

complaint

Mrs M complains that Uncles The Original Pawnbrokers Limited, trading as Uncles Money, ("UM"), wrongly sold items she had pledged with it, and didn't comply with regulations. In particular, it didn't tell her that the items she had pledged with it would be sold, and it hasn't given her details of the items sold.

background

In April 2012, Mrs M took a loan of £1,000 from UM against the deposit of three paintings. The pledge was for six months, and Mrs M couldn't repay the loan after the period had expired. Mrs M said that it was then agreed that the loan would be kept open until the end of October 2012. But Mrs M was also not in a position to pay off the loan then. After that, despite requests from UM, no payments were made. In February 2014, UM sent a letter to Mrs M to tell her of its intention to sell the three paintings at auction, if repayment wasn't made by 5 March 2014. UM received no repayments, and so two of the paintings were then sold at auction in July 2015 and September 2015 respectively, but the third went unsold, and is still being held by UM. UM is willing to return this one painting if the balance of the loan is repaid. The proceeds from the sale of the paintings were paid into Mrs M's loan account.

The adjudicator didn't recommend that the complaint should be upheld. He couldn't see that UM had acted incorrectly and he said that it was entitled to take the actions it had taken. It had been some years since the loan was taken with no repayments made by Mrs M. UM had issued the appropriate notice of intention to sell which it was required to do, so he didn't think that UM was in breach of the guidelines that applied to its business. The adjudicator explained that the loan agreement was for a six month period, after which, unless a new agreement was put in place, UM was entitled to sell the items to repay the debt. He also noted that UM had offered Mrs M a new agreement.

Mrs M disagreed and responded to say, in summary:-

- UM didn't send her notification of its intent to sell the pledged items;
- UM should have sent the notification of its intent to sell by email, as it had sent all other items by email;
- UM had given her a verbal assurance that it would not sell the items;
- UM should have sold the items for a higher price;
- If she'd known that UM was going to sell her items, she would have taken measures to prevent the sale;
- UM had agreed that she could repay the loan at the end of 2015;
- UM didn't sell her items before July 2015 because of its agreement with her not to sell her items; and
- UM hadn't written to her to tell her about the details of the sale.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where things are not clear, or in dispute, I make my findings on what I think is most likely to be the case. I take into account the evidence which is available to me and the wider surrounding circumstances.

Mrs M entered into a loan agreement with UM in April 2012 and pledged three paintings as security. She said that she had paid a total of almost £13,000 for them. The loan was for £1,000 and for a period of six months, although this could be extended by UM. So, I think that Mrs M would have been aware from the terms of the loan agreement of her need to repay the loan and that, if this didn't happen, that her items could be sold.

Mrs M was experiencing financial difficulties and didn't repay the loan by October 2012. But there appear to have been conversations between the parties about this. UM said in an email dated 7 August 2013 that it would like to upgrade Mrs M to its new system which would allow Mrs M to part pay the loan whenever she felt the need, and that this would give her six months to repay the loan. Mrs M sent an email in response to UM in August 2013 to say that she would like to pay £300 on the 15 September 2013, followed by a one off payment to clear the loan in October 2013. Unfortunately, no payments were made by Mrs M. There are no later emails to document any other verbal agreements. As no repayments were made, UM sent a letter to Mrs M in February 2014, giving her notice of its intention to sell the items if she didn't pay by 5 March 2014. Mrs M said that she didn't receive this letter. But, she does refer to conversations with UM in May 2014, August 2014 and January 2015 in which she told UM she was expecting to work shortly and would then be able to pay the loan off. Ultimately, she said she would do this by the end of December 2015. I note that UM has no record of these conversations. And, as it hadn't received any contact from Mrs M or repayment, it sold one painting in July 2015 for £550 (for which Mrs M said she had paid £2,000) and it sold a second painting in September 2015 for £1,200 (for which Mrs M said she had paid £6,950). A third painting for which Mrs M said she had paid £4,000 remains unsold.

I set out below the issues raised by Mrs M and my comments in response.

UM didn't send Mrs M an 'intention to sell' letter

Mrs M has suggested that the copy letter sent to this service may have been fabricated in light of this dispute, as she didn't receive it. But, I have seen a credible copy of the letter, so I think that this is unlikely. I can see that the letter clearly sets out UM's intention to sell the pledged items. The letter was addressed correctly. Although it may not have been received by Mrs M, on balance, I have no reason to believe that it wasn't sent.

UM should have sent the notification of its intent to sell by email, as it had sent all other items by email

UM said that it always sends its notices of intention to sell by post, as emails can be lost or end up in the trash bin of an inbox. I don't think this was unreasonable.

UM had given Mrs M a verbal assurance that it would not sell the items

I have seen the emails which passed between Mrs M and UM and there is no record in those of any agreement not to sell the items. Mrs M refers to conversations in which assurances were given by UM that it wouldn't sell the items. But, UM disputes this. It said that as it hadn't heard from Mrs M for such a long time, it sold two of the items. It said that apart from the email dated 8 August 2013 in which Mrs M said that the loan would be paid off by October 2013, it had received no repayments or any further agreements to pay the loan off. The proposed repayment arrangement in Mrs M's email dated 8 August 2013 wasn't kept. Because of this, and in the absence of any evidence of an assurance not to sell the items, I

don't think it was unreasonable for UM to sell the items in line with the terms of the loan agreement.

UM should have sold the items for a higher price

Under the Consumer Credit Act 1974, UM must prove it and the auction house used reasonable care to ensure true market value was obtained. It's clear that there was a substantial difference between what Mrs M had said she had paid and the prices obtained for the paintings at auction. But, I can see that before the loan was granted, UM asked the gallery which had sold the paintings to Mrs M for a valuation of the paintings. I have seen an email from the gallery dated April 2012, which said it would pay a total of £1,650 to buy all three paintings back if they were in pristine condition. UM said that it relied on this information in setting the loan amount. And, it said that as the value of the paintings provided by the gallery was quite low, there was no merit in setting a reserve price at auction. It also provided an email from an auctioneer in April 2012 which said that there was little comparable evidence of auction sales of paintings by the same artists as had painted Mrs M's artworks. In view of this and on balance, I don't think that UM acted inappropriately in selling the paintings at auction.

If Mrs M had known that UM was going to sell her items, she would have taken measures to prevent the sale

I asked the adjudicator to ask Mrs M to provide evidence that she could have paid off the loan if she had received the notice of intention to sell. She hasn't provided any such evidence, and also said that she has only been employed since 2015. So, as Mrs M was still unemployed in 2014, I don't think she would have been able to pay a sufficient amount to prevent the sale of the paintings even if she had received the notice. And I note that even now, after being employed, Mrs M hasn't paid anything towards the loan.

UM had agreed that Mrs M could repay the loan at the end of 2015

I've seen no evidence of such an agreement. Even if there had been such an agreement, it doesn't seem likely that Mrs M would have kept to it, as she has paid nothing to date towards the loan.

UM didn't sell Mrs M's items before July 2015 because of its agreement with her not to sell her items

As above, I can see that UM disputes there was such an agreement.

UM hadn't written to Mrs M to tell her about the details of the sale

I can see that the loan agreement refers to details of the sale being given to Mrs M. But the date of sale is construed as the date of sale of the last item. As the third painting hasn't been sold yet, the details of the sales are not yet due under the agreement.

Other issues

Mrs M also said that UM had asked for her bank details to take money from it. But it said that it only take its customers' bank details in order to transfer funds. At no point has it ever taken

funds out of any of its customers' accounts. It only ever deposits funds into its clients' accounts.

Mrs M also referred specifically to conversations with UM in May 2014, August 2014 and January 2015. But UM said that it didn't hear from Mrs M for more than 12 months after the notice of intention to sell was sent to her in February 2014. If there had been contact from Mrs M, it said that it wouldn't have sold her paintings at auction and would have tried to agree a payment plan, as it suggested in its email dated 7 August 2013.

I can see that as of February 2016, there was still an outstanding balance of over £1,600 on Mrs M's loan account, although no interest has been added to the account since then. Mrs M received £1,000 from UM when she pledged the items. As she's had the benefit of the loan funds, I think it only fair that she repays what she owes under the loan agreement. Overall, and on balance, I don't think that UM has acted inappropriately, and I don't find it has done anything wrong in rejecting Mrs M's complaint.

If Mrs M is in financial difficulties, I would urge her to contact UM to discuss this. I would remind UM of its duty to treat cases of financial difficulty positively and sympathetically.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 September 2016.

Roslyn Rawson
ombudsman