

The complaint

Mr S complains that Novaloans Ltd trading as cash4unow (“Novaloans”) continued to text and phone him, even after he had told them he was no longer working and has a mental health condition. Mr S was also unhappy Novaloans passed his account to a third-party collection agency.

What happened

The issues Mr S has had stemmed from a loan of £300 advanced on 25 March 2022. Mr S was due to make four monthly repayments of £104.54. As of September 2022, Novaloans said there was an outstanding balance of £274.40.

On 28 April 2022, Novaloans was informed by a third-party debt advice charity that Mr S had entered a debt respite scheme. As a result of this scheme, Novaloans paused collection activity for 60 days. This meant Novaloans didn't proactively contact Mr S during this period. Although I can see from the email records that it did respond to emails it received from Mr S.

The respite scheme ended on 28 June 2022 and as such Novaloans started to contact Mr S about his outstanding balance to try and establish his current financial position and to see whether a payment plan would be needed.

Initially, Mr S was trying to put a plan in place and then Novaloans started to call him from 5 July 2022. But on 30 June 2022 Mr S had already told Novaloans “*I am unavailable to talk over the phone*” and this was again explained to Novaloans on 5 July 2022.

Calls continued until on 12 July 2022 when Mr S explained to Novaloans how these calls were impacting his mental health and he considered the calls he was receiving as harassment.

Novaloans put Mr S on the do not call list on 13 July 2022 – after which Mr S didn't receive any further calls.

Novaloans considered Mr S's complaint and issued its final response letter (FRL) on this matter on 19 August 2022. The FRL didn't uphold the complaint and in summary made two main conclusions:

- The debt respite period had ended, and Mr S may receive letters that Novaloans is legally required to send – such as a Notice of Sum in Arrears.
- It also explained the Consumer Credit Trade Association (CCTA) has provided guidance on the number of calls that can be made – 3 calls and 3 text messages before each payment is made so Novaloans doesn't consider that it harassed Mr S.

Unhappy with this response, Mr S referred the complaint to the Financial Ombudsman. After the complaint was referred here, but before the complaint was investigated, Mr S let us know that Novaloans had sold the account to a third party collection agency. However, both Mr S and Novaloans later confirmed the debt had been recalled and is currently still the

responsibility of Novaloans.

The case was then considered by an adjudicator. She didn't think Novaloans had done anything wrong in terms of the number of calls that it had made, because she thought it was reasonable for Novaloans to chase Mr S for payment.

However, taking into account Mr S's current position, she thought it would be positive and a sign of forbearance for Novaloans to write off the interest on the loan and only collect any outstanding capital.

Mr S didn't agree with the proposed outcome, I've read all his emails and I've summarised his response below:

- Mr S said: "...under the Disability Act they can't do what they did..."
- Due to Mr S's health condition, he can't speak on the phone – and this meant the loan shouldn't have been granted in the first place because it didn't do enough checks.
- Mr S was harassed because he sent numerous emails to Novaloans asking not to be called and calling 15 times was too many.
- Mr S told Novaloans he wasn't going to make payments while the case was being investigated by the Financial Ombudsman.
- Even though the interest may be waived, Mr S says he can't afford to repay the balance and so he made an offer of a one-time payment of £100 to settle the debt.

As no agreement could be reached the case was passed to an ombudsman to make a decision. After the complaint was allocated, I asked an adjudicator to obtain further information from Novaloans which included putting Mr S's offer to it.

Novaloans responded, to say that the offer Mr S made of £100 was too low for it to accept. However, it did offer to re-work the account, removing the interest and applying the payment Mr S made towards the outstanding balance. This would leave an outstanding balance to pay of £260. This is in effect what the adjudicator asked Novaloans to do in her assessment.

Novaloans' offer was put to Mr S – but he didn't accept it. Therefore, the case was passed to me. I then issued a provisional decision explaining the reasons why I was intending to uphold Mr S's complaint in part. A copy of the provisional findings follows this in smaller font and forms part of this final decision.

Both parties were asked to provide anything further for consideration as soon as possible but in any event no later than 11 July 2023.

Mr S has sent a number of emails and I've read and considered them in full. In summary he said:

- Novaloans had sold his account to third party collection agency on two occasions and
- Mr S was unsure how the payment of distress and inconvenience would work along with the outstanding balance that would need to be paid.

I can see the adjudicator responded to Mr S to explain the payment of distress and inconvenience and confirmed that there would still be an outstanding balance to pay after the complaint is closed.

Novaloans responded to say that given how long the loan has been active for, it would prefer to use the payment of distress and inconvenience to reduce Mr S's outstanding loan balance.

The adjudicator explained to Novaloans the general approach that is taken with regards to the payment of compensation for distress and inconvenience and that Mr S had asked for the payment to be made to him directly. Novaloans then confirmed that it would pay the compensation directly to Mr S.

What I said in my provisional decision:

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

In order to assist both parties I have broken the decision down in to various sub-sections. In response to the adjudicator's assessment, Mr S has now said the loan ought to not have been granted because the checks weren't good enough. This is a new issue about whether the loan was affordable and so he may wish to speak to Novaloans about this. So, I say no more about it and I make no finding about whether Novaloans was right or wrong to have granted the loan.

Respite Scheme

Once Novaloans was aware of the respite scheme (through a third-party organisation) it carried out what I would expect it to do. Under the guidelines that brought the scheme into effect – for 60 days Novaloans wasn't entitled to take enforcement action or add interest and charges.

I'm satisfied the respite scheme was correctly administered, and while I can see from the email logs provided by Novaloans that it did contact Mr S during this time, it was only in response to questions and proposed repayment plans that were made by Mr S. In relation to the scheme, I'm satisfied no error was made.

CCTA Guidance

In the FRL Novaloans says that it didn't consider it had harassed Mr S because of what the CCTA guidance says "...we can contact a customer with 3 emails and 3 SMS text messages prior to each payment being due"

A copy of the CCTA guidance that has been mentioned by Novaloans in the FRL hasn't been provided, and a copy of the guidance that I found during my research doesn't say what number of calls can or can't be made. The copy of the guidance I located says the following:

10. Always notify you by email, text, letter or phone at least three days before attempting to recover payment using continuous payment authority on the due date. This notice will ask you to contact us if you are in financial difficulty and cannot repay.

So, if this is the section that Novaloans is using to say that its calls were in line with guidance, I'm not persuaded that it actually says that a lender can call and text three times before a payment is made. Indeed, due to the respite scheme Mr S's payments were already out of line with the contracted due date. And, I can see from the emails, that around 30 June 2022 Mr S had proposed a repayment plan.

But notwithstanding my concerns about the guidance Novaloans is relying on and even if the CCTA guidance does say what Novaloans has suggested about the number of calls it is entitled to make, based on its own call logs that it has provided, it attempted to speak to Mr S on both 5 and 12 July 2012 at least four times. Which would be, according to Novaloans in excess of what the CCTA says it is entitled to do. So, I do think, based on Novaloans own metrics it does appear to have called Mr S too many times on at least two separate dates.

Harassment

I just want to start by saying, that harassment is a criminal offence and not one that I am able to determine as criminal charges are prosecuted through the criminal courts. What I am interpreting Mr S's complaint to mean is that he feels the contact was too much and was unreasonable.

And there is a balance to be struck between a lender reasonably following up with its customer about missed and late payments and excessive contact such that the owner of the debt feels that this was too much to bear.

Mr S says that Novaloans called too many times and that constituted harassment. In order to see what the guidance says about the contact Novaloans can make I've considered the Financial Conduct Authority Consumer Credit Sourcebook (CONC) – this is the relevant guidance and rules. CONC 7.9.4R says:

A firm must not contact customers at unreasonable times and must pay due regard to the reasonable requests of customers (for example, customers who work in a shift pattern) in respect of when, where and how they may be contacted.

Directly, underneath this the FCA makes reference to:

“[Note: paragraphs 3.3j and k of DCG]”

The DCG is the Debt Collection Guidance issued by the Office of Fair (OFT) trading which was the previous regulator of this type of credit. Section 3 of the DCG relates to “Unfair Business Practices”. Looking at what the OFT guidance says. 3.3j says:

j. contacting debtors at unreasonable times

and then subsection k says:

k. ignoring or disregarding debtors' reasonable requests in respect of when, where and how to contact them

Directly, underneath this section is a box which says the following:

For example, shift workers may ask not to be telephoned during certain times of the day.

Also, some debtors may request contact by email rather than by telephone.

Given this is the wording of the regulation, I think it's pertinent to consider what both CONC and the OFT guidance says in relation to the number of calls, the time when the calls can be made and what did Novaloans know and at what point in time.

It looks like between the 5 July 2022 and the morning of 13 July 2022 there were at least 15 calls. However, I've also seen copies of emails Mr S sent Novaloans on 13 July 2022, which indicated further calls were also made on this day – in addition to what I can see in the call log. So, I do think it's likely, that Novaloans attempted more than 15 times to speak to Mr S in an 8-day period.

All the calls were started between the hours of 8 o'clock in the morning and 8 o'clock in the evening. Just considering the times the calls were made, I don't think Novaloans acted unreasonably, as for many people these were working hours and so I don't think an error was made by Novaloans purely in relation to the times it contacted Mr S.

I've also considered the number of calls that were made, and as I've said above, there were days when Novaloans attempted to call Mr S on at least four occasions. And so, I can quite

understand why Mr S says that he was being contacted too much.

But it is important to note, the regulations don't prescribe a set number of calls that can or can't be made on any particular day. But the guidance in both CONC and DSG makes it clear that due regard needs to be had for effect the individual circumstances of each complaint.

Novaloans wasn't given any indication that these calls were impacting Mr S's health until his email to it on 12 July 2022, where he said:

"Also (sic) I am suffering from mental health and you harassing me isn't helping its making my health worse".

This was the first time that Mr S had mentioned his health and the impact the calls had on them. And while Novaloans added Mr S to the 'do not call' list on 13 July 2022, this doesn't appear to have happened until late in the afternoon, which meant that Mr S received further calls on 13 July 2022.

Putting Mr S on the 'do not call list' was a reasonable course of action for Novaloans to have taken given what it had been told. But, purely in relation to his health, this was the first time Novaloans was told about it and so I can't say it made an error by not making any adjustments for this earlier than it did.

However, thinking about what CONC and the DSG guidance says – Novaloans needed to take into account the individual circumstances of the consumer. And Mr S had told it – as early as 30 June 2022 that he couldn't speak on the phone and while I accept no context was provided as to why this was the case, but as Novaloans is considered the experts in this – I don't think it was unreasonable for it to have asked.

In any event, looking at the emails Mr S has sent, he repeated this again on 5 July 2022 he couldn't take calls, but these didn't stop. Indeed, they continued for another 8 days and it is evident in the emails that Mr S was becoming more distressed as a result of Novaloans continuing to call him when he's told them not to. It was a reasonable request by Mr S – not to be called, and it isn't clear in this case why Novaloans didn't adjust its communication with him.

And I do think, in this case, given what Novaloans knew that calling Mr S up to four times a day was excessive especially when email communication seemed to be working as Mr S was responding to emails he received from Novaloans.

This isn't to say Novaloans couldn't contact Mr S to find out what was going on – only given what Mr S said about not wanting calls and secondly about his health, there were and are other options open to Novaloans such as email or letters that could've been sent. Only knowing what it did and from what Mr S had told it, in the circumstances of this complaint it should've done something differently.

I am therefore planning to award Mr S a payment to reflect the distress and inconvenience that was caused, by Novaloans not taking on board what he was saying about wanting calls, and then the further calls that were made, after Mr S had provided details about his mental health. I am planning to direct Novaloans to pay Mr S – directly £200.

Debt Sale

I can appreciate why Mr S says that he wasn't going to pay anything while the Financial Ombudsman considers the complaint. But there is no obligation on the part of the lender to suspend collections activity while a case is investigated. I accept some lenders chose to pause any further activity while a complaint is being looked into, but there is no requirement for them to do so.

And given, albeit that only one payment has been made by Mr S since he'd taken the £300

loan in March 2022, and no payment arrangement was agreed between them, I can quite understand why Novaloans concluded that Mr S was not giving it any signs of wanting to pay and therefore proceeded to pass the debt to a third party.

Therefore, the fact the loan was sold, isn't in itself an error. And I can see, that after the loan was sold, it was recalled – because it appears the third party who purchased it wasn't aware of the ongoing complaint.

Whatever the reason, I am now satisfied the loan is back with Novaloans. I can see from the emails that Mr S wasn't happy the loan was sold, but I make no finding against Novaloans for this. And so I am not persuaded to award any compensation here as I do not consider Novaloans did anything wrong.

What I've decided – and why

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

Novaloans initially queried whether it would be entitled to use the compensation payment of £200 to reduce the amount Mr S owes it. However, after further enquires with the adjudicator, it has now accepted that it will pay this sum directly to Mr S. And so, for completeness as part of the redress which I outline below, the money should be paid to Mr S directly.

Mr S said the loan account had been sold twice, whereas in the provisional decision I explained that it seemed, based on the notes that it was sold only once, and the outstanding balance was now back with Novaloans. Further enquires have been made with Novaloans about the number of times the debt was sold, and it has also confirmed, that this only occurred once. So, I see no reasons to alter my view on this part of the complaint.

Overall, I see no reason to depart from the findings I reached in the provisional decision, and I still think Novaloans should pay compensation for the distress and inconvenience it caused to Mr S. In addition, it should also only collect the outstanding balance which it says is still owed of £260.

Putting things right

Finally, even after the redress that I am directing Novaloans to pay, this will still leave Mr S with an outstanding balance to pay. He will need to work with Novaloans to discuss the most appropriate way forward. But I would remind Novaloans of its obligation to treat Mr S fairly and with forbearance as well as taking into account his health condition.

So, to put matters right, I require Novaloans to:

- Pay Mr S directly, £200 for the distress and inconvenience caused to him by this matter; and
- As it has offered to do, only collect the re-worked account balance of £260.

My final decision

For the reasons I've explained and in my provisional decision, I'm upholding Mr S's complaint in part.

Novaloans Ltd trading as cash4unow should put things right for Mr S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 9 August 2023.

Robert Walker
Ombudsman