

The complaint

Mr C complains that Cabot has treated him unfairly when trying to recover debts it acquired from other businesses.

What happened

Cabot has purchased three debts in Mr C's name.

Loan 1

In August 2012 Cabot acquired a personal loan account that had defaulted with the original lender. The outstanding balance when Cabot bought the debt was £4,771.26. Cabot says it sent Mr C a Notice of Assignment (NOA) confirming the outstanding balance and new arrangement. Between August 2012 and November 2017 Mr C made repayments to reduce the outstanding balance to £4,059.26. In November 2017 Mr C's representatives requested documents from Cabot under Section 78 of the Consumer Credit Act 1974. On 20 March 2018 Cabot wrote to confirm it couldn't provide a copy of the original loan agreement and that the debt isn't enforceable.

Loan 2

In June 2013 Cabot bought another closed personal loan in Mr C's name. The balance when Cabot acquired the account was £3,199.68. Cabot sent Mr C a NOA confirming the new ownership and outstanding balance on 27 June 2013. Between June 2013 and November 2017 Mr C made repayments to reduce the outstanding balance to £2,717.06. In November 2017 Mr C's representatives asked for copies of documents, including the credit agreement. Cabot responded on 20 March 2018 and advised it couldn't provide a copy of the original credit agreement and that the debt isn't enforceable.

Credit Card

In February 2017 Cabot acquired a closed credit card debt in Mr C's name. The balance was £1,626.97 and Cabot sent Mr C a NOA on 23 March 2017 confirming the change in ownership of the debt. Between February 2017 and November 2017 Mr C made payments to reduce the balance to £1,578.71. In November 2017 Mr C's representatives asked for the loan documents and on 25 September 2018 Cabot responded to say it wasn't able to obtain a copy of the original credit agreement which meant the debt wasn't enforceable.

In June 2019 Mr C's representatives complained that Cabot had acted unfairly. Mr C complained that Cabot couldn't be sure the balances were correct when the debts were acquired. Mr C's representatives also said it was unfair to attempt to collect when the original terms aren't available.

Mr C's case was referred to our service and it was passed to an investigator. He thought Cabot had dealt with the complaint fairly and didn't ask it to do anything else. Mr C's representatives asked to appeal and said it's unclear whether the sums Cabot seek to collect are correct. They also said that the limited information about the nature of the original debts

meant it's unfair to attempt recovery from Mr C. As Mr C's representatives asked to appeal, his complaint has been passed to me to make a decision.

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.

As our investigator has said, it's not our role to say whether a debt is enforceable or not. We're an informal dispute resolution service and decide the outcome of a complaint on a fair and reasonable basis. I've considered Mr C's complaint on the basis of whether it's fair for Cabot to seek repayment of the three debts in question. I'll look at each debt in turn.

Loan 1

I understand the original credit agreement isn't available for review which makes the loan unenforceable in court. But there is other information available that supports Cabot's claim that the information it has provided is correct. Cabot sent Mr C a NOA to confirm it had acquired a debt of £4,771.26 in his name from the original lender. The transaction history provided shows that Mr C made regular repayments to the debt across several years. I've looked at the statements and I'm satisfied the current outstanding balance of £4,059.26 correctly reflects the payments Mr C has made. I haven't found anything to show the figures Cabot has provided are wrong.

I also think it's reasonable to note that Mr C made payments to reduce the outstanding balance for over five years. Mr C's representatives have said that the payments were made via a debt manage company and that he wasn't aware of what he was paying. But I can see the amounts Mr C paid varied annually and I think it's more likely than not that the debt management arrangements were regularly reviewed. I'm not persuaded that the fact Mr C's payments were made via a debt management company means it's unfair for Cabot to seek repayment of the remaining balance.

I'm sorry to disappoint Mr C but I'm satisfied that Cabot did acquire Loan 1 from the original lender and that the balance it seeks to reclaim is correct. I haven't been persuaded that Cabot has treated Mr C unfairly by asking him to repay the outstanding balance.

Loan 2

Again, the original credit agreement isn't available in this case. But I think that reflects the passage of time since Mr C took out the original loan. I'm not persuaded that the absence of the credit agreement means Cabot's actions when trying to recover the debt are unfair. Cabot has provided systems evidence to show it sent Mr C a NOA on 26 June 2013 confirming it had purchased the debt from the original lender and the amount outstanding. I note that Mr C didn't object to Cabot and made payments between July 2013 and November 2017, reducing the outstanding balance to £2,717.06.

As with Loan 1, I'm not persuaded that Mr C was unaware of the nature of Loan 2 on the basis that his payments were made via a debt management company. Mr C's repayments appear to have changed on an annual basis, as with Loan 1, and I think that reflects reviews carried out by the debt management company to ensure Mr C's repayments remained affordable. I'm satisfied Mr C would most likely have been involved in that process and was aware of the debt.

The information I've seen shows Cabot owns Loan 2 and that there is an outstanding balance. I'm not persuaded that Cabot has treated Mr C unfairly by asking him to repay the outstanding debt.

Credit Card

Again, there is no original credit agreement available for Mr C's credit card. But we have a copy of the NOAs sent by both Cabot and the original lender on 23 March 2017. Both NOAs contain the same figure for the outstanding balance of £1,626.97 and confirm the debt was sold to Cabot on 28 February 2017. I note Mr C didn't contact Cabot to query the debt it had acquire or ask whether the balance was correct. Mr C made various payments reducing the balance to £1,578.71 in November 2017 when they stopped.

I note that the payments were via a debt management company and, as I've said above, I think that reflects the fact Mr C was aware of the debt and what he owed. I'm not persuaded that the absence of a credit agreement means it's unfair for Cabot to attempt collection of the debt. As I'm satisfied the outstanding balance is accurate, I agree with Cabot that it has a genuine reason to contact Mr C and request repayment.

As I've said above, it's not for our service to say whether a debt is enforceable or not. I've considered whether Cabot has treated Mr C unfairly by asking for repayments despite the fact it has limited information and documents available from when he opened the original account. For the reasons I've given above, I'm satisfied Cabot acquired genuine debts in Mr C's names and that the balances given to Mr C and shown on his statements are correct. As I haven't found that Cabot has treated Mr C unreasonably and I'm satisfied it has dealt with his complaint fairly I'm not telling it to take any further action.

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 Mr C to accept or reject my decision before 8 January 2021.

Marco Manente
Ombudsman