

## **complaint**

Mr D is unhappy Advanced Payment Solutions Limited (APS) didn't tell him when he settled his debt that it had been sold to a debt collection agency.

## **background**

Mr D had an account with APS from September 2016. The account charged a monthly subscription of £5.95.

In September 2017, APS arranged for Mr D to have a £100 overdraft facility which increased the monthly fee to £10. And by October 2017 Mr D had exceeded his overdraft.

In December 2017 APS discussed the setting up of a payment plan for Mr D but at this time Mr D said he was able to make payments to clear his arrears. But in January 2018 Mr D became homeless.

APS removed the overdraft facility from Mr D's account in June 2018. This left Mr D with an outstanding balance of £110. And in October 2018 APS sent a default notice to Mr D advising him he had to pay off the balance no later than 31 December 2018.

But on 23 December 2018, APS sold the debt to a debt purchaser. On 28 December 2018, when Mr D contacted APS he said he wasn't told his debt had been sold, only that he had to pay the debt in full which he did.

Mr D is unhappy as after he'd paid his debt in full the debt purchaser asked him to settle the debt with them.

APS accepted Mr D should have been told his debt had been sold. And apologised for this and offered £40 for the trouble and upset caused. But said it had a responsibility for correctly recording account activity, and Mr D had been in arrears for several months.

Mr D referred his complaint to us as he said this had caused him considerable distress and had damaged his credit file.

Our investigator said that APS had agreed it should have told Mr D it had sold on his debt, but asked that it pay £100 for trouble and upset.

APS disagreed and asked for an ombudsman to decide.

I issued a provisional decision in October 2019 which said:

*I have asked APS to provide further evidence for me to consider but to date this hasn't been sent. So, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm thinking of upholding Mr D's complaint.*

*Ours is an inquisitorial remit which means we will look at what we feel a business should have looked at when dealing with a complaint. This means we are expected to do more than just look at a complaint as it's written or explained to us. We must think about what lies at the*

*heart of a complaint and look at the whole picture.*

*So, when looking at Mr D's complaint I've looked at the crux of the matter which wasn't just that his debt was sold but that he had difficulty in repaying the debt.*

*Mr D's account was set up in September 2016; his only income was a monthly benefit payment. His outgoings were generally for food, mobile phone and car insurance and Mr D kept within his means but his balance at the end of each month was often zero or close to zero. The account did accrue a monthly subscription charge of £5.95.*

*In August 2017, the first sign Mr D was having any difficulty was the rejection of a direct debit which APS at first charged Mr D a £15 fee. When someone is in financial difficulty I would expect the business to treat them positively and sensitively. Looking to provide help by way of freezing any charges or payment holidays. APS did take positive action by refunding the direct debit rejection fee, it had charged.*

*But in September 2017 APS arranged for Mr D to have an overdraft facility of £100. It charged an overdraft arrangement fee of £20 and each following month an overdraft fee of £10. So, I've looked to see whether Mr D could afford this and whether APS had been irresponsible in lending it to him.*

#### *Unaffordable lending*

*When assessing a customer for lending, there aren't set checks which a lender has to do. But I'd expect them to perform checks which are proportionate in each case, taking account of things like the size of the loan, the ability of the customer to repay and what they know about the customer.*

*CONC 5.2.4G (2) provides some guidance on the proportionality of assessments. And it makes it clear that the risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

*We don't expect lenders to tell us the details of their lending criteria, but we do expect them to be able to show us (by providing evidence) that they reasonably assessed a customer's ability to repay what they were borrowing. As outlined above APS hasn't provided me with any evidence of how it had checked this. So, I've based my decision on Mr D's circumstances at the time.*

*Lending is unaffordable if it's clear the customer's disposable income wasn't enough to make the payments for the borrowing at the time it was taken out. And I can see from Mr D's account that he had little to no disposable income.*

*From looking at the way Mr D ran his account I don't think he had sufficient disposable income to cover the additional charge applied to his account for the overdraft facility. As this had increased from £5.95 to £10.00, a difference of £4.05, which Mr D didn't have, as outlined above he was living to his full means and so didn't have enough disposable income to cover this additional payment. The fee was being paid back out of the overdraft itself. Also Mr D didn't have any available funds to repay any of the overdraft facility he used.*

*So, I don't think Mr D could afford the overdraft facility that APS arranged for him.*

#### *Irresponsible lending*

*But it's not just about whether Mr D could afford the credit or not it's whether there is another reason APS shouldn't have lent to him. Low income consumers can be particularly vulnerable to income and expenditure shocks. And Mr D later became homeless.*

*I can see that APS tried to assist Mr D when he told them he was struggling to repay the outstanding overdraft and overdraft fees by freezing the charge on his account. But I think Mr D's financial difficulties resulted from the arrangement of an overdraft he couldn't repay. And this was evident as he exceeded his overdraft within a month of it being arranged. And he wasn't able to make any repayments to clear the debt from then until December 2018.*

*As the repayment was unsustainable, I think APS was irresponsible in lending to Mr D.*

*credit file*

*When a payment isn't made by its agreed time the account may be reported to a credit reference agency. When this continues over a period of time it may result with the lender defaulting the account.*

*It isn't in dispute that Mr D was struggling to clear the outstanding balance and that a default notice was sent to him by APS. The default notice gave Mr D until 31 December to pay the outstanding balance and he did this. APS has confirmed that as the payment was made before the requested date, it didn't report a default to the credit reference agencies. But the late payments over several months would have been evident to other lenders.*

*As I think the overdraft facility shouldn't have been given to Mr D I think any record and adverse information associated with the lending should be removed from his credit file.*

*I can understand Mr D's frustration as he thinks this information has meant when he's applied for other credit he's been declined, or the premiums have been increased meaning he couldn't afford them. But while that is possible, I can't know what weight would be attached by a lender to any adverse information as this is dependent on each lenders' criterion. So, I don't think there is enough evidence to show this has caused Mr D actual financial loss.*

*APS sold Mr D's debt to a debt purchaser before the end of the period given to him in his default notice. APS has accepted that it should have told Mr D his debt had been sold and has apologised and offered £40 for the trouble and upset this caused.*

*But think the main cause of trouble and upset to Mr D was in knowing he had a debt he was struggling to repay, added to which, after he'd paid it, being chased to repay this debt by a debt purchaser. It wasn't until March 2019 that Mr D was told his debt had been sold on when it shouldn't have been. So, I think APS should compensate Mr D a further £210 – so a total of £250 for the trouble and upset all of this caused.*

## **responses to my provisional decision**

Mr D accepted my provisional decision, but APS have made no comment.

## **my final decision**

I uphold this complaint and require Advanced Payment Solutions Limited to:

- refund the remaining £10 overdraft fee that had been applied to Mr D's account for the arrangement and use of the overdraft facility;
- remove any record and adverse information held on Mr D's credit file for the debt; and
- pay Mr D a total of £250 for the trouble and upset caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 December 2019.

Anne Scarr  
**ombudsman**