

complaint

Mr L complains about a debt he has with Bank of Scotland plc. He believes the debt is statute barred and is unhappy that the account still shows as a defaulted account on his credit file.

background

Mr L took out an account with the bank in 2005. Payments to the account stopped in June 2009, the bank issued a default notice and then defaulted the account. Mr L believes the account is statute barred and that the account should be 'extinguished'. He therefore believes it should not be now showing on his credit file.

After complaining to the bank he referred his complaint to us. The adjudicator who considered the complaint did not recommend it be upheld. In summary, the adjudicator was satisfied that account was Mr L's and that the default should continue to show on his credit file.

Mr L did not accept this and asked for his complaint to be reviewed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not upheld this complaint.

The bank has provided a copy of the application form from 2005, along with some account statements. The signature on the application form is not dissimilar to Mr L's signature on our complaint form. On balance, I am satisfied that this debt relates to an account with Mr L.

Mr L argues that the account is statute barred and refers Scottish law, which states that after five years a debt can become statute barred. This is different to England where a debt can become statute barred after six years. Scottish law also states that a statute barred debt will be considered 'extinguished'. This is also different to English law, where a statute barred debt still remains but is simply uncollectable.

I can assure Mr L that I am fully aware of English and Scottish law around statute barred debts and therefore the differences between the two. However, as the adjudicator has explained, our service has regard for the law but our rules state that we must consider complaints on a fair and reasonable basis. It is for a court to find whether or not a debt is actually statute barred and I have no power to determine this. Mr L should raise this argument in court if needed.

Mr L also questions the enforceability of the account because the initial copy of the agreement was unclear. A clearer copy of the agreement has however now been provided which does set out the original terms of the agreement. Whether the debt is actually enforceable is also something that a court would need to consider if the bank took action to recover the debt. A court would likely consider this issue alongside the statute barred point to ultimately decide whether the bank is able to seek payment of the debt. As the bank has said that it is not pursuing the debt at present it is possible that no court action will actually be taken by the bank.

Mr L is also unhappy about the account still showing on his credit file as a defaulted account. He believes the debt should be removed from his credit file as if statute barred in Scotland it would be 'extinguished'. As explained above, a court has not found the debt to be statute barred and I do not have the power to do this. Mr L's credit file shows the date the account defaulted and this is accurate information.

The Information Commissioner's Office (ICO) states that where the existence of an agreement is not in doubt, it considers it appropriate for information about the account to be recorded with credit reference agencies. It generally feels information should be recorded for six years. The ICO states that information with credit reference agencies should be accurate and Mr L's credit file does accurately record when the account defaulted. The debt has not been statute barred by the court, or therefore 'extinguished'. I do not therefore find that the information with the credit reference agencies is actually inaccurate.

Mr L has referred to the Financial Conduct Authority's (FCA) Consumer Credit sourcebook which refers to statute barred debts and when they may no longer be recoverable. The sourcebook does not (when referring to statute barred debts) refer to information being recorded with credit reference agencies. Although some unrecoverable debts may not show on a credit file, other unrecoverable debts will still show.

Having considered the specific circumstances of this case I do not think the bank has acted unreasonably or unfairly by refusing to remove the default, or the defaulted account, from Mr L's credit file. The credit file accurately records when the account defaulted, which is still within the generally accepted six year period. The debt has not been found to be statute barred by a court and I am not persuaded the bank should now remove the information recorded with the credit reference agencies.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr L to accept or reject my decision before 8 June 2015.

Mark Hollands
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