

## **The complaint**

Mr A complains that Hoist Finance UK Limited is asking him to repay a debt that is statute-barred. Mr A wants Hoist to write the debt off based on the impact this is having on his mental health.

## **What happened**

Mr A owed money to a business I will refer to as "S". In late 2014, S sold the debt to Hoist Portfolio Holding 2 Limited (HPH2) which then assigned the debt to Hoist in around October 2018.

Mr A complained to Hoist in late 2020. He said the debt was statute barred as he'd not made any payments towards it for more than six years. Hoist didn't uphold his complaint as it had received a payment towards the debt from S in 2016.

When Mr A complained to this service, he explained that the debt was impacting his mental health. The investigator asked Mr A to give this service more details about how his mental health condition affected his ability to manage his finances. Mr A sent this service a Debt and Mental Health Evidence Form (DMHEF) that his doctor had completed. The investigator sent this to Hoist but it didn't agree to write the debt off.

The investigator didn't recommend that Mr A's complaint be upheld. She didn't think the debt was statute barred as S had made a payment against the balance in 2016.

The investigator said that at the time Mr A asked Hoist to write the debt off, he hadn't made it aware of his mental health problems. But that based on the evidence Hoist now had about Mr A's mental health, it wasn't reasonable to require it to write the debt off.

Mr A is very unhappy about the investigator's recommendation. He says that the debt is severely impacting his mental health.

## **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 should first like to say that I have every sympathy for Mr A and the mental health struggles that he's facing.

My decision only deals with the actions of Hoist and not S but I've included some information on the complaint that Mr A made to this service about S as it's relevant to his current complaint against Hoist.

Mr A was unhappy about the charges that S had applied to his current account before it sold the debt to HPH2. Mr A thought S should amend his credit file and refund the entire amount he owed. This service considered his complaint in 2016 and the ombudsman decided that S

had acted reasonably when it reduced the amount Mr A owed by £541. She didn't require S to remove the default or take any other steps. Based on what I've seen, I'm not persuaded that S wrote the debt off. So, I can't find that Hoist acted unfairly by asking Mr A to repay the outstanding balance when it took the debt over in 2018.

This service can't declare a debt statute barred – it would be for a court to decide this. Even if a debt is statute barred, it still exists and is recoverable. However, I can consider whether Hoist treated Mr A fairly once he told it that the debt was more than six years old.

When Mr A asked Hoist to write the debt off in 2020, I don't think it was aware of his mental health problems. So, I can't find that Hoist should've taken account of Mr A's circumstances at the time. And I'm satisfied that Hoist had reason to believe that Mr A owed money on the debt.

Hoist has now seen Mr A's DMHEF, so I've considered whether it's still reasonable to continue asking for payment.

Financial businesses are required to follow the rules of the Financial Conduct Authority (FCA). The relevant rules and regulations are contained in the Consumer Credit Sourcebook (CONC).

CONC 7.2.2 says that CONC 7.2.2 says that customers with mental health difficulties or mental capacity limitations may fall in the category of particularly vulnerable customers. CONC 7.2.3 says that in developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, firms may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt".

The DMHEF says that although Mr A is suffering from a mental health condition that affects his ability to concentrate, he's able to communicate normally and has fluctuating support. I don't think this means that Hoist is wrong not to write the debt off. Or that it shouldn't continue to ask Mr A to repay the debt. But going forward, I would expect Hoist to be mindful of the MALG guidance when it communicates with Mr A. I would also expect Hoist to take account of any further information that Mr A may give about his ability to repay the debt.

If Mr A is unhappy with the way that Hoist treats him in the future, I don't see why he couldn't complain again. It's just that for now, I don't consider Hoist has treated Mr A unfairly. This means I don't uphold his complaint. I'm very sorry that this is likely to come as a disappointment to Mr A.

### **My final decision**

My decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 April 2022.

Gemma Bowen  
**Ombudsman**