DRN-4217854

The complaint

Ms T's complaint is about a secured loan she took out in 2007 with Lender W, which is now owned by Cabot Financial (Europe) Limited. Ms T's representative has said:

- the loan was mis-sold because it was lent irresponsibly as it was not affordable. This is because the combined payments to Miss T's main mortgage and this loan represented 63% of her household income;
- the debt cannot be enforced given the amount of time that has passed since it was advanced and no payments had been made – it is statute barred under the Limitation Act 1980; and
- the requirements under the consumer Credit Act 1974 (CCA) for provision of information to Ms T were not complied with between October 2008 and March 2016, which means that the debt cannot be enforced until the non-compliance is rectified. The lack of required notices means that interest and charges should not have been added to the debt.

In light of this, Miss T wants the charge removed from her property and the debt written off.

What happened

In December 2007 Ms T's loan was advanced for £25,000 by Lender W with a repayment term of 15 years. The account was declared in default in April 2010 because payments hadn't been made for most of the term. At this point, rather than pursue possession of the property, Lender W simply terminated the agreement. This meant that interest ceased to be charged on the account and no further charges were applied. The loan balance has not changed since. Lender W went out of business and the loan was transferred to Cabot in July 2014.

In November 2021 Ms T's representative raised a complaint with Cabot on her behalf.

Cabot responded to the complaint on 7 February 2022. It confirmed that the loan had been advanced by Lender W, and that it had bought the loan in 2014 after Lender W went out of business. Following that it had transferred the charge into its name, which it had confirmed to Ms T at the time. Cabot said that as the loan was secured on Ms T's property it could not be statute barred under the Limitation Act 1980. In relation to the allegation of irresponsible lending, Cabot confirmed that as the loan had been advanced by Lender W, it was not responsible for the acts complained about. As for the matter of the compliance with the CCA regulations, it said that the complaint had been made too late.

Ms T was not satisfied with Cabot's response and asked us to look into the matter. One of our investigators looked into our jurisdiction to consider the complaint. He explained that we could not look at the complaint about the irresponsible lending against Cabot, as it was not responsible for the act complained about. He also thought that, even if we could, the complaint would have been made too late under the time limits contained in our rules.

Ms T's representative didn't accept the investigator's conclusions. The investigator considered the further comments, but he remained of the opinion that we could not consider

the complaint about the irresponsible lending, as Cabot was not responsible for that aspect of the complaint.

Ms T's representative put forward that as Ms T's debt had been bought from Lender W, Cabot would have inherited responsibility for all past acts or omissions on the part of Lender W. In addition, it said that Cabot had a responsibility to check that the loan had not been mis-sold before it started the process to enforce the debt. The representative asked that the complaint be referred to an ombudsman for consideration.

I issued a jurisdiction decision on 27 June 2023 setting out our jurisdiction as it related to Ms T's complaint. I concluded that we could not consider the first complaint point against Cabot and we should not consider the second. However, the third point of the complaint did fall within our jurisdiction and so I went on to consider its merits. Below is an excerpt of my findings.

'*As Ms T's representative has pointed out there are requirements in place for the information that needs to be provided to a borrower for loans that are covered by the CCA.*

Cabot has confirmed that Ms T's loan was declared in default by Lender W in 2010. At that time Lender W would have issued Ms T with a default notice, which would have set out how much she owed and told her the full amount was payable at that time. Following this, the requirement for SPSs and arrears notices ceased. As such, I can't find that Cabot was in the wrong by not issuing such documentation. As for notification of default sums when charges are added, again these would not have needed to be issued by Cabot. This is because no charges have been added by Cabot since it took ownership of the account.

I would also confirm that, even if we were to find failings on the information Cabot provided Ms T from 2014, or to have found that Lender W didn't issue the appropriate default notification in 2010, the remedy would be that Cabot would not have been entitled to charge interest or apply charges, or ask Ms T to pay any such additions to the loan applied by Lender W. As no interest or charges have been applied to the account by either lender since the default date, there would be no redress due Ms T.'

Cabot acknowledged receipt of my provisional decision and confirmed it had nothing to add.

Ms T's presentative didn't accept my provisional decision. However, other than to highlight that Cabot had a duty to administer the loan going forward in line with the CCA requirements, the representative didn't make any comment on the merits of the part of the complaint.

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.

Ms T's representative has highlighted that Cabot had a responsibility to administer the complaint in line with CCA requirements. That is not in question; Cabot inherited the duty to provide information, serve enforcement notice, default notice, termination notice, supply a settlement figure and a termination statement. However, as I explained in my provisional decision, as the account was declared in default in 2010 and no further charged or interest have been added there were no requirements for regular provision of information. As for the latter obligations, the need for those activities have not as yet arisen in relation to Ms T's account.

The representative has also highlighted that if these obligations are not met, either by Cabot

or Lender W, the debt can't be enforced. Again, as I said in the provisional decision, if Lender W didn't fulfil its obligations for documentation under CCA, it would potentially have an effect on Cabot's rights under the agreement. However, the main one would be that it would be unable to charge interest on the debt, which it hasn't anyway. In relation to enforcing the debt, if Lender W was deficient when issuing the default notice, Cabot wouldn't be able to enforce the debt until it had rectified that omission, but it would not mean it could never enforce the debt. In any event, the capacity or otherwise of a creditor to enforce a debt through the courts is a matter for the courts, not this service.

As neither party have provided any new evidence, I see no reason to depart from my provisional conclusion. That being that Cabot did nothing wrong in not providing the documentation Ms T's representative has said it failed to provide after it took over the loan in 2014, because it didn't have to because the loan had already been defaulted.

My final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Ms T to accept or reject my decision before 28 July 2023.

Derry Baxter
Ombudsman