

complaint

Mrs B complains about Arrow Global Limited chasing her for a debt which isn't enforceable. She wants them to cease debt collection activity and for the balance to be written off.

The complaint has been brought by a representative, who I'll refer to as 'F'.

background

F complained to Arrow Global about a debt they were chasing Mrs B for. They disputed the sum being sought and said that Arrow Global's failure to comply with their request for a copy of the credit agreement, along with information relating to the outstanding debt and the account, meant that it wasn't enforceable. And so they felt Arrow Global were unfairly chasing Mrs B for payment.

Arrow Global apologised for the delay in providing information to F and that their inability to obtain documents – including the credit agreement – meant the debt was unenforceable. But they said they'd purchased the debt in good faith and they weren't made aware of any issues surrounding the account at that time. They considered the outstanding balance to be correct and so due for repayment.

The matter was referred to our service. Our investigator looked in to it but he didn't think the complaint should be upheld. He explained it isn't the role of our service to decide whether a debt is enforceable as that would be for the courts to decide. But he said Arrow Global had provided evidence to show the account likely belonged to Mrs B. And that they'd also shown payments had been made towards the debt between 2012 and 2017. So he thought Arrow Global was acting fairly and reasonably when seeking repayment of the debt from Mrs B.

F didn't agree with our investigator. So the matter has been passed to me to decide.

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'm sorry to hear that Mrs B has experienced financial difficulties as it's never an easy situation to deal with. And so I appreciate why she's concerned at being asked to repay a debt that she doesn't think she's responsible for. But I think it would be helpful for me to explain, as our investigator did, that the matter of whether a debt is enforceable is for the courts to decide. All I can determine is if Arrow Global has reasonable grounds to believe they are entitled to seek repayment from Mrs B for the debt.

I understand F accepts it is for the courts to determine if a debt is enforceable. But they've referred to guidance published by the Office of Fair Trading that, under section 5.8, says:

'...The OFT would firstly expect the creditor or owner to take steps to check that there was in fact an agreement with the debtor or hirer, and in particular whether there are in fact monies outstanding under it, and if so for how much. This should be capable of being demonstrated to the debtor or hirer.'

They think Arrow Global's inability to provide an adequate statement of account of the debt before they took ownership prevents them from establishing what sum is due, along with

how the sum arose. Because of this, they don't think Arrow Global can properly show what is owed and so argue that collection activity should be stopped until this can be established or the balance written off.

I've carefully taken this point into account. But while Arrow Global hasn't been able to provide a copy of the credit agreement, or a statement of account prior to purchasing the debt; I think they've shown sufficient evidence to support their position that Mrs B is the debtor along with the amount owed. I'll explain why.

Arrow Global has provided the information they received from the creditor which they purchased the debt from. This lists Mrs B's details – including her full name, address and date of birth – as the debtor along with the details of the account purchased. They've also shown that payments were made to the debt up until June 2017. I think these payments are acknowledgements of the debt and give Arrow Global reasonable grounds to believe the debt is owed by Mrs B. I also think the payment arrangement shows Arrow Global made allowances for the financial difficulties Mrs B was facing. So I can't fairly say it was being unfair in how it sought to recover the debt.

Arrow Global's statements show the opening balance of the debt upon purchasing it. But while there isn't anything to show what sum was owed prior to this, I haven't seen anything to suggest the amount is incorrect. I also think it's reasonable to assume the debt management company assisting Mrs B would've checked what she owed prior to making the repayments. So, on balance, I think it's more likely than not that the amount owed is correct.

I therefore think the evidence available provides Arrow Global with reasonable grounds to believe they are entitled to seek repayment from Mrs B for the debt.

In the absence of a signed agreement it would seemingly be open to Mrs B to insist Arrow Global obtain a court order if they want to enforce this debt. But this would run the risk of her incurring significant additional costs. Alternatively, if Mrs B wishes to seek a payment arrangement Arrow Global would be obliged to treat her positively and sympathetically.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 16 November 2019.

Daniel O'Dell
ombudsman