

## **complaint**

Mr S has raised a complaint about the administration of his account, in particular the validity and amount of the outstanding debt.

## **background**

Mr S took out a loan in 2011. The company he borrowed from has now gone into liquidation and his debt has been sold to a third party, Kapama Limited ("Kapama").

Mr S has raised several issues in relation to this account. In summary, he says the debt is unenforceable and that he wasn't given a notice of assignment in the correct timeframe. Mr S also says he's already repaid the original debt and believes the interest and charges added to the account are unfair. Mr S also says he's been harassed for repayment of this debt.

Mr S has also raised concerns about a default having been registered against this account. He says this has been incorrectly registered by Kapama.

The investigator upheld Mr S's complaint in part. She said there were several issues we couldn't consider as they happened when the original lender owned the debt. She said that she believed a notice of assignment had been sent in the correct timeframe, even if Mr S didn't receive it. And she said that only a court could declare this debt as unenforceable.

But she did think Kapama should have noticed that most of the balance of the debt consisted of interest and charges. So she asked Kapama to remove £475 of charges and also pay Mr S £50 compensation, which was to be removed from the outstanding balance. This would reduce the outstanding balance to £248.10.

Kapama accepted the investigator's recommendations.

Mr S disagreed. He says £50 is not sufficient compensation and believes Kapama registered the default, rather than the original lender.

## **my findings**

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've reached similar conclusions to our investigator and for the same reasons.

As our investigator has explained, I can only comment on the actions of Kapama. So I've only considered what's happened to the debt since it was bought by them in 2014.

### *interest and charges*

The interest and charges applied to Mr S's debt were added by the original lender. But I agree with our investigator that Kapama should have noticed that around 75% of the debt was comprised of charges. Kapama has now offered to remove £475 of charges from the outstanding debt, reducing it to £298.10.

Mr S entered into this agreement knowing that interest would be charged and that there may be further charges if he missed repayments to the loan. So I think it's reasonable he pays the interest and some of the charges added, which is what this balance is comprised of.

But having looked at the breakdown of charges, I can see that the original lender also added two default charges to the account. Given that Mr S would only have been defaulted once and has also been charged debt collection charges, I think this charge is excessive in the circumstances. So I think Kapama should also remove the second default charge of £50 from the account, reducing the debt to £248.10.

#### *validity of the debt*

Mr S has said that he doesn't believe the credit agreement is enforceable. He says that he doesn't think the credit agreement is correct. And he doesn't think the debt was assigned to Kapama within the timeframes allowed by the FCA under an application for voluntary variation and cancellation of permission.

As a service we don't have the power to say that an agreement is or isn't enforceable. That's a power given to the courts. Instead, we can only look at whether the business chasing the debt's acted fairly and reasonably in all the circumstances.

Mr S has commented on the fact that the credit agreement Kapama has provided to us is a copy, rather than the original so it's undated and unsigned. But in the absence of any other evidence, I think it's likely this is a true copy of the document Mr S would've been given when he took out the loan. And in any event, there isn't any suggestion that the loan didn't belong to Mr S – in fact he has acknowledged that he's made repayments towards it.

The original lender needed to assign this debt to Kapama by 29 December 2014. Kapama has sent us evidence to show a notice of assignment was sent on 20 December 2014. Mr S says he didn't receive this letter but based on the screenshots I've seen, I'm satisfied that this notice was sent. And that it was sent to the correct address.

So, for the reasons outlined above, I don't think Kapama has acted unfairly in pursuing Mr S for this debt. And having reviewed the contact notes between Mr S and Kapama, I haven't seen any evidence that Kapama has harassed Mr S or contacted him an excessive amount. I say this because I can't see that Kapama contacted him more than necessary to try to reach an agreement to repay the account and provide relevant information about the account balance and how he can repay the outstanding balance.

#### *Mr S's credit file*

Kapama don't need to issue a new notice of default when purchasing a debt. But Mr S doesn't believe the original lender registered the default or advised him of it, so he believes it's incorrect and should be removed from his credit file.

Kapama have provided a screenshot showing that the last payment Mr S made to the original lender was February 2012. The screenshot also shows the account was defaulted by the original lender in April 2012 when they owned the debt. This is the same information that showed on Mr S's credit file. So, on balance I don't think Kapama registered the default and I think it's more likely the default was registered by the original lender.

In any event, a default is only reported to the credit reference agencies for six years from the date the default is first registered. That means that the default should no longer be reported to Mr S's credit file.

#### *customer service*

Mr S has raised concerns about the customer service he's received since Kapama bought the debt. Kapama has now offered him £50 compensation for these delays. I do think Kapama should have responded to Mr S's concerns sooner and that this has caused him some inconvenience. However the only correspondence between Mr S and Kapama during that year was a few emails several months apart. So, taking everything into account, I think Kapama's offer of £50 is fair and reasonable in the circumstances.

#### **my final decision**

My final decision is that I uphold this complaint in part for the reasons outlined above.

To put things right, Kapama Limited should:

- remove £525 of charges from the outstanding debt reducing it to £248.10
- pay Mr S £50 compensation in recognition of the poor customer service he's received since Kapama bought this debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 December 2018.

Sara Falzon  
**ombudsman**