

complaint

Mr P complains about Cabot Financial (Europe) Limited's response to his subject access request (or "SAR"). He also complains that it refused to suspend its debt collections process while he challenged a debt it was pursuing him for.

background

In 2007 Mr P took out a loan with a third party. Shortly afterwards he struggled to repay it, and it went into arrears. He says he settled that debt in 2011. But in 2013 the debt was sold to Cabot. Mr P says he didn't receive any correspondence from Cabot until March 2015, around four years after the debt was settled. By then he no longer had any letters from the original lender to prove he no longer owed anything. And the debt management company he'd used at the time has gone into administration. So in order to obtain enough information to challenge the debt, he raised a SAR with Cabot in 2016. Among other things, he wanted to be given a copy of the deed of assignment by which the original lender had purported to sell the debt to Cabot.

Cabot initially refused to consider the SAR because it said Mr P had not enclosed the £10 fee. Mr P disputes that. He is adamant he had included a postal order. Cabot also said that it didn't have to send him the deed of assignment anyway, because it doesn't contain personal information about him, and it had written to him to tell him about it at the time.

As well as the SAR, Mr P also requested statements and a copy of the original loan agreement under Part VI of the Consumer Credit Act 1974. Cabot took seven weeks to provide these, which is longer than the time allowed. Cabot says the statements it obtained from the original lender show that the debt was not settled and still remains outstanding.

Mr P complained to our service. He complains that in response to his subject access request, Cabot told him how to make a SAR. He objects to that, because it suggests that Cabot had failed to recognise that he had already made a SAR. He also said that he already knows how to make a SAR and he so didn't need to be told again. (He has also complained to the Information Commissioner's Office ("ICO") about some other aspects of how Cabot dealt with his SAR.) Mr P also says that Cabot should have put its collection process on hold until his dispute about the debt was resolved. He pointed out that a debt is not enforceable while a creditor's response to a request under Part VI of the Consumer Credit Act is late.

Cabot says it wrote to Mr P and tried to phone him in 2013, to tell him it had bought the debt. But it couldn't contact him as he had moved house. It found him in March 2015, and wrote to him again at his new address. It says that when Mr P replied and disputed the debt, it put his account on hold, and it remained on hold until our adjudicator issued her opinion about this complaint in October 2016. Cabot maintained that it had not received Mr P's postal order. And it argued that since the purpose of the SAR was to obtain evidence with which to challenge the debt, this purpose had been fulfilled when it responded to his request under the Consumer Credit Act.

Our adjudicator did not uphold this complaint. She accepted that the account had been on hold since March 2015. And she thought that Cabot had provided all of the relevant information it had about the account. She didn't think Cabot had refused to answer the SAR in bad faith. (She also commented that she hadn't seen enough evidence to conclude that Mr P didn't owe the debt.)

Mr P was not satisfied. He said that his submission that Cabot should have suspended collections was based in part on his assertion that the debt had already been settled. He made a number of arguments in support of that assertion. He said he had recently made a second SAR. And he argued that Cabot shouldn't be able to collect the debt because it had not provided the deed of assignment.

The adjudicator pointed out that Mr P's complaint had not actually been about whether the debt had been settled or not. Mr P asked for an ombudsman's decision.

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 do not uphold it.

what is this complaint about?

In his complaint form Mr P wrote:

"I'm not complaining about the fact I'm disputing the debt... Rather – I'm unhappy that ...Cabot Financial seem incapable of working out that I've already tried to make the SAR request ... and are refusing to halt their Collections process while I try to work out what's going on with [the original lender] direct."

So I haven't considered whether the debt was settled, and I haven't considered the argument about the deed of assignment. I have confined myself to dealing with two issues:

- How Cabot responded to the first SAR request (to the extent that this is not already being considered by the ICO), and
- The allegation that Cabot refused to suspend its efforts to collect the debt.

I recognise that Mr P has recently argued that the second part of his complaint is based, in part, on his contention that the debt has been settled. But as I explain below, that doesn't mean I have to consider whether the debt was settled.

did Cabot refuse to suspend collection of the debt?

Cabot first knew that Mr P was disputing the debt in March 2015. It immediately put his account on hold. It says the account remained on hold continuously from then until October 2016. I've seen no evidence to contradict this. So I don't think there has been any collections activity since Cabot learned of the dispute. It follows that I don't need to make a finding about the dispute itself to resolve this issue.

the SAR

I don't think it's likely that Cabot refused to answer the first SAR in bad faith. I don't know whether it did so because it didn't receive the postal order, or because it lost the postal order. If Cabot did receive the postal order and lost it, then that would be an error. But I don't think I have enough evidence to make a finding about that. I don't find that either scenario is more likely than the other, so I don't uphold that part of this complaint.

I think Cabot did understand that Mr P had attempted to make a SAR. Its response, in which it explained to Mr P how to make a SAR, was probably intended to be helpful. I don't think it

was meant to insult him by suggesting that he didn't understand what he was doing, or to imply that he had not tried to make a SAR already. So I don't think that reply amounts to an error.

In any case, the second SAR has now been answered. Mr P says that the information disclosed did not tell him anything he didn't already know. By then, Cabot had already provided him with the information he had requested under other legislation (except the deed of assignment). I think that diminishes the importance of this issue in the context of this complaint.

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 February 2017.

Richard Wood
ombudsman