

Complaint

Ms C complains that a debt Cabot Credit Management Group Limited (“Cabot”) are pursuing her for is unenforceable and it has been aggressive when chasing her for it.

Ms C has been represented by a third party in this complaint but for ease I will refer to Ms C throughout this decision.

Background

Ms C took out an unsecured loan with a bank in 2004. She fell behind with her payments and the debt was sold to Cabot in September 2008. She made payments to Cabot over a number of years but stopped paying in 2018 and questioned the enforceability of the debt.

Ms C then went on to raise a complaint. She said Cabot had failed to supply her with a copy of the credit agreement and a statement of the accounts, as is required by section 78 of the Consumer Credit Act 1974. Because of this, she felt the debt is unenforceable on her and it's unfair to leave her in a state of limbo while Cabot sit on debts they can't enforce.

Ms C also complained that Cabot has been sending aggressive communications and unfairly putting pressure on her when attempting to collect the debt. She said the decision to lend to her in the first place was irresponsible, and as the debt is assigned to Cabot it is responsible for that decision.

Cabot responded to the complaint. It accepted it couldn't enforce the debt but said this didn't mean it wasn't owed. So, Ms C referred her complaint to this service. Our investigator didn't think the complaint should be upheld. She explained that this service wasn't able to determine whether a debt was enforceable – only a court could do that. But she noted that Ms C had continued to make payments towards the account when Cabot took over its management and that Cabot had explained the current balance. So, she was persuaded there was evidence the debts were Ms C's and that Cabot were therefore being fair when pursuing her for payment. She reviewed the correspondence that had been sent to Ms C by Cabot, but she didn't think there was evidence Cabot had been aggressive or had harassed her.

Ms C responded and raised further queries about the balance that was transferred to Cabot when the debt was assigned from the bank. The investigator looked into this and gathered information from the bank and Cabot – based on this information she thought that Cabot hadn't done anything wrong in seeking to collect the balance. But Ms C disagreed and she asked for a final decision by an ombudsman.

My Findings

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

I'd first like to reassure Ms C and her representative, that I've read all the correspondence in the file when deciding the complaint. I haven't comment on every specific point raised but it's not because I've failed to take it into account and think about it. I've instead concentrated my findings on what I believe to be the key factors in reaching a fair and reasonable outcome.

Ms C says because Cabot can't provide the original agreement this means, in law, that the debt is not enforceable. I've noted that Cabot agrees that the debt is currently unenforceable. But I have no power to say whether a credit agreement is enforceable or not, nor can I determine if either Ms C or Cabot are correct, this would ultimately be up to the court to decide. What I can decide is whether Cabot is being fair in pursuing Ms C for the debt.

Despite not having a copy of the original agreement, I think there is enough evidence to suggest the debt in question is Ms C's. Since the debt was passed to Cabot in 2008, I can see from the statements provided that Ms C has made regular payments towards the balance up until 2018. I don't think that would be likely if it wasn't her debt. The original bank has confirmed it sold a debt to Cabot – and confirmed the debt it sold belonged to Ms C.

Cabot has also provided systems data showing the date it purchased the debt. Cabot has been able to provide a balance for debt they say Ms C is responsible for. So, I think, given the evidence I've detailed above, Cabot are being fair in pursuing Ms C for the debt.

There has been some dispute about the exact balance of the debt that was sold on – mainly due to limited records available. Ms C says, given the limited information available, it's unfair for Cabot to continue to pursue her for the debt. Our investigator contacted the original bank to gain further information about the balance that was passed over to see if this tallies with the information Cabot hold. There was a small discrepancy with the figures provided. After investigating this further, the investigator came to the conclusion that this was due to payments being made just before and just after the debt was assigned to Cabot. This was because some payments weren't accounted for on the original banks records. But having compared the two records, it appears the balance Cabot has been recording is correct and has taken account of all the payments Ms C has made. Ms C hasn't provided any information to say why she thinks the balance is incorrect. Having looked at the payment history and balance information provided by both the bank and Cabot, I think the explanation provided the investigator is a fair position to take. This means, I still believe Cabot is acting fairly in pursuing the debt.

I've considered the comments made about Cabot sending aggressive correspondence when chasing the debt. I've reviewed the correspondence that Cabot sent to Ms C but I don't agree that it was aggressive. It appears to be factual and not too frequent or rude. Our investigator asked Ms C to provide any further evidence she has to show aggressive collection activity - but nothing further was supplied. So, I don't think I've seen anything to say Cabot have done anything wrong here.

Finally, I don't agree that Cabot is responsible for any irresponsible lending. It was the original bank who provided the loan, so I think it's fair to suggest that any complaint about irresponsible lending should be made to them and not to Cabot.

My Final Decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 17 April 2020.

Daniel Little
Ombudsman