

complaint

Mr K complains about the manner in which he says Paragon Finance Plc trading as Idem Servicing is chasing him for a debt it says he owes. He says it hasn't provided information he's requested about the debt and he's been threatened with legal action. He also complains the debt was made irresponsibly and the terms were unfair. He wants it to stop contacting him and chasing him for the debt. Mr K is represented by solicitors I'll call "F".

background

F told us Mr K entered into an agreement for "*running credit*", a credit card, in 2009. It says he subsequently ran into financial difficulty and struggled with debt for some time. It felt action taken by Idem was unfair and set out a number of specific issues:

- Assignment - it said the creditor had not provided evidence of the notice of assignment
- Affordability and Irresponsible lending - it said Mr K was vulnerable and had been taken advantage of. And there'd been an inadequate check on his ability to repay the loan
- Unfair terms - it was alleged certain fees and charges were excessive
- Administration and Enforcement - it was alleged Mr K had received threatening letters and phone calls and that enforcement action had been aggressive.

It also said Idem contacted Mr K directly even though he'd appointed F to represent him and made it clear he didn't want any direct contact.

Idem told us it had provided the information F had requested and had evidenced the debt was enforceable. But it had not received any payments or payment arrangement. It said it was entitled to contact Mr K direct. It said it had not applied any fees or charges to the account.

The adjudicator didn't recommend the complaint should be upheld. She said Idem had provided the information F had requested. And it had sent a notice of assignment to Mr K. She said Mr K hadn't disputed the debt was his and had made reduced payments up until April 2017. As this evidenced the debt was Mr K's she was satisfied Idem was entitled to pursue him for it. In response to a comment from F that she hadn't fully addressed each point of the complaint she later explained why she did not think Idem had done anything wrong in contacting Mr K directly.

F, on behalf of Mr K, didn't accept this and said Idem hadn't provided sufficient information for it to properly assess the sum that should be outstanding. And it suggested reporting the debt to credit reference agencies could not be accurate if Idem wasn't able to properly prove the debt. It wanted an ombudsman to make the final decision.

my findings

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

It's important to understand that I do not apply the law directly although I take it into account. This means it's not for me to say whether a debt is or is not enforceable. That would be for a court to decide. What I'm required to do is to determine if Idem has acted reasonably both in terms of having a reasonable belief it was entitled to pursue Mr K for the debt and the way it went about this.

In the original complaint F, on behalf of Mr K, made a large number of allegations regarding various aspects of this debt. I'll deal briefly with several of those issues as I don't think they are matters for which Idem is responsible.

Idem is the purchaser of the debt - not the original lender. So issues of whether the credit was lent irresponsibly and/or was not affordable are not matters for Idem. Similarly the terms and conditions of the loan and interest and charges imposed before it acquired ownership of the debt are not the responsibility of Idem.

I can see when the adjudicator acknowledged the complaint she advised these aspects should be taken up with the original lender. I assume that as no evidence has been provided about these issues in relation to this complaint it is accepted they are not matters for Idem. In any event, in the absence of evidence, I can't say Idem has done anything wrong in this regard.

When F first wrote to Idem in June 2017 it requested information including a copy of the signed agreement and details of the account and sums payable. I've seen evidence that Idem has now provided this information along with copies of the notice of assignment dated November 2016. I've also seen statements of account dated 30 June 2018 and 2 October 2018 sent to Mr K detailing payments made between January 2012 and April 2017. It appears some of the payments were made through a Debt Management Plan. Other payments were made by cheque and standing order. And it shows no additional charges or fees since Idem acquired the debt. Mr K has not denied the debt is his and in view of the method of payments it's an inevitable inference he was aware of these.

The evidence provided, on any reasonable view, is sufficient to show on a balance of probabilities, indeed beyond reasonable doubt, that Idem was entitled to consider Mr K was the debtor responsible for repayment. And I find F's assertion - that Idem had not provided sufficient information to properly assess the sum outstanding and could not properly prove the debt - to be without objective justification. And whilst I've not been provided with a copy of Mr K's credit file I can't see any reason why it would be unreasonable of Idem to report the continuing state of this account.

Allegations have also been made about both about Idem's methods of seeking repayment of the debt and it contacting Mr K directly rather than through his legal representatives. I've not seen any persuasive evidence to support any allegations of threatening behaviour or harassment. I accept the mere fact of being chased for debt is likely to prove upsetting but nothing I've seen makes me think the amount of contact or the manner of it has been improper.

As for the fact of contact itself, it's been suggested Idem was wrong to contact Mr K directly rather than through his legal representative. And it's correct to say that under rules issued by the Financial Conduct Authority (FCA) lenders should not refuse to deal with a customer's representative and/or contact the customer directly against his wishes - without an objectively justifiable reason.

Idem has owned this debt since November 2016 and Mr K stopped making any payments since April 2017. I've seen evidence that by this time he'd instructed F. There's evidence F had requested information from the previous owners. It seems a similar request was later made to Idem in June 2017. Whilst it took several months to supply all the information requested that's been done. So it can't reasonably be said Idem has refused to deal with F.

And I've seen notes recorded on Idem's system that Mr K told Idem that F had advised him "*not to pay us a penny at all*". This is recorded as having occurred *after* a copy of the agreement had been provided. It's not for me to comment on any advice F may have given to Mr K. But it's approaching two years since F has been involved and there's no evidence of it attempting to negotiate any form of repayment on behalf of Mr K. That seems to me to provide an objectively justifiable reason for Idem to contact Mr K directly. There's no evidence his representatives are prepared to progress the matter towards repayment.

I think Idem has reasonable grounds to believe Mr K is the person responsible for this debt. And that it is entitled to seek repayment and take enforcement action if this is necessary. And I don't think it has acted improperly to date in the manner in which it has sought to collect the debt.

So whilst I know it will come as a disappointment to Mr K I'm not upholding this complaint.

my final decision

For the reasons given above my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 February 2019.

Stephen D. Ross
ombudsman