

The complaint

Mr S is unhappy about Cabot Credit Management Group Ltd (Cabot) pursuing him for a debt previously held with a bank, that he disputes is his. He is also unhappy about the delay Cabot took in responding to his request under the Consumer Credit Act.

What happened

In 1997 Mr S opened a credit card account. In 2009 the agreement was terminated due to non-payment on the account. In 2013 Cabot were assigned the legal ownership of the debt and sent out a notification of this to Mr S. Mr S made some payments to the account.

Cabot attempted to contact him, but it was unsuccessful until 2014, when a payment plan was set up. Following this there was limited contact between Mr S and Cabot, but Mr S was making payments. In 2016 Mr S contacted Cabot to ask them to write off the debt due to its age, which Cabot refused.

In 2018, Mr S raised a request under the Consumer Credit Act as he disputed that he was responsible for the debt and wanted a signed copy of the credit agreement and the terms and conditions of the account, within 12 days. Cabot acknowledged receipt of the letter but told Mr S that it would have to get the documentation from the issuing bank.

Unfortunately, Cabot didn't get the documents within the timeframe and marked the account as unenforceable. This meant it couldn't enforce the debt at court, but it considered the outstanding balance was still collectable.

It wasn't until 2019 that Cabot obtained the original credit agreement and sent this to Mr S. Mr S complained that the agreement was illegible, and he wasn't liable for the debt. Cabot logged this as another complaint but, concluded that there was enough evidence to find that Mr S was responsible for the debt.

Cabot attempted to contact Mr S, but this was unsuccessful. So, it wrote to Mr S telling him that it would pass the case to a debt recovery agency due to the lack of response. This referral was cancelled by Cabot, once Mr S had made contact and told Cabot of his circumstances. Mr S still disputed the debt and another complaint was raised.

Following this investigation, Cabot found that it didn't comply within the timeframe so reduced the balance on the account. Mr S remained unhappy and raised another complaint as he said that he was still receiving letters regarding the debt collection agency.

Cabot again investigated and found that there had been a communication error as the letter shouldn't have been sent. For this, it paid compensation of £100. Mr S was still unhappy and referred the complaint to this service.

Our investigator didn't uphold the complaint and found that Cabot had acted fairly. She said that the delay in Cabot receiving the original credit agreement and passing this onto Mr S was unfortunate. But because the documents were coming from another bank, the delay was understandable. She concluded that there was evidence that Mr S was the account holder and by Cabot reducing the outstanding balance, this was fair and reasonable. So, Cabot could pursue him for the debt.

Mr S didn't agree with our investigator and asked for a decision from an ombudsman.

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.

But having done so, I won't be upholding this complaint.

I can understand that this is likely to come as a disappointment to Mr S, but I hope my findings go some way in explaining why I've reached this decision. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Firstly, it should be noted that we offer an informal dispute resolution service. We try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances. Although we do take account of applicable law and regulations, we also consider the overall situation. So, it is possible that a court would reach a different outcome to the decision that we make on a complaint. It would be for a court to determine whether or not the agreement was enforceable, so I haven't considered that in any detail. But I am able to consider whether or not Cabot has acted fairly and reasonably in its dealings with Mr S.

Was Mr S the account holder?

I must consider the evidence Cabot relied upon as well as the evidence from Mr S before deciding what is fair and reasonable. Mr S said that because the debt was so old, Cabot were being unreasonable in pursuing him for it. He also said that because Cabot didn't comply with his consumer credit act request, this was another reason why it shouldn't pursue him for the debt.

Cabot has accepted that there was a delay in obtaining the documentation from the issuing bank and from what I have seen I agree. I also accept Mr S' view that the documents weren't in the best of condition. But I am satisfied that they were of sufficient quality to make out Mr S' name, date of birth and previous home address. I can see that Cabot cross-referenced those details with the call recordings, which were the same except the previous home address. So, I think it was reasonable for Cabot to conclude that Mr S was the account holder.

Cabot has provided evidence to show that Mr S followed a payment plan and made a number of payments to the account over the years. I have also read letters from 2016-2017, between Cabot and Mr S at his current address. When he was making payments to the plan. So, I am further persuaded that this shows proof that the debt belonged to Mr S and that he was the account holder.

I have next considered whether Cabot has been fair in its treatment of Mr S. From the evidence, I think it has. I can see that Mr S contacted Cabot to try to get the debt written off because of its age. But Cabot reduced it as it accepted its failure in complying with the requirements under the consumer credit act.

It also tried to arrange affordable repayment options for Mr S but this I can see were hampered by the difficulties it faced in trying to contact Mr S. I note that Mr S has given no reason why he didn't maintain contact with Cabot and only contacted Cabot once he was

informed that a debt collection agency would attend his home address. Fortunately, Cabot cancelled this visit once it was made aware of Mr S' circumstances.

So overall, I can see that Cabot has treated Mr S fairly and as such I can't see that it has been unreasonable in pursuing him for the debt. So, I find that it wouldn't be fair or reasonable for me to require it to take any action in response to his complaint. But it's required to respond to any financial difficulties that Mr S may be experiencing positively and sympathetically.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 August 2020.

Ayisha Savage
Ombudsman