

complaint

Ms C complains that Kapama Limited required her to repay too much towards her loan after it defaulted.

background

In 2012 Ms C borrowed £100 from a payday lender. She failed to repay the debt, and the lender added fees and interest until the debt increased to over £1,000. The debt was sold to Kapama in December 2014. The lender has since gone into liquidation.

Ms C says she had fallen into financial difficulties before the loan became due to be repaid, and had told the lender that she couldn't afford to pay it back yet. But the lender had just continued to add interest and charges. Ms C complains that the amount of money she has had to repay, when compared with the small amount she originally borrowed, is disproportionate and excessive.

Another company is collecting the debt on behalf of Kapama. When Ms C complained to Kapama in 2016, that other company replied on Kapama's behalf. Although it said it hadn't done anything wrong – neither it nor Kapama had added any charges or interest – it accepted that the lender had not acted properly. It offered to reduce the outstanding balance by £775, which represented various fees that had been charged.

Ms C did not accept that offer, which expired after 30 days. She brought her complaint to our service. Our adjudicator upheld it. He recommended that in addition to reducing the outstanding balance by £775, another £80 in default fees should also be deducted.

Kapama did not reply by the deadline (and neither did its collections company). So this complaint has been passed to me for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I mostly agree with our adjudicator's decision, and for broadly the same reasons.

In July 2012, seven days before the loan was due to be repaid, Ms C contacted the lender to explain that she was in financial difficulty. She said she had been unable to meet her mortgage repayments for the last three months. She couldn't afford to repay the loan, and she asked if interest could be frozen and if she could make token payments of £10 a month until she was "back on her feet."

The lender's response, seven days later, was to try to take full repayment. This was unsuccessful, as Ms C had said would be the case, and so it charged her a £25 default fee.

The lender tried to take payment again two days later, and charged her another £50 when that also failed. (So the default fees come to £75, not £80.) Following the default fees, Ms C continued to plead for forbearance. But a further £775 of fees was charged.

In 2012 the *Lending Code* set out the minimum standards of good practice for lenders to follow. It said that lenders "should be sympathetic and positive when considering a

customer's financial difficulties." There is no doubt in my mind that the lender failed to do that here.

Also in 2012, the Office for Fair Trading's guidance on debt collection said (in paragraph 2.2) that businesses should:

"exercise forbearance and consideration – in particular towards debtors experiencing difficulty – we would expect businesses to work with debtors with a view to providing them with reasonable time and opportunity to repay debts."

It added that businesses should:

"act proportionately when seeking to recover debts, taking into account debtors' circumstances – actions taken in respect of arrears or default should give proper consideration to available options and the likely effect of such actions on the debtor."

The OFT also said (in paragraph 3.1) that "charges should not be levied inappropriately or unfairly." The guidelines elaborated on this point in paragraph 3.11, saying that:

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

I doubt that £775 represented the actual and necessary cost to the lender of recovering Ms C's debt. I also note that the OFT went on to say:

"In the OFT's view, creditors should consider reducing or stopping interest and charges where a borrower evidences that he is in financial difficulty and is unable to meet repayments as they fall due or when he can only make 'token' repayments such that his level of debt would continue to increase if interest and charges continue to be applied."

I don't think that the lender complied with any of these guidelines. It's clear to me that those fees should not have been charged.

Kapama wasn't the lender, and it didn't add any of those charges to the debt. But it should have noticed when it bought the debt that so much of the balance was made up of unreasonable charges. This was evident from information that appears to have been available to it at the time. And I think it should have acted on that information by reducing the outstanding balance.

Kapama's sister company, which is responsible for collecting the debt, accepted that the lender had not done enough to recognise and address Ms C's difficulties. Although its offer to waive the fees has expired, and it doesn't bind Kapama, I think it would be fair to order Kapama to reduce the outstanding balance by £775. But I also think it would be fair to remove the £75 of default fees as well. There was no need for the lender to try to recover full payment of the loan after Ms C had told it that she couldn't pay it, and had explained why.

my final decision

My decision is that I uphold this complaint. I order Kapama Limited to reduce the outstanding loan balance by £850.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 15 March 2017.

Richard Wood
ombudsman