

The complaint

Mr Q complains that Cabot Credit Management Group Limited, trading as Cabot Financial (Europe) Limited are pursuing him for several debts which he says they haven't evidenced they own.

What happened

A debt purchaser (DP) say they acquired three separate debts, in Mr Q's name, from Company B, between 2017 and 2020 and asked Cabot to collect and service the debts on their behalf.

Mr Q disputed Cabot's legal right to the debts and around December 2020 asked them to provide copies of the original credit agreements. Mr Q continued to correspond with Cabot, expressing his dissatisfaction and the first of several final responses to Mr Q's complaint, was issued in March 2021.

Cabot said they were expected to contact him about repayments, they didn't agree they had acted incorrectly in doing so.

Mr Q continued to dispute matters, raising several concerns around the legitimacy of the credit agreements, Cabot's conduct, and that one of the debts from Company B should now be statute barred.

Cabot issued a further final response on 8 November 2022. They confirmed the accounts had been administered correctly and they had no further obligations to evidence their ownership rights. Following this, they agreed to close the account relating to the first debt acquired from Company B, meaning Cabot were now only concerned with two outstanding debts, both acquired from Company B.

Unhappy with Cabot's response, Mr Q contacted our service in April 2023. An Investigator reviewed matters and explained Cabot purchased the debts in good faith and would've been made aware of any concerns over the validity, had this been an issue. They went on to say it was not for our service to decide whether a debt is legally enforceable, but they'd seen nothing to say Cabot had acted unreasonably.

Cabot accepted our Investigators findings, Mr Q didn't. He didn't consider our Investigator had taken into account the information he'd provided and in summary, I think Mr Q's key points are:

- Cabot didn't carry out necessary due diligence when purchasing the debts
- Cabot haven't provided proof they are the legal owners of the debt – evidenced by Cabot being unable to provide the credit agreements
- Concerns over the purchase of the debts, including sending the Notice of Assignment's (NOA) and any impact on his credit file that purchasing these debts may have had
- Concerns over Cabot not evidencing they are the legal owner of the debt

- Cabot don't have the right to collect the debt – evidenced by Cabot being unable to provide the credit agreements and no longer chasing for all accounts
- The debt is statute barred but Cabot have continued to send debt collection letters
- Cabot haven't conducted their debt collection process in line with Financial Conduct Authority (FCA) rules
- As a result, his credit file shouldn't have included these debts

As part of my review, I asked Cabot to confirm the current status of Mr Q's accounts. They've since confirmed that in addition to the debt acquired by DP in 2017, they also now won't be pursuing Mr Q for the debt DP acquired in 2018 because Cabot has chosen to close these accounts.

With no resolution, the complaint was passed to me to decide.

I issued a provisional decision, explaining that I didn't think Cabot had acted unreasonably so I didn't plan to ask them to do anything further. In this provisional decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr Q's complaint in considerably less detail than he has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint."

I'm aware we've not set this out previously, but I think it would be helpful to explain that in my view by appointing a regulated debt servicer, DP passes on responsibility for all actions under Article 60B(2) to Cabot. So, I'll be taking the approach that Cabot is responsible for the activity of exercising the lender's – in others words the owner of the debt (DP) – rights and duties under a regulated credit agreement. So I'll be considering these elements against Cabot."

In this case it's also important I set out the scope of what I can and can't consider in this complaint – both in terms of how I'm required to decide Mr Q's case, and what I can consider in terms of the complaint issues raised."

The regulator the Financial Conduct Authority (FCA) sets out the rules for our service to follow. These rules are set out in the Dispute Resolution: Complaints (DISP) Handbook."

DISP 3.6.1 says:

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

And DISP 3.6.4 says:

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; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.

The effect of these rules mean I'm required to take into account the information Mr Q has mentioned, but I'm not bound by it. This reflects our informal nature as an alternative to the courts. I note Mr Q is concerned our Investigator didn't mention a lot of the laws he has, but that's because we wouldn't routinely quote every law that could potentially apply due to the informal nature of this service. The only reason I've mentioned them here, is because Mr Q has raised them – had he not done so, then unless a particular law was relevant, I wouldn't have gone into this level of detail in explaining my outcome.

Points Mr Q has raised I don't consider relevant to deciding his complaint

Firstly, it's important to explain the scope of what I can consider in relation to this complaint. Much of what Mr Q has referred to relates to the actions of Company B. When a debt is purchased not all of the responsibilities of the original lender, for example issues in relation to the initial sale, are taken on by the servicer. As such, I can only consider the actions Cabot have taken in this case, I won't be commenting on aspects Company B were responsible for, prior to the debt being sold.

Mr Q has also spent some time explaining why he doesn't consider the debts Cabot are pursuing him for are enforceable. I can see Mr Q has some concerns about the way in which Cabot have acted and to support his reasoning, he's referenced several legislations including: Administration of Justice Act 1970; Fraud Act 2006; Law of Property Act 1925 and Companies Act 2006.

It isn't for me to decide whether Cabot have, or haven't, breached the legislation Mr Q has referred to. My role here is to decide what's fair and reasonable in the circumstances of this particular case and based on the information I'm presented with I don't consider these legislations relevant to the finding I need to make.

It's also important to explain here that, as an alternative to the courts, I can't decide if the debt is statute barred, as Mr Q says, only a court can. Instead, I'll consider whether it was reasonable for Cabot to contact Mr Q and ask for payment.

Points I agree are relevant to Mr Q's complaint

Mr Q has also mentioned several rules and legislations that Cabot are bound by. This includes: CONC 13; CONC 4; Section 13.1.6 of the FCA Sourcebook rules; Section 55 of the Consumer Credit Act 1974. As well as The Financial Services Markets Act 2000, FCA Sourcebook rules and the Consumer Credit Act 1974 more generally.

I've taken Mr Q's comments into consideration and I've taken account of the various legislations he's mentioned, but I have done so in the context in which they were written – rather than simply the parts he has extracted.

It's also important to mention here that while Mr Q considers the debts are unenforceable, it doesn't mean that they are.

So, bringing all of the above together, if I ultimately decide Cabot have done something wrong – then I'll consider the impact on Mr Q and award compensation appropriately in line with our guidelines. If though I decide Cabot haven't done anything wrong, then I've decided Mr Q has been treated fairly. In those circumstances, I'm satisfied that would address the various regulations he's mentioned above.

Purchase and servicing of the debts

Cabot say they took on responsibility for servicing the debts in question in April 2017, March 2018 (which are the ones they're no longer asking Mr Q to repay) and June 2020. They say these debts relate to three separate credit card accounts taken in Mr Q's name and all provided by Company B.

It's common practice for lenders, such as Company B, to sell accounts which may have fallen into arrears or have defaulted. I've also seen Company B's terms and conditions allow for this. When this happens, both the lender and the debt servicer, here that's the role Cabot are performing, are required to send the account holder a Notice of Assignment (NOA). This lets the account holder know their account has been passed on to a different company.

I understand Mr Q doesn't think Cabot should be able to chase for these debts, as he says they've not provided sufficient evidence they are the legal owners. But I don't agree. While Cabot aren't the legal owners, they have been appointed by DP to service these. For each of the three debts, Cabot have provided the Notice of Assignments (NOA) – where Company B confirmed they'd sold the accounts, as well as the credit agreements. I think that is enough to show Cabot took responsibility of each account when they say they did.

When Mr Q first contacted Cabot to ask for copies of the credit agreements, in December 2020, they explained they didn't hold these. Mr Q says this shows Cabot didn't have the legal right to chase him for the debt. I don't agree.

The usual process when a debt is disputed is for the debt servicer to put the account on hold and obtain information from the original lender. I can see Cabot did that here, and were provided with copies of the Consumer Credit Agreements (CCA's) from Company B. It would also be useful to explain here that a debt servicer, such as Cabot, only need to have a reasonable belief the person they're contacting is the correct party.

The usual evidence that's provided in these circumstances is a copy of the CCA taken out, plus something to evidence how the balance has accrued. Cabot received account statements along with the CCA's – both show Mr Q's details.

It's not uncommon for debt purchasers not to have all relevant information when they purchase an account, but here, given the CCA's and statements both show Mr Q's details – plus Cabot followed what I'd expect them to do in disputing the accounts – I can't reasonably say Cabot did anything wrong when DP first purchased the debt or were acting unfairly in asking Mr Q to repay the debts.

Turning now to Mr Q's concerns over Cabot's decision to no longer chase him for the debt acquired in April 2017. Mr Q says this is evidence they shouldn't have contacted him in the first place – but I don't agree. Cabot have made a commercial decision to no longer chase Mr Q for this debt, and subsequently the 2018 debt, which is something they're entitled to do. I've seen nothing to suggest this decision was made as a result of any concern over the validity or right to collect these debts.

So, in terms of asking Mr Q to repay the debts over the years, I've seen nothing to suggest Cabot have done anything wrong. I also don't think their communication with Mr Q when asking for repayment of the debts has been unreasonable, as Mr Q says.

Credit file

Mr Q says there are entries on his credit file that he can't reconcile. As he's not provided specific details, I've considered this more generally.

It's important to explain, when a debt servicer is appointed, they're required to report the account(s) to relevant Credit Reference Agencies – ensuring information is updated as and when repayments are made. And here, the role has been assigned to Cabot. The information Cabot has sent to Mr Q also explains this.

Given I've concluded Cabot haven't acted unfairly in pursuing Mr Q for the repayment of these debts, it follows that it would be reasonable for this information to be reflected on his credit file.

Rules and regulations

As a starting point I've explained our service is not the regulator – that's the role of the FCA. However, Cabot are required to follow the rules set by the FCA when carrying out debt servicing. And based on what I've seen I think they've done that here. So I can't agree they've acted incorrectly or unfairly when attempting to collect the debts from Mr Q.

Mr Q has also referred to various other rules and regulations he says Cabot haven't acted in accordance with, as explained above. But as far as I can see, Cabot have contacted Mr Q in order to repay debts they say he owes, and that's something they are entitled to do.

With this in mind, I can't agree Cabot have done anything wrong here either.

While I understand Mr Q will be disappointed, I'm satisfied Cabot had a legitimate right to contact him about the outstanding debts. Overall, I don't consider Cabot have acted unreasonably so I don't require them to take any further steps in respect of Mr Q's complaint."

I invited both parties to respond with any further points or evidence they wanted me to take into account before I made a final decision.

Responses to my provisional decision

Cabot acknowledged what I'd said but didn't have anything further to add.

Mr Q has also responded, broadly disagreeing with my provisional decision. He's commented that Cabot have purported to carry on a regulated activity, which he considers to be a breach, and potentially even a criminal offence. As a result he says they have effectively fallen short of DISP 1.4 – which explains the steps that should be taken when a complaint has been received by a respondent business.

Mr Q reiterated his concerns about Cabot not holding copies of the credit agreements as well as referring to several laws and regulations he considers relevant. In addition to those he's referred to previously he says The Financial Services and Markets Act (FSMA) section 19 and GDPR Article 6 are relevant. As well as case law – specifically Jones V Link (2011).

Mr Q has also said he'd like to raise a complaint under Section 14 of the Human Rights Act, in part because he didn't consider he'd been given sufficient time to respond following my provisional 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.

Taking everything that's been said into account, I think it's appropriate to continue to review matters and issue my final decision on this complaint. Which I've done below.

I say this for several reasons. Firstly, DISP 3.6.1 says:

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

Here we have asked Mr Q several times to explain why he's unable to respond within the time given, how much additional time he requires and whether he'd like to continue with the process. Mr Q has now said he'd like the process to continue and referred to certain laws and regulations as outlined above. He's also reiterated he considers there has been a breach of his Human Rights and that he'd like to complain about that. I consider Mr Q has had sufficient time to explain why he needs more time to respond to my provisional decision, and he's chosen not to do so. So I've continued, based on the responses he has provided.

Mr Q also argues that he should be able to wait for our service's response to the above before issuing a final decision – I don't agree.

DISP 3.5.9, says:

The Ombudsman may:

(3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested

As such I don't consider that issuing a final decision would be unfair in this instance.

Our service is an alternative to the courts and as such can't consider whether the actions of a business can be considered a criminal offence – as Mr Q says. This is only something a court can decide, so I won't comment on this matter further.

Turning now to the concerns Mr Q has raised in relation to the actions of Cabot purporting to carry on a regulated activity. While Mr Q has said this a breach – he's not been specific as to what this has breached, but has separately referred to Section 19 of FSMA, which is in relation to carrying out regulated activities. So I've considered this, as well as thinking about his comments more generally.

Having done so, I haven't seen anything to say that's the case. As explained in my provisional decision the debt purchaser passes on responsibility for all actions under Article 60B(2) to Cabot. As such, I don't consider they have breached regulations or acted unfairly in assuming this responsibility, as I explained in my provisional decision – or fallen short in their handling of Mr Q's complaint, as he says.

Mr Q has also referred to GDPR Article 6, section 170-172. I've reviewed these sections and I'm satisfied they don't change my opinion. As I've explained above, as the debt purchaser

passed on responsibilities to Cabot I don't consider they've acted unfairly in obtaining his data. However if Mr Q remains unhappy he can refer his complaint on this aspect to the Information Commissioner's Office (ICO) who are able to consider complaints about how personal information has been handled.

I've thought about what Mr Q has said about the laws and regulations he's previously raised. And for the reasons explained in my provisional decision, I consider some of those were relevant, and I've taken them into account. I don't think it's necessary to reiterate why it was the case that some weren't relevant, as my reasoning is the same.

Mr Q has also pointed to certain case law, specifically Jones V Link (2011). Mr Q hasn't elaborated on why he's raised this, so I've reviewed it more generally. Having done so, I haven't seen anything that would change my outcome here.

Taking everything into account, I've seen nothing to suggest Cabot have acted unfairly as I consider they had a legitimate right to contact Mr Q about these debts. So I won't be upholding this complaint.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 22 April 2025.

Victoria Cheyne
Ombudsman