

The complaint

Miss N complains that Cabot Credit Management Group Limited is chasing her for a debt which she disputes its entitled to collect from her. She wants it to cease collection activity and provide her with the information she's requested.

What happened

Miss N tells us that Cabot is seeking to recover payment of a debt. She says that it's refused to provide her with a deed of assignment to prove that it's the legal owner of the debt and is entitled to collect it. And that she feels harassed by the amount of contact she's received.

Cabot told us that it purchased the debt from Miss N's original creditors, a company I'll call "R" in July 2017. And that small monthly repayments were made until March 2019. It said that it had advised Miss N that it wasn't obliged to send a copy of the deed of assignment as it had sent her a notice of assignment which confirmed it was the legal owner of the debt.

Our investigator didn't recommend that the complaint should be upheld. He felt that Cabot had acted correctly and provided sufficient information to show it owned the debt. And that it needn't supply Miss N with a copy of the deed of assignment.

Miss N didn't agree with this outcome. She raised a number of points of law which she said required Cabot to provide the information she'd requested or cancel the debt.

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.

I understand why Miss N would be concerned if she thought an unauthorised party was seeking repayments of a debt from her. And asking her to enter a payment arrangement in order to do this.

I should say at the outset that I find that Miss N has been very open in the way in which she's brought this complaint. And it's clear from what she's said that she has been led - perhaps I should more accurately say misled - by some items that she's seen on social media platforms. It is of course a matter of personal choice as to what sources an individual relies upon for advice. But objectively speaking, the risks of acting upon unqualified "*legal*" advice posted on social media would seem to be considerable.

Broadly speaking, and apparently acting on such advice, her complaint is that as Cabot hasn't produced the deed of assignment it isn't legally able to enforce the debt. Miss N also complains that Cabot has ignored certain letters that she's sent it and which she feels prevents it from continuing with collection activity.

I should say at this stage that for reasons I'll explain below, it's not for me to determine if the debt is legally enforceable against Miss N.

I'm aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not responding to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

This service is an informal resolution service. And as an ombudsman I'm required to make my decisions in accordance with the rules which are set out in the Financial Conduct Authority (FCA) sourcebook and Financial Services and Markets Act, 2000.

The most relevant rules are:

DISP 3.6.1

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

DISP 3.6.4

In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice;

The effect of the above is that I don't apply the law directly – but I take it into account. This means my decisions may be different to that which a court might reach if it was able to look at the same issue. Although here I believe there's a very high probability that a court would reach the same decision regarding the legitimacy of Cabot seeking to collect the debt.

Financial businesses are also required to follow the rules of the FCA. And relevant rules relating to this complaint are (my underlining):

CONC 6.5.2

(1) Where rights of a lender under a regulated credit agreement are assigned to a firm, that firm must arrange for notice of the assignment to be given to the customer:

(a) as soon as reasonably possible;

CONC 7.5.3

A firm must not ignore or disregard a customer's claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the customer's claim is not valid.

I wrote to Miss N with my initial thoughts (which were to the effect that Cabot didn't need to provide the deed of assignment in order to justify its attempts to collect the debt). She replied indicating that she would repay the debt if Cabot provided the documents to prove it had a *legal* assignment of the debt as opposed to an *equitable* assignment.

I've already explained that I don't directly apply the law, so I'm not required to apply such a distinction in determining this complaint. In very basic terms, the difference being that if there had been only an equitable assignment, Cabot would have been collecting the debt on behalf of R. With a legal assignment it would be collecting the debt on its own behalf as the absolute owner of the debt.

Miss N acknowledges that she recognises the details of a debt she owed to R. And I've seen a notice of assignment from R, addressed to Miss N, confirming the debt was sold to Cabot. And also a letter from Cabot advising that it had become the new owner. Given that Miss N kept up monthly payments for more than 18 months after Cabot acquired the debt it seems she initially had no doubts about the legality of its right to collect it.

The FCA requirement is for the notice of assignment to be provided – not the deed of assignment. And in 2019, the High Court also held that a debtor couldn't challenge the validity of an assignment where the parties to the assignment (here that's R and Cabot) were satisfied that the assignment was confirmed and effective, provided that notice of the assignment had been sent to the debtor. Both conditions are met in the circumstances of this complaint. I'm satisfied that Cabot doesn't need to provide Miss N with a copy of the deed of assignment to show it owns this debt. And that the notice of assignment is sufficient to permit it to seek to collect repayments from her.

For completeness, I'll deal briefly with some other related matters which Miss N has raised. She suggested that the failure to supply the deed of assignment amounted to a breach of the Fraud Act, 2006. It's not my role to decide if any law has been broken but that particular legislation has no application here as it only relates to disclosure of information where a legal duty to disclose arises. I've already explained why no such obligation exists here.

And Miss N's suggestion that - by sending three letters to Cabot seeking the information and asking it to "*cease and desist*" from contacting her about the debt - it was required to stop collection activity, is again unsupported by legislation.

I understand that it would be stressful to be contacted about a debt – whilst the debt was disputed. But I've seen nothing in the manner or frequency of contact to cause me to think Cabot has taken other than reasonable steps in pursuing a debt it owns and which it believes on reasonable grounds that it's entitled to enforce.

I note that Miss N asked Cabot only to her contact her by email. Cabot has acknowledged this and adjusted its system details to accommodate this request as far as is possible. But it confirmed that regulations require it to send some information by post. I'm satisfied that as far as it is able to do so Cabot has tried to make reasonable adjustments to accommodate Miss N's wishes.

In summary, I find that Cabot has acted reasonably in seeking to collect this debt from Miss N and the way it has done so. I'm satisfied it's provided her with justification and sufficient evidence to show that it's entitled to do so.

I'd expect it to continue try to ensure that it offers Miss N a method by which to repay the debt sustainably and affordably.

I'm aware my decision will come as a disappointment to Miss N but I'm not upholding this complaint.

My final decision

For the reasons given above my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 6 January 2021.

Stephen Ross
Ombudsman