to prove the amount owed. But, I remain satisfied that those issues are likely to be looked at by the court, in the ongoing legal proceedings. I understand a hearing date hasn't been set until recently but the proceedings were started some months ago. And, for the reasons I've explained already in my provisional decision, I am not persuaded that it would be appropriate for this service to consider that part of Mrs K's complaint. I find it should be dismissed without any consideration of the merits.

I remain satisfied that this service is able to look into Mrs K's complaint about RWL's debt collection activities and complaint handling. I understand Mrs K's disappointment at what I have said about her harassment complaint. I want to assure Mrs K that I have thought carefully about the comments she's made and looked again at the activity she is concerned about.

I have no doubt that Mrs K was upset by the contact she received from RWL about this matter. I accept she felt it was relentless. But, for the reasons I've explained already in my provisional decision, I am not persuaded that there are enough grounds here for me to reasonably conclude that RWL's actions amount to harassment.

Neither party seems to object to the rest of my provisional findings. I remain of the view that RWL made some comments that are likely to have misled Mrs K and caused her more worry and upset. I see no reason to depart from my provisional conclusions and I order RWL to pay Mrs K £100 compensation for the additional distress caused by poor complaint handling.

my final decision

For the reasons I've explained, my decision is that it's not appropriate for the Financial Ombudsman Service to look into Mrs K's complaint about the response to her subject access request. So I dismiss that part of this complaint without considering its merits.

But, I find this service is able to look into Mrs K's complaint about RWL's debt collection activities and complaint handling. And my decision is I uphold Mrs K's complaint about that, in part. In full and final settlement, I require Robinson Way Limited to pay Mrs K £100 compensation for the additional worry and upset she experienced as a result of its poor complaint handling.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 12 July 2017.

Claire Jackson
ombudsman

copy provisional decision

complaint

Mrs K complains that Robinson Way Limited (RWL) is harassing her to pay a debt she knows nothing about.

Mrs K is represented by a relative Mr K, but I'll refer to all submissions made on her behalf as if Mrs K had made them herself, for ease of reading.

background

This matter concerns a credit card debt RWL says Mrs K is liable to pay. RWL was instructed to recover the debt by a third party, that I'll call H. H says Mrs K owes over £5,000 on an account she held with a lender, that I'll call T. H bought the debt from T last year.

Mrs K says

1. she's never heard of H and RWL hasn't provided a copy of the credit agreement, default notices and interest calculations to prove she owes this money;
2. this debt is unenforceable so it's wrong of RWL to ask her to pay it;
3. RWL, H and the solicitors failed to respond properly to subject access requests (SARs) she sent last November;
4. pressure to pay has been increased deliberately by using multiple parties to pursue the debt - H says it bought the debt (but she has no evidence to that effect) then RWL tries to collect while third party solicitors issue legal proceedings;
5. RWL harassed her with phone calls at all times of the day and night;
6. RWL told her the account was on hold until this complaint was resolved - but it hasn't suspended the court case; and
7. RWL continued to make contact by phone after her representative explained he has difficulty hearing and asked for all contact to be made in writing.

RWL objected to this service looking into Mrs K's complaint at first, because of the ongoing court case. Our adjudicator accepts we aren't able to decide if a debt's enforceable – only a court can do that. But, she's satisfied Mrs K's complaint relates mainly to debt collection activities, the SAR and complaint handling - and this service is able to look into those because they are not included in the ongoing legal proceedings.

Our adjudicator says RWL was slow to provide information to this service which has prolonged the complaint. From the information she was sent, our adjudicator considers it likely that RWL made phone calls at inappropriate/unsociable hours and harassed Mrs K. She thinks RWL should have explained what it meant for the court case when it agreed to put the account "on hold". And she's not persuaded RWL responded to the SAR properly. She's satisfied Mrs K has experienced considerable distress and inconvenience as a result and recommends RWL should pay £300 compensation.

RWL says

- collection calls were made during normal business hours - its records show the earliest was just after 9am and latest at 6.42pm;
- it never managed to speak to Mrs K and left three messages on her answerphone;
- four letters were sent between June and September offering different repayment options;
- calls and letters were suspended after Mrs K complained in late November; and
- it received the SAR at the end of November 2016 and supplied documents within ten days.

RWL considers Mrs K's complaint was dealt with properly and our adjudicator hasn't looked into what happened impartially so it asked for an ombudsman to review the matter.

my provisional findings

I've considered all the evidence and arguments available so far to decide what's fair and reasonable in the circumstances of this complaint.

I have no doubt that Mrs K has been very worried by what's happened here. I understand she's found it upsetting to be contacted by several different parties about this debt. And I can see that's been confusing and frustrating at times. So, I should make it clear at the outset that my role is to look into Mrs K's complaint about RWL. I do not have the power to address what she's said about other parties in this decision.

I should also explain that this service doesn't have a free hand to consider every complaint that's brought to us. Our powers are set by the Financial Services and Markets Act 2000 and our rules. Those rules are contained in the Financial Conduct Authority's (FCA) Dispute Resolution Handbook (DISP rules).

One of the reasons we may not be able to look into something a consumer complains about is if it is also the subject of court proceedings. H started a court action against Mrs K last year. Our adjudicator has explained already that this service can't declare a debt unenforceable – only a court can do so. I'm satisfied a court has been asked to enforce this debt and we can't deal with parts 1 and 2 of Mrs K's complaint (as set out above).

H's claim is only one part of the subject matter of the current legal proceedings. Mrs K entered a defence so I asked to see that as well. Mrs K says she isn't responsible for repaying this money and she asks the court to look into the SARs she sent H's "representatives".

I appreciate the court case is between H and Mrs K, and RWL isn't a party at present. I can't be certain what the court will do. But, it seems to me any consideration of Mrs K's defence may include RWL's response to the SAR. So, on the evidence I have at the moment, I don't think it's appropriate for this service to deal with part 3 of Mrs K's complaint. And I intend to find this should be dismissed without consideration of its merits.

I can't see that parts 4 to 7 of Mrs K's complaint (above) are included in the court case. So I'm satisfied I am able to deal with those here. I think they fall broadly under the headings of debt collection and complaint handling.

debt collection

Mrs K says RWL phoned her at all hours of the day and night causing upset and inconvenience. Our adjudicator thought this was likely - and I can see why, on the limited information she saw at first. RWL has since supplied more evidence, including the full contact notes/telephone log for this account.

I have considered these and I think the content seems credible and consistent with events. H bought this debt early in 2016. It looks as if several attempts were made then to contact Mrs K at an address that's not her current one. RWL found out Mrs K didn't live there in April 2016 and traced her to a new address about a month later. It follows, I think, that none of RWL's contact before May could have harassed Mrs K because it wasn't directed to her address or phone number.

I have looked at what happened after May 2016. RWL's phone log shows ten calls were made in June, one in July, none in August and six in September. It doesn't look as if any of the calls were answered although I can see some voicemail messages were left. All of the calls seem to have been made during RWL's normal office hours.

I understand Mrs K found this contact upsetting. But, I can't fairly find it was wrong of RWL to try and get in touch with her about this debt, on the evidence I have seen so far. I don't think RWL had reason to think the debt might be disputed until Mrs K responded in November 2016. When she did so, RWL seems to have stopped phoning and sending letters and investigated Mrs K's complaint. Taking

everything into account, I am not persuaded I can fairly find RWL's actions amount to harassment in these circumstances. So I don't intend to require it to pay any compensation in this respect.

complaint handling

I've considered what Mrs K says about the way this complaint has been handled. I can see it's been confusing for her to have several different parties (T, H, RWL and a firm of solicitors) involved with this debt. But, I don't think it's unusual for debts to be sold on and collected in this way. It looks as if a letter was sent to Mrs K's new address in May 2016 to say the original owner (T) had sold the debt (to H) and RWL would manage the account. So, I'm not persuaded RWL has deliberately set out to confuse or mislead Mrs K about who held the original account or who owns the debt now.

When Mrs K contacted RWL to dispute the debt in November 2016 it said "*your account has been placed on hold until your complaint has been resolved*". I understand Mrs K was relieved by that as she took it to mean all action, including the legal proceedings, would be suspended. So I'm not surprised to hear that she was shocked and upset to find that the court action carried on.

I am satisfied RWL did stop contacting Mrs K about payment while it looked into her complaint. I accept RWL and H are separate companies - and I wouldn't generally expect a debt collector like RWL to be able to stop or suspend ongoing court action brought by H, the debt owner, in this situation.

But, I think RWL should have realised that Mrs K was unsure about where this debt had come from and confused by the various parties asking her to pay it. I can see RWL and H share a correspondence address. And RWL itself doesn't always differentiate between its actions and those of H - in the final response letter it sent Mrs K, RWL says "I understand you are defending the legal action we have taken against you for this debt and your case is currently with *our* solicitors".

Like our adjudicator, I find it understandable that Mrs K thought the court case was suspended when she received RWL's letter. I think it would have been reasonable for RWL to explain that the legal proceedings would not be affected when it told Mrs K the account had been put "on hold". And I think the fact that it didn't do so is likely to have caused Mrs K additional worry and upset, in already very stressful circumstances. So, from the evidence I've seen so far, I think it is fair overall for RWL to pay Mrs K £100 compensation in recognition of the impact of this poor complaint handling.

It's not clear to me when Mr K asked RWL to make contact only in writing. From the information before me it looks as if that couldn't have been before November 2016. It appears RWL made one phone call after that. I accept that's likely to have been frustrating for Mr K, if he had requested communication in writing beforehand. But I can't compensate Mr K for any upset and trouble he's experienced - as he's not the complainant here. I accept the fact Mr K has been distressed probably upset Mrs K. But I am not persuaded I can fairly require RWL to pay more compensation in all of the circumstances.

I realise both parties are likely to be disappointed by aspects of this provisional decision. I invite them to let me have their comments and any further evidence and information they would like me to take into account. Then I'll reconsider all of the evidence in order to reach my final decision.

my provisional decision

For the reasons I have given, and subject to any further evidence or information I may receive from Mrs K and RWL by 24 May 2017, my provisional decision is that it's not appropriate for the Financial Ombudsman Service to look into Mrs K's complaint about the response to her subject access request. So I intend to dismiss that part of this complaint without considering its merits.

But, I am satisfied this service is able to look into Mrs K's complaint about RWL's debt collection activities and complaint handling. On the evidence available so far, I propose to uphold Mrs K's complaint in part. And I am minded to require Robinson Way Limited to pay Mrs K £100

compensation for the additional worry and upset she experienced as a result of its poor complaint handling.