

The complaint

Mr C complains Cabot Credit Management Group Limited (“Cabot”) is unfairly holding him liable for three debts it purchased as they were taken out fraudulently.

To put things right, Mr C wants Cabot to return all payments made to it from his account as he didn’t authorise them.

What happened

Mr C says he discovered he’d been the victim of impersonation fraud by his brother, Mr D, in August 2019. Mr C is represented by Miss K. Where appropriate, I will refer to Miss K in my decision.

Upon realising Mr D was committing fraud, Miss K says she’s since been looking into Mr C’s financial affairs and has discovered, amongst other things, regular payments to Cabot. This in turn has led to her discovering about the debts Cabot bought from three separate financial businesses.

In response, Cabot said it was collecting agreed repayments towards debts owed and so declined to refund any of the payments it had collected from Mr C. Cabot said the repayments made towards the debts weren’t indicative of fraud, and Mr C should take up the matter of the debts being fraudulent with the original lenders.

Mr C says Mr D was making repayments to Cabot from his account and these were not authorised by him. Unhappy with what Cabot said, Mr C referred his complaint to this service.

One of our Investigator’s looked into the matter. In short, they found:

- Cabot had no reason to doubt the person they were communicating with wasn’t Mr C. That’s because the information it had matched Mr C’s. And, it was only until recently it received an offer of payment from somebody else, which was why Cabot didn’t act on it
- It’s for the original lenders to investigate matters related to the account being taken out fraudulently
- Direct debit payments for one of the accounts were returned to Mr C following an indemnity sent by that original lending business. But as these debts are owed, Cabot has acted reasonably in declining to return payments taken under the second direct debit mandate
- Cabot purchased these accounts in good faith and, until such time the original lender confirms fraud has taken place, they are not obliged to return any payments made towards the balances owed
- Cabot has since decided not to pursue Mr C for any outstanding debts – which is fair in the circumstances.

Mr C and Miss K disagreed with what our investigator said. In summary, they added:

- As Mr C doesn't own a home, he wouldn't have taken out one of the loan's which was for home improvement
- PPI redress, that was attached to this loan, wasn't paid into Mr C's only bank account
- There's no evidence that one of the accounts had been reduced by all the payments made against it sent to Cabot, the original lender, and a third-party debt collector
- Cabot is a member of the Credit Services Association ("CSA"). Cabot has breached one of CSA's codes of conduct as it should have referred Mr C's fraud allegation to its client(s)
- The CSA code of conduct also says Cabot should have taken '*reasonable steps to ensure the person being contacted is in fact the customer*'. To that end, Cabot hasn't provided any evidence to support its assertion Mr C borrowed the money.

In response, our Investigator said a statement for the respective lender shows a large amount being credited to the account which is likely to be the PPI redress payment. A statement of account for the other lender doesn't indicate multiple payments were being claimed at the same time. And, though there's no indication the individual lenders were contacted, Mr C was given their details to contact directly to raise the disputes in Cabot's final response.

As Mr C didn't agree, this matter has now been passed to me to decide.

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.

And having done that, I've decided not to uphold this complaint. I know this will disappoint both Mr C and Miss K, so I'll explain why.

It's not clear under what terms Cabot bought the accounts from the three respective lenders. But, broadly speaking, these types of agreements include an obligation to take on any liabilities that fall under them.

This matter therefore isn't likely as simple as saying Mr C should approach the original lenders to look into the accounts being opened fraudulently. So that means I need to consider if there was cause enough for Cabot to be alerted to the possibility it may be dealing with a fraudster – and therefore, whether it should have acted differently.

From the information Cabot has given me, I don't think it had any reason, until more recently, to question whether it was dealing genuinely with Mr C and not someone impersonating him. When it did receive information which suggested it wasn't dealing with Mr C, Cabot picked up on this and didn't act on it. So I think it acted reasonably and responsibly here.

I accept it's possible Mr D may have been impersonating and using Mr C's money to pay loans he'd taken out fraudulently. But Cabot didn't have any evidence to have been concerned this was happening when it took the debt on, arranged repayments and when repayments were being made.

Key to Mr C's complaint is whether he had authorised his brother to carry out these actions.

Miss K has told this service that Mr C is in a state of shock and isn't talking about what's happened and how that relates to his relationship with his brother, Mr D. That means Mr C hasn't given this service enough information about the nature of his relationship or any financial arrangement with Mr D. So, I simply don't have enough evidence to make a finding on this point.

Cabot wasn't involved in the original setting up of any of the three accounts and wouldn't likely hold related application paperwork. So it's likely they're not best placed to establish if the original lending was taken out fraudulently.

I do agree that it appears as though the PPI related payment might have been paid into the relevant account it was attached to in 2018. And that it's unlikely, from the statement I've seen, that Mr C's payments to different entities didn't credit the relevant account.

Its possible Cabot didn't meet its obligation under the CSA to inform its 'client' about the fraud allegation. But Mr C was given the contact details for these lenders to contact himself. So I don't think any real detriment has been caused here – or that Mr C has been obstructed in any way.

So, in conclusion, Cabot seemed to have acted reasonably when it took on these accounts as there doesn't seem to be any evidence to have alerted it to the possibility it wasn't dealing genuinely with Mr C. And when it was presented with information it might not be, Cabot took reasonable steps.

Overall, Cabot didn't have enough evidence and therefore cause to think the payments it was receiving weren't authorised by Mr C.

Cabot has decided to not hold Mr C liable for any remaining balances. I don't think it needs to do more.

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 Mr C to accept or reject my decision before 30 March 2022.

Ketan Nagla
Ombudsman