DRN-5500411

The complaint

Mr R complains Cabot Credit Management Group Limited trading as Cabot Financial ("Cabot") have failed to prove they have the legal right to collect on a debt they're contacting him about.

What happened

My understanding is a credit card account was held in the same name as Mr R's with a bank, who I'll refer to as L. On 21 April 2023 L sold the account to a debt purchaser who I'll refer to as C, and wrote to Mr R telling him this on 28 April 2023 in a Notice of Assignment (NOA). C, as the account owner, then appointed Cabot as their debt servicer. The NOA communicated the change in ownership, that Cabot would be the debt servicer – and that the amount outstanding was £485.55 at the time of assignment. At one point, Cabot appointed a debt collector, who I'll refer to as W, to contact Mr R on their behalf.

Mr R seems to have first contacted Cabot on 21 June 2023 with a notice of conditional acceptance. In short, Mr R said W had contacted him, and he'd pay the outstanding debt, as long as certain evidence was provided. Mr R quoted a number of laws which he said entitled him to the information he'd asked for which, amongst other things, included a Deed of Assignment (DOA) and a sworn affidavit which asked 19 specific questions.

In this notice Mr R also referred to legal precedents which upheld the right to unredacted documents, due diligence safeguards against unsubstantiated claims, and he only wanted to be contacted in writing – amongst other things.

On the same date, 21 June 2023, Mr R also raised a Subject Access Request (SAR). Following ongoing discussions, Mr R ultimately raised his complaint on 23 November 2023 – and asked for a further SAR on 21 February 2024.

In their final response letter on 17 January 2024 Cabot listed out their understanding of Mr R's concerns and responded to them. In summary, they said:

- Sending a NOA complies with their obligations to formally confirm the account has been transferred.
- The DOA is validly executed and confirms to all statutory requirements. But, it's a confidential document, so they won't be sharing it.
- The account was defaulted on 6 March 2023, so they'll continue reporting the default until 6 March 2029 as the data owners.
- Their case handler made an error in not referring to one of Mr R's letters and didn't tell him about the enforceability status of the account.
- They provided a copy of the credit agreement, statements, their transaction history and the available terms and conditions. Cabot felt these documents were enough to confirm Mr R is the proper owner of the account, but said L haven't provided them with all the relevant terms and conditions, so the account remains unenforceable.

- Due to the case handler's errors Cabot reduced the balance outstanding by £50 to £435.55 but wouldn't be closing the account or removing any reporting to the credit reference agencies (CRAs), as they were satisfied Mr R properly owed the balance.

Mr R first contacted us on 29 May 2024 explaining he was unhappy with Cabot's actions – and in the meantime he'd recorded a second complaint with Cabot.

The issues he raised in this second complaint were:

- Cabot not replying to his letter of 7 May 2024
- He's being harassed by Cabot for repayment of the debt
- Cabot have failed to comply with his SAR

Cabot said they'd not harassed Mr R, and they had complied with his requests for a SAR but didn't log a new complaint following his 7 May 2024 letter – and reduced the balance by a further £75 in recognition of this. Cabot said the balance remained unenforceable but was still owed so they were acting fairly in contacting him.

One of our Investigators considered things, and ultimately found Cabot had acted fairly in their dealings with Mr R – so didn't uphold the complaint.

Mr R didn't accept this, saying:

- Cabot have said the DOA doesn't contain any of his specific information which he finds highly suspicious – he says because Cabot have refused to provide it this suggests they don't have it and are fraudulently claiming to be the account owners.
- The assignment wasn't legally executed – because Cabot won't provide the DOA – he also referred to a number of court cases on this point.
- The Investigator had misapplied the Financial Conduct Authority's Consumer Credit Sourcebook (CONC) rules – specifically 6.5.2. Mr R said his question wasn't about being informed of the assignment, it was about legal ownership.
- A NOA isn't enough to prove legal assignment – he's quoted section 136 of the Law of Property Act 1925 and has quoted more case law.
- The debt has been formally disputed, so he considers Cabot are harassing him, as they're contacting him to repay a debt without verifying their claim. He says continuing contact when there is a dispute is in breach of the FCA's rules.

So, the complaint's 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.

I think it's important to explain I've considered all of the information provided by both parties in reaching my decision. If I've not reflected or answered 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.

How I'm required to decide complaints

I think it's important I first 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 R's case, and what I can consider in terms of the issues raised.

The regulator the 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.

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 means I'm required to take into account everything Mr R has mentioned, but I'm not bound by it. A significant number of points made by Mr R appear to be ones which require a detailed analysis of the law. That isn't something I can do, because my overall remit is to reach an outcome on a fair and reasonable basis. If Mr R wants a decision that Cabot have broken the law on aspects of his complaint, then he may wish to seek legal advice.

Proof of ownership

Mr R says to prove Cabot have the legal right to collect on the debt, they have to provide him with the DOA – and he's happy to accept a redacted version. Mr R has also quoted a number of legal cases where he says the judge explained the individual was entitled to the DOA – which can be redacted if necessary. Mr R has expressed concerns about the debt being validly assigned, or that this could be fraudulent.

Cabot say Mr R has received the NOA, and that is sufficient to show the account has been purchased and that they can collect on the account.

I'm aware there are some court cases which Mr R and other consumers said a consumer is entitled to see the DOA – and there are other court cases which businesses say a consumer isn't entitled to see the DOA.

Mr R believes legally he's entitled to the DOA – and if that were the case then I'd expect all court cases to have reached the same conclusion – which they don't seem to have. If Mr R thinks Cabot have incorrectly held back the DOA from his SAR, then he can contact the Information Commissioner's Office (ICO) to discuss this – as they're the correct body to consider if a SAR has been complied with.

I'd also expect debt companies to have sought legal advice on this point as it's one that comes up regularly, and it seems likely to me debt companies wouldn't continue to deny

their customers access to this document if the law said they were required in every case to provide it.

In addition, the FCA sets out what's expected of financial businesses in the Consumer Credit Sourcebook (CONC) rules. CONC 6.5.2 says:

(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; or
(b) if, after the assignment, the arrangements for servicing the credit under the agreement do not change as far as the customer is concerned, on or before the first occasion they do.
[Note: section 82A of CCA]

(2) Paragraph (1) does not apply to an agreement secured on land.
(3) A firm may assign the rights of a lender under a regulated credit agreement to a third party only if:
(a) the third party is a firm; or
(b) where the third party does not require authorisation, the firm has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

If legally debt purchasers had to provide the DOA to their customers, then I'd expect the FCA to have reflected that in their guidance – but they don't. Instead, they say a NOA is sufficient to say the debt has been transferred from one party to another.

Whether this is enough for lawful ownership as I've explained above I can't decide. I appreciate Mr R wants to verify Cabot are entitled to contact him regarding this debt. Mr R can contact L if he wanted to – either to discuss the account if he recognises it or dispute it as fraudulent if he doesn't.

Given all of the above information, I'm not satisfied Mr R's request for the DOA is one Cabot are required to fulfil. So, I don't require them to provide the DOA to Mr R.

In the circumstances, I'm satisfied on a fair and reasonable basis the NOA fulfils its purpose of confirming to someone their debt has been transferred to another party. I think Cabot haven't been as clear as they should have been though. I say that because the owner of the account they're asking Mr R to repay isn't in the name of Cabot – it's in C's name as I said before.

But, as the NOA goes on to say, C have asked Cabot to service the account which they're allowed to do. So, overall, I don't uphold this element of Mr R's complaint.

Are Cabot acting reasonably in asking Mr R to repay the debt

Mr R hasn't disputed he owes the money but has said he wants to make sure it's not being fraudulently asked for by Cabot.

Cabot have provided copies of statements, a credit agreement and some terms and conditions.

I've looked at these documents, and I'm satisfied these all show the debt is in Mr R's name. So, I don't think Cabot are doing anything wrong by continuing to ask him to repay the debt.

I can see Mr R has framed the ongoing contact as harassment because Cabot haven't provided the DOA. As before, I can't decide if Mr R has been harassed as only a court can.

And I've already decided Cabot aren't doing anything wrong by not providing the DOA. So, it follows I've not seen anything to suggest Cabot are treating Mr R unfairly by continuing to ask him to repay the debt.

Status of the account and CRA reporting

Mr R doesn't think Cabot should be reporting a default, in part because they've not proven they have legal ownership over the account.

Cabot say L reported a default, and when they take over the servicing of the account they'll do the same.

In general terms when an account is defaulted, and then sold to another party, it's expected the default will continue to be reported – if it's within six years.

Here, Cabot have said L reported a default on 6 March 2023 date. So, I'd usually expect Cabot to continue to report the default until six years after this.

I've not seen anything to suggest this would be unfair. I say that because L have told Cabot they defaulted the account, and it's reasonable for Cabot to rely on this. Cabot's status as a debt servicer doesn't change this – as they're acting on behalf of C when reporting it.

If Mr R doesn't think this account was ever defaulted, or has any other concerns about the default, then he may wish to raise this with L. If they think the default should be removed, then they can instruct Cabot to do so.

I've also thought about the account being unenforceable. This isn't something I can decide, only a court can. But, Cabot can treat an account as unenforceable if a request for documents under sections 77-79 of the Consumer Credit Act 1974 isn't met. Typically this will be a copy of the credit agreement, and a statement of the account and Cabot has 12 working days in which to provide these documents.

Mr R made the request on 5 July 2023, Cabot have said on 21 July 2023 they considered the account to be unenforceable. They reconfirmed this to our Investigator on 6 June 2025.

So, I've also thought about whether it's fair for Cabot to continue to report the account, given it's seemingly temporarily unenforceable.

I'm aware Mr R has referred to the legal case involving Grace and another v Black Horse Ltd [2014] EWCA Civ 1413. This court case was about an account which was judged by the court as being permanently unenforceable. And the court decided, because the account was permanently unenforceable, the information being reported to the credit reference agency's (CRAs) was inaccurate. Mr R has also made reference to the relevance of data protection legislation more generally, referring to Cabot's obligation to process data accurately.

While there are parallels to draw from this legal case, the key difference is this complaint is about an agreement which is currently considered to be temporarily unenforceable. That's because Cabot hasn't yet been able to provide a copy of the required information under sections 77-79 of the Consumer Credit Act 1974. As a result of this key difference, I don't consider this legal case to be directly relevant to Mr R's complaint. But, I have had regard for the wider relevance of data protection legislation, and the obligation of Cabot to make sure that they process Mr R's data accurately.

Cabot can't currently report to the credit reference agency's (CRAs) that an account is temporarily unenforceable as there isn't a mechanism within the current reporting systems to

allow for this. And, even if there was, the CRAs don't currently have a way of displaying this data.

So, while there is an argument to say the data could be inaccurate on Mr R's credit file, to tell Cabot to stop reporting the account completely would arguably be more inaccurate. This is because I'm satisfied the reporting reflects the money owed, and repayment history on the account to date which is factual information. Additionally, enforceability can only be confirmed by a court, and even if a debt is confirmed as unenforceable, this doesn't mean Cabot can't still ask for repayment or treat Mr R as owing the money.

Even if I accept not reporting the account as temporarily unenforceable causes an inaccuracy I'm not persuaded this leads to any detriment to Mr R for the reasons I've set out above. And removing the account information then shows an incomplete picture of someone's credit worthiness – and removing it could also amount to something akin to credit washing which wouldn't be appropriate So, I don't find it unreasonable in these circumstances for Cabot to continue reporting the account in the way they currently are.

My final decision

For the reasons set out above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 March 2026.

Jon Pearce
Ombudsman