

complaint

Mr D complains that Motormile Finance UK Limited, trading as MMF ("MMF"), is pursuing him for debts that he is unaware of, and that it has added defaults to his credit file without notifying him.

background

Mr D said that MMF had wrongly applied defaults to his credit file for debts that he had had with other lenders, and which had been assigned to MMF. He does not consider that MMF had the right to apply defaults on his credit file, if the original lender had not applied them. He wanted to see confirmation from the original lenders that they had assigned the debts to MMF, although MMF had sent Mr D notices of assignment for each of the eight debts that it was pursuing Mr D to pay. Mr D had also asked for copies of his credit agreements, default notices, and statements to show that the money was due for each debt. Mr D does not feel that MMF has the right to seek payment of the debts and apply a default if it cannot provide him with the documents he has asked for.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. Based on the information she had seen, she did not believe that MMF had acted unreasonably by asking Mr D for payment.

Mr D disagreed and responded to say, in summary, that the notices of assignment, which MMF had provided, were letters it had written. He said that the company purchasing the rights to debts were not the people that were supposed to communicate this to a debtor. He also said that he had disputed the debts because of this. He also explained that he had complained about the defaults being added as he had received no default notices from either party, the original creditor or MMF. So he said that MMF had acted unfairly in registering defaults.

MMF then said in response to further queries raised by this service that it was in the process of removing the data it had shared on Mr D's credit record, so that no trace of any of the accounts would appear on his credit record. It was doing this as it had been unable to obtain a copy of the Notices of Default from the original lenders. It also said that it had not been able to obtain a copy of the loan agreement from three of the creditors, so it would be writing off these accounts.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr D and to MMF on 31 March 2015. I summarise my findings:

As the evidence was incomplete, inconclusive, or contradictory, I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

I noted that eight accounts, which Mr D had had with seven different lenders, were assigned to MMF between 2009 and 2014. MMF had provided this service with copies of five credit agreements, eight notices of assignment for each of the debts and details of each debt and the balances due from Mr D. It had also provided extracts from its contact notes.

Credit agreements

I had seen copies of the credit agreements for five of the eight debts. Each agreement gave the lender the right to assign its rights under the agreement. On balance, based on the evidence provided, I considered that the debts in relation to the five credit agreements which had been provided to us, were Mr D's debts. I also considered that it would be helpful for MMF to send copies of the five credit agreements to Mr D so that he would know which debts MMF would be collecting from him going forward. It should also send him a current statement of account for each debt.

Notices of assignment to MMF

I had seen copies of all the notices of assignment of Mr D's eight debts sent by MMF to Mr D. These had told him that MMF was taking over his debts from Mr D's original lenders. So, I considered that MMF was the party which could fairly seek repayment. I noted that each notice was addressed to Mr D at the address he was living in at the time. I saw no reason to believe that these were not delivered properly.

Mr D disputed MMF's right to enforce the debts. He had told us that he should receive notices of assignment issued by the original lenders. I disagreed. I explained that Section 82A of the Consumer Credit Act 1974 said that where a creditor's rights under a regulated consumer credit agreement were assigned, then the assignee (in this case MMF) must arrange for a notice of assignment to be given to the debtor. If Mr D wished to continue to dispute the legal assignment of the debts, then he was free to do so in court.

Current position on enforcement of the debts

I noted that each of the debts was currently on hold. I also noted from MMF's contact notes that Mr D had acknowledged two of the debts, and considered one to be unenforceable. But, I explained that only a court could decide if a debt was unenforceable.

Default notices and Mr D's credit files

In response to our request for copies of the default notices, MMF said that it was removing the defaults from Mr D's credit file, as no notices of default had been sent to Mr D. So, I considered that MMF should pay Mr D compensation for Mr D's time and trouble as a result of its actions.

Overall, I noted that MMF had acted in line with the appropriate legislation by giving Mr D notices of assignment of the debts. So, I was satisfied that MMF had the right to collect the debts from Mr D. MMF also said that it would not pursue three of the eight debts as it did not have credit agreements for these. I could also see that Mr D felt very strongly about MMF's actions in applying defaults to his credit file, and had spent significant time writing to MMF about these issues. I considered that MMF should credit Mr D's account with £250 compensation for his time and trouble.

I also reminded MMF that when coming to any future repayment arrangement it was required to react positive and sympathetically to any financial difficulties which Mr D may be experiencing at the time.

Subject to any further representations by Mr D or MMF, my provisional decision was that I was minded to uphold this complaint in part. In full and final settlement of it, I intended to order Motormile Finance UK Limited, trading as MMF, to:-

1. Credit Mr D's account with £250 compensation;
2. Send Mr D copies of the five credit agreements it has in its possession; and
3. Send Mr D an account statement for each debt.

Mr D responded to say in summary that he had noted that MMF would be removing the default information from his credit file. But he said that he had checked his credit file recently and default entries still remained. Mr D also said that he had received copies of credit agreements and account information from MMF, but that he was unable to work out what he actually owed from the information provided. He also said that he had not been told the actual dates of assignment of the debts. He was also seeking clarification of the amount to be deducted from account *****313.

MMF responded to say, in summary, that it would credit one of Mr D's accounts (*****313) with the compensation of £250. It had reduced the balance due on this account from £920.30 to £499.38. It explained that this reduction was based on the cap for short term high cost loans. It should be 200% but it had made the decision to cap at 175% as well as deducting the £250. It also said that it would send Mr D copies of the five credit agreements and an account statement for each debt. It also confirmed that it had removed the defaults from Mr D's credit files.

my findings

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

I note that MMF has already sent Mr D information about his accounts, but he said that he could not work out what he owes from the information received. I do not know if the information already sent is in the form of an account statement. I had envisaged that the statements to be sent to Mr D should show the original loan amount, contractual interest, default interest, charges and repayments with dates when all these amounts were added to or deducted from the account. If the information sent to Mr D already does not show all this, then I consider that MMF should send these details to him together with a note of the date of assignment of each debt.

I also note that MMF said that it had removed the defaults from Mr D's credit files, but that Mr D said that default entries still remained, although he has not provided this service with evidence that the defaults remain. I consider that MMF should tell Mr D the date when these were removed to save him further time and trouble checking his files.

Subject to the above modifications, I find no basis to depart from my earlier conclusions.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it, I order Motormile Finance UK Limited, trading as MMF, to:-

1. Credit Mr D's account with £250 compensation;

2. Send Mr D (if it has not done so already) copies of the five credit agreements it has in its possession;
3. Send Mr D (if it has not done so already) an account statement for each debt containing the following information:- original loan amount, contractual interest, default interest, charges and repayments. The statement should also show the dates when all these amounts were added to or deducted from the account, and provide details of the date of assignment of each debt to MMF; and
4. Tell Mr D when the defaults were removed from his credit files.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 6 July 2015.

Roslyn Rawson
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