

complaint

Miss J complains that Kapama Limited have asked her to repay too much towards the loan she took out with a different lender.

background

In 2012, Miss J took out a pay day loan for £170 with a lender. The account fell into arrears and the lender applied charges to the account – the total balance Miss J owed to the lender was £2,191.60. The balance was made up as follows:

- Loan amount: £170
- Interest charges: £201.60
- Debt collection charges: £100
- Default charge 1: £25
- Default charge 2: £50
- Attempt charges: £1,645.00

A third party was instructed to collect repayments on behalf of the lender. This same business, a sister company of Kapama was then instructed by Kapama to collect the remaining balance after Kapama bought the debt in December 2014. When Kapama took the debt over, the balance was £632.10. Miss J has since repaid this balance in full.

Miss J complains because the amount she repaid for the loan was far more than the amount she originally borrowed. She also says she couldn't afford to repay the loan and she asked the lender if she could set up a repayment plan to help her – she says the lender refused.

The third party who collected the debt responded to Miss J's complaint on behalf of Kapama. It explained why it didn't think the lender had lent irresponsibly. It also said that the fees the lender applied to the account were in line with the terms and conditions of the agreement and so it didn't think Miss J ought to receive a refund. It also confirmed that neither it (the debt collector) nor Kapama had applied fees of any kind to Miss J's account.

Our investigator thought this complaint should be upheld. She was of the opinion that Miss J was right to pay interest and *some* of the charges that were applied as a result of the loan falling into arrears. She also agreed that Miss J should pay the principal sum of the loan as she had the benefit of the money.

But she upheld the complaint because she thought Kapama ought to have made better enquiries before it bought the debt. Had it done this, it would have been apparent that the outstanding debt mainly consisted of 'attempt charges' – which she felt were unfair and excessive. In her view, she felt Kapama shouldn't have bought the debt and should refund to Miss J the amount she had paid to Kapama after it bought the debt in December 2014.

To resolve the complaint, the investigator said Kapama should pay Miss J back the £632.10 that she paid it and add 8% per year simple interest on the payments. She also asked Kapama to amend Miss J's credit file to show that the debt was repaid in full in December 2014.

The investigator confirmed that she wouldn't be looking at the affordability of the loan as these checks were carried out by the lender – and this complaint is about Kapama who subsequently bought the debt.

Kapama didn't agree with the investigators findings for a number of reasons. It said:

- It felt it was unfair to ask Kapama to refund money to Miss J that was initially applied by the lender. It says the balance it bought was wholly calculated by the lender and so Kapama shouldn't be responsible for this.
- The charges that were applied to Miss J's account were part of the terms and conditions of the borrowing.
- The sale of the portfolio of debt to Kapama was overseen by the regulator, the Financial Conduct Authority (FCA), and so they should have said something if they thought the balances that were being bought were too high.
- It asked for an explanation of how the investigator came to the view that Kapama didn't make reasonable enquiries into the balance of Miss J's account.
- Kapama would like to discuss the case with an ombudsman before the decision is made.

Because Kapama didn't agree with our investigator the complaint has been passed to me to make a final decision on the matter.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on everything I've seen, I'm upholding this complaint. And I'll explain why below.

Kapama asked to be contacted by an ombudsman before a decision was issued. Our investigator asked both Miss J and Kapama to let us know if there was anything else it would like this service to consider before a decision was issued. And so I don't think it necessary for me to speak to Kapama direct. It has had the same opportunity as Miss J to provide information to support its case.

For the avoidance of doubt, when Miss J first complained to us, she told us that she was unhappy that she took out a loan for what was a relatively small amount and was then asked to pay back much more than the initial loan. So this complaint isn't about how the loan was initially sold – or that the lender acted irresponsibly when it lent to Miss J in the first instance.

Miss J didn't mention Kapama by name in her initial submission, but I can understand why. There have been three businesses involved with this debt – the initial lender, a third party collecting the funds on behalf of both the lender and Kapama; and then Kapama, who bought the debt from the lender. So it isn't surprising that Miss J was confused about whom her complaint should be directed to – and it is part of our role to help consumers to find the right business responsible for the complaint they want to make. And we've done that in this case.

In relation to the debt in general, lenders are regulated under rules in the *Consumer Credit Sourcebook* (or "CONC"). CONC 7.7.5 says:

"A firm must not impose charges on customers in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the firm."

And, The Office of Fair Trading's (OFT) guidance on debt collection said:

"charges should not be levied inappropriately or unfairly"

It also went on to say:

"an 'unreasonable charge' in this context would be a charge, the level of which is not based on the recovery of actual necessary costs."

The total loan Miss J borrowed was £371.60 (the amount of the loan plus interest). The lender charged Miss J an additional £1,820 in fees. With the above rules and guidance in mind, I find it very unlikely that it cost £1,820 to recover a debt of £371.60. While I agree that Miss J had the benefit of the loan amount so she should pay this, and she did default on the loan so some charges should also be paid, in my view, the total charges the lender applied to the account were excessive in comparison to the amount Miss J borrowed.

So while I appreciate Kapama's point that the terms and conditions state charges would be applied in certain circumstances, the terms and conditions also need to be applied in line with rules and guidance. And I don't think they have been.

Kapama wasn't the lender in this case, and it says it didn't apply any charges to the account. Based on what I've seen I think this is correct. But I think Kapama needs to accept some responsibility here. I've seen information Kapama sent to Miss J that is a breakdown of the balance it says she owed. This breakdown clearly shows that much of her outstanding balance was made up of charges that appear to be excessive – and I think this information would have been available to Kapama when it purchased the debt.

When Kapama bought the debt, Miss J had already made repayments of £1,559.50 to the lender – which in my opinion is more than enough to cover the lenders reasonable costs. Because of this, I think Kapama ought to have waived the balance outstanding to Miss J when it bought the debt – or it should have chosen not to buy it in the first instance.

So while I appreciate Kapama's comments in that it didn't apply the charges to the account and so it shouldn't be held responsible for how the outstanding balance was calculated, I do think it should have done more to check the debt it was buying was made up of reasonable charges – which I don't think it did in this case.

I can't comment on what involvement the FCA had in the purchase of the debts Kapama bought from the lender. It is my role to look at individual complaints and decide what is fair in the circumstances of that particular complaint. And having done so, I think Kapama should have done more.

When Kapama bought the debt in December 2014, it said Miss J owed £632.10 and she's since paid this. To put things right for Miss J, I think Kapama should refund the £632.10 she paid it. It should pay her back 8% simple interest on each of the payments from the date they were made until the day they are refunded – to compensate her for the time she's been out of pocket. And I also think Kapama should update Miss J's credit file to show the debt was settled in December 2014.

my final decision

My final decision is that I uphold this complaint. And I order Kapama Limited to:

- Refund to Miss J all the payments she has made since Kapama Limited bought the debt.
- Pay Miss J simple interest on the refunds at 8% a year from the dates she made those payments to the date the refunds are made. If Kapama considers it is required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss J how much it's taken off. It should also give her a tax deduction certificate if she asks for one so that she can reclaim the tax if appropriate.
- Amend Miss J's credit file to show that the debt was fully settled in December 2014.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 3 November 2019.

Sophie Wilkinson
ombudsman