DRN-5881948

The complaint

Mr C complains ACI-UK Limited haven't proven he owes a debt they're asking him to repay.

A representative has supported Mr C in bringing this complaint, but for simplicity I'll just refer to him in this decision.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

As I understand it a catalogue shopping account was opened in March 2022 with a company I'll refer to as S. The account was defaulted by S on 20 December 2023. S then sold the account to a debt purchaser, and they asked ACI to service the account. ACI wrote to who they believe to be the owner of the account with the Notice of Assignment (NOA) on 2 January 2024.

Mr C received this contact, and asked ACI to prove he's the owner of the debt by asking them to produce certain documents. These were:

- *A true copy of the executed credit agreement*
- *A full statement of the account*
- *A copy of the default notice*
- *The Deed of Assignment (DOA) as the NOA isn't sufficient in law*

Mr C also said ACI had harassed him by sending a letter before claim when ACI know the account is unenforceable. Mr C added he is registered disabled with mental health issues so is classed as vulnerable.

ACI said they're not responsible for handling any concerns that occurred before they took over the account – including liability of the account. They said they'd sent Mr C a reconstituted copy of the credit agreement, and this doesn't have to have a signature to be valid. So, they were comfortable they'd provided what they needed to regarding the credit agreement.

In respect of statements, they said they weren't the original creditor, so didn't have statements but did provide the list of transactions as given to them by S. And the Default Notice was issued by S as well, so again not something they could provide. On these two points they didn't think they'd done anything wrong.

ACI added they weren't required to provide the DOA but had sent the NOA. Overall, they found Mr C was the right party to contact regarding a debt they said remained valid and enforceable.

Unhappy with this Mr C asked us to look into things.

One of our Investigators did so, but didn't think ACI had done anything wrong in asking Mr C to repay the debt, so didn't uphold the complaint.

Mr C didn't accept this, reiterating his concerns about the information provided to date. So, the complaint's been passed to me to decide.

What I've provisionally 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.

It's not my role to decide if ACI are definitely contacting the right party. Instead, it's to consider whether ACI are entitled to have a reasonable belief they're asking the correct person to repay the debt. Any further disputes about the account – for example if Mr C thought it'd been fraudulently taken out in his name – would need to be made to S. ACI aren't responsible for the opening of the account.

Credit agreement

Mr C has frequently referred to sections 77, 78 and 79 of the Consumer Credit Act 1974 to say what ACI had to do regarding a credit agreement. Mr C has said ACI haven't complied with this request because ACI haven't provided a true copy of the executed agreement. Mr C has also said the credit agreement doesn't meet all of the prescribed terms either.

ACI say they've provided everything they needed to so don't think they have to do anymore.

Section 78 (s78) specifically deals with running accounts such as catalogue shopping, which is what Mr C has so I'll focus on this.

In relation to credit agreements s78 says:

Duty to give information to debtor under running-account credit agreement.

(1)The creditor under a regulated agreement for running-account credit, within the prescribed period after receiving a request in writing to that effect from the debtor and payment of a fee of [F1£1], shall give the debtor a copy of the executed agreement (if any) and of any other document referred to in it

The text goes on to talk about statements, but I'll cover that in the next section.

So, the law says ACI have to provide Mr C with a copy of the executed agreement. But, that isn't all of the information I think it's appropriate to take into account. I say that because the Financial Conduct Authority (FCA) have set out in the Consumer Credit Sourcebook (CONC) their interpretation of this law.

In CONC 13.1.4 talks about the copy agreement in detail – but I think the key section is CONC 13.1.4(2) which says:

The firm can reconstitute a copy. It can do this by re-populating a template of the relevant agreement form with the details of the specific agreement taken from its records. If the firm does provide a reconstituted copy, it should explain that that is what it has done, to avoid misleading the customer that this is a contemporaneous copy.

So, although Mr C wants a true copy of the executed agreement, ACI are allowed to provide a reconstituted agreement as long as they tell him that's what they've provided.

ACI were given a reconstituted agreement by S, so I don't think they've done anything wrong in passing on what they were given. But, I can't see ACI ever explicitly told Mr C the credit agreement was a reconstituted one until the final response – and they should have told him this when first passing it on. I'll think about the impact this has had at the end of this decision.

I've also thought about Mr C's comments that the agreement doesn't meet all of the prescribed terms. I haven't assessed the credit agreement for this – and the reason for that is because ACI have passed on what they were given by S. I think if the agreement itself is defective, and I'm not saying it is, then the responsibility of that would lie with S. So, if Mr C wants to raise that specific concern, he may wish to contact S regarding it.

Account statements

Mr C says ACI haven't provided a true copy of the full statement of the account.

ACI say they've provided the transaction list they were given by S when they took over servicing the account, so they don't need to do anything more.

The rest of s78 part (1) talks about this:

(1) …together with a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer,—

(a)the state of the account, and

(b)the amount, if any currently payable under the agreement by the debtor to the creditor, and

(c)the amounts and due dates of any payments which, if the debtor does not draw further on the account, will later become payable under the agreement by the debtor to the creditor.

So, I agree with Mr C, ACI haven't provided signed statements showing the relevant information. But, again, I am obliged to take into account CONC, specifically CONC 13.1.2 which says:

(1) The FCA takes the view that sections 77, 78 and 79 of the CCA should be read in a way that allows the borrower or hirer to obtain the information needed in order to be properly informed without imposing unnecessary burden on firms.

(2) The statement referred to in the relevant section must be prepared according to the information to which it is 'practicable' for the firm to refer. In the FCA's view, this means practicable at the time of the request and includes information which can reasonably be obtained from third parties.

(3) Firms should take steps to ensure that information is preserved and kept available to be used to give information to a borrower or hirer.

ACI already had a transaction list which showed the purchases as well as Mr C's personal details. In the circumstances, I'm satisfied providing this transaction list was sufficient to meet the requirements – due to the interpretation of CONC 13.1.2.

Default Notice

Mr C has referenced sections 87 and 88 of the Consumer Credit Act 1974 to say ACI also have to provide him with a Default Notice.

ACI say S defaulted Mr C's account, so if he wants the Default Notice he'd need to contact them, as there is no requirement for them to issue a second one.

Section 87 says:

Need for default notice.

(1)Service of a notice on the debtor or hirer in accordance with section 88 (a "default notice ") is necessary before the creditor or owner can become entitled, by reason of any breach by the debtor or hirer of a regulated agreement,—

(a)to terminate the agreement, or

(b)to demand earlier payment of any sum, or

(c)to recover possession of any goods or land, or

(d)to treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred, or

(e)to enforce any security.

(2)Subsection (1) does not prevent the creditor from treating the right to draw upon any credit as restricted or deferred, and taking such steps as may be necessary to make the restriction or deferment effective.

(3)The doing of an act by which a floating charge becomes fixed is not enforcement of a security.

(4)Regulations may provide that subsection (1) is not to apply to agreements described by the regulations.

[F1(5)Subsection (1)(d) does not apply in a case referred to in section 98A(4) (termination or suspension of debtor's right to draw on credit under open-end agreement).]

[F2(6)This section does not apply to a regulated deferred payment credit agreement.]

And Section 88 says:

Contents and effect of default notice.

(1)The default notice must be in the prescribed form and specify—

(a)the nature of the alleged breach;

(b)if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken;

(c)if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid.

(2)A date specified under subsection (1) must not be less than [F114] days after the date of service of the default notice, and the creditor or owner shall not take action such as is mentioned in section 87(1) before the date so specified or (if no requirement is made under subsection (1)) before those [F114] days have elapsed.

(3)The default notice must not treat as a breach failure to comply with a provision of the agreement which becomes operative only on breach of some other provision, but if the breach of that other provision is not duly remedied or compensation demanded under subsection (1) is not duly paid, or (where no requirement is made under subsection (1)) if the [F114] days mentioned in subsection (2) have elapsed, the creditor or owner may treat the failure as a breach and section 87(1) shall not apply to it.

(4)The default notice must contain information in the prescribed terms about the consequences of failure to comply with it [F2and any other prescribed matters relating to the agreement].

[F3(4A)The default notice must also include a copy of the current default information sheet under section 86A.]

(5)A default notice making a requirement under subsection (1) may include a provision for the taking of action such as is mentioned in section 87(1) at any time after the restriction imposed by subsection (2) will cease, together with a statement that the provision will be ineffective if the breach is duly remedied or the compensation duly paid.

Having read through both section 87 and 88 I can't see anything in here which says a debt purchaser or a debt servicer (such as ACI) are required to send a second Default Notice.

Generally I'd only ever expect an account to be defaulted once. So, I can't see any reason why a Default Notice would have to be sent a second time by someone who has taken over the debt. In view of this, I don't think ACI have done anything wrong by not providing it, as they didn't send it originally and I can't see they were required to either provide it or send a new one.

Deed of Assignment

Mr C has asked for the DOA and suggested Section 189 of the Consumer Credit Act 1974 means it's something ACI have to provide. He's also referenced a specific legal case, and Section 136 of the Law of Property Act 1925 to explain why a NOA isn't sufficient.

ACI say the DOA is a commercial agreement between them and S, and isn't something they're required to give to Mr C. They are required to send a NOA, which they've done.

Section 136 of the Law of Property Act 1925 says:

Legal assignments of things in action.

(1)Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

(a)the legal right to such debt or thing in action;

(b)all legal and other remedies for the same; and

(c)the power to give a good discharge for the same without the concurrence of the assignor:

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

(a)that the assignment is disputed by the assignor or any person claiming under him; or

(b)of any other opposing or conflicting claims to such debt or thing in action;he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the M1Trustee Act, 1925.

(2)This section does not affect the provisions of the M2Policies of Assurance Act, 1867.

[F1(3)The county court has jurisdiction (including power to receive payment of money or securities into court) under the proviso to subsection (1) of this section where the amount or value of the debt or thing in action does not exceed [F2£30,000].]

I'm aware Mr C has also quoted a legal case as well as the above piece of law. I can't see anything in Section 136 of the Law of Property Act 1925 which requires ACI to provide the DOA to Mr C. And I'm aware there are some court cases Mr C and other consumers said a consumer is entitled to see the DOA – but there are also other court cases which businesses say a consumer isn't entitled to see the DOA.

Mr C 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.

I'd also expect debt purchasers to have sought legal advice on this point as it's one that comes up regularly, and it seems likely to me debt purchasers 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 regarding assignment of a debt. 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).

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

ACI provided Mr C with the NOA. This is a standard document when a debt is sold from one owner to another. There isn't anything obviously wrong with the NOA, and it contains all of the usual information I'd expect. So, in the circumstances, I don't think there's any reason

not to rely on it. As such, I'm satisfied by sending the NOA ACI fairly responded to Mr C's request for the DOA.

Communication

Mr C has said ACI have harassed him and made threats of court action when they know the debt is unenforceable. Mr C has referenced CONC 13.1.6(8).

ACI say the account is enforceable, they've got every reason to believe Mr C is the account owner, so they've not done anything wrong.

CONC 13.1.6(8) says:

8) However, where a firm is aware that an agreement is unenforceable because of non-compliance with an information request under section 77, 78 or 79 of the CCA, a firm should make it clear when communicating to a customer about a debt that the debt is in fact unenforceable. Failure to do so, in that case, would in the FCA's view unfairly mislead the customer by omission. Any communication that implies expressly or otherwise that a debt is enforceable when it is known that it is not, would be misleading. One way to avoid this would be for the firm to explain to the customer the full meaning of 'unenforceable'.

So Mr C is suggesting he's being harassed by ACI because the debt is unenforceable.

I can't decide whether the account is or isn't unenforceable, nor if Mr C has been harassed – only a court can do that. But, ACI believe the account to be enforceable, so this wouldn't be a reason to say they can't contact Mr C.

I've also seen ACI were given the some of the same details for Mr C when they were passed the account including:

- *His name*
- *Date of birth*
- *Email address*

They've also provided some tracing details which include Mr C's address that S seemingly gave ACI, along with the current address we have for him.

There is one discrepancy which doesn't completely make sense. The account is a catalogue shopping account where all the transactions took place in 2022. The items were all delivered to an address Mr C isn't noted as living at in ACI's trace since 2012.

I can't explain that discrepancy, but having weighed everything up, I do think ACI have enough to reasonably believe Mr C is the correct person to ask to repay this account. And, as I said earlier, if Mr C wants to have a fraud claim investigated, then he can contact S regarding that.

Summary

I've reviewed all of Mr C's claims and aside from not telling Mr C they were providing him with a reconstituted copy of the credit agreement I can't see ACI have done anything wrong.

I've thought about the impact on Mr C of not telling him the credit agreement is a reconstituted one – and I'm not persuaded there is any. I say that because Mr C has continued to dispute all other aspects of this – including the terms of the credit agreement itself. So, even if ACI had told Mr C the credit agreement was a reconstituted one, then I don't think it'll have been something Mr C was satisfied showed he owed this debt – given his concerns over the terms in the credit agreement, statements, Default Notice, DOA and that he thinks the account is unenforceable.

Responses to my provisional decision

In summary, Mr C said he wanted to point out a comment by me saying I couldn't decide if an account was unenforceable or not. Mr C said this showed I don't understand the Consumer Credit Act 1974 and he's said I should have sought professional advice from the FCA if I didn't know.

ACI didn't reply by the deadline.

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.

As Mr C has focused on my comments about not being able to decide if a debt is unenforceable I've done the same.

I'm sorry Mr C feels I don't understand the Consumer Credit Act 1974. In response to this complaint I'm not providing any interpretation of the Consumer Credit Act 1974 regarding whether the account is unenforceable or not – I'm simply saying it isn't something I can decide.

I can see Mr C disagrees with that, but my understanding on whether an account is unenforceable or not is a point of law. So, with that in mind, only a court can decide whether an account is or isn't unenforceable.

I've noted Mr C's comments about getting professional advice to confirm this one way or another and suggested I speak to the FCA. But, our role is to decide matters on a fair and reasonable basis. Mr C's complaint was ACI haven't proven a debt is owed by him – but for all the reasons I've mentioned above I think they have.

My final decision

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 11 November 2025.

Jon Pearce
Ombudsman