complaint

Mr W complains that Hoist Finance UK Limited (Hoist) has contacted him about a debt he believes is statute-barred.

background

Mr W received a letter in August 2017 from his credit card provider informing him that the account had been "assigned and transferred" to "Hoist Portfolio Holding Limited (HPH)". The letter informed him that HPH had appointed Robinson Way Limited to manage the account. It confirmed that there was an outstanding amount of more than £1,200 on the account, and that all payments due should be paid to HPH.

Around the same time, he received a similar letter from HPH, confirming the assignment and advising him that Robinson Way Limited would manage the account. This letter advised that all correspondence and payments should be made to Robinson Way.

He also received a letter from Robinson Way informing him that HPH had asked them to agree an affordable payment plan with him for the account.

Robinson Way advised Mr W that the debt was not statute-barred as the original creditor had informed them that payments had been made to the account in August 2012, although it had been unable to provide evidence of the payment.

Mr W brought his complaint about Robinson Way to this service. One of our investigators looked into the matter. She recorded the complaint against Hoist because Robinson Way is an appointed representative of Hoist.

Hoist asked for an ombudsman's decision as it disagreed with the investigator's view that the complaint should be upheld. She had not been persuaded there was enough evidence to show Mr W had made the payments; therefore, she didn't think there was enough evidence to show there has been "contact" within the statutory limitation period.

I issued a provisional decision in June 2018. Here's what I said:

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

This debt was bought by HPH, who are based in Jersey, and are not regulated by the Financial Conduct Authority (FCA). In this matter, the regulated activity – the collection of a debt – is being conducted by Robinson Way Limited. As I said earlier, Robinson Way is an appointed representative of Hoist. And that firm is authorised by the FCA. Our compulsory jurisdiction covers FCA-authorised firms, not their appointed representatives.

Hoist has told me that its parent company, HPH, entered into a servicing arrangement with Hoist in order to exercise (on HPH's behalf) their rights under regulated credit agreements. I note that Hoist's FCA permission allows it to exercise the lender's rights and duties under a regulated credit agreement. So the correct 'respondent' for this complaint is Hoist Finance UK Limited.

Mr W submits that the debt is statute-barred. Robinson Way says that the original creditor told them that a payment had been made in August 2012, meaning that the debt was not statute-barred. Mr W disputes that this payment was made.

The Limitation Act 1980 provides, amongst other things, that "an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued" (section 5). In the case of debt-recovery proceedings, I believe that the cause of action normally accrues on the day after the debtor first defaults, as that's the earliest date on which the creditor could start legal action. But section 29 of the 1980 Act also states (my emphasis) that:

> *…where any right of action has accrued to recover…any debt or other liquidated pecuniary claim…and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it* ***the right shall be treated as having accrued on and not before the date of the acknowledgement or payment.***

It is not for me to determine, as a matter of law, whether the debt is in fact statute-barred – only a court can make a binding decision on that. However, in deciding whether Hoist has acted fairly and reasonably in all the circumstances, I do need to take account of the law. In other words, I need to make a finding on the limitation issue in order to reach a conclusion on the dispute before the Financial Ombudsman Service. If it is more likely than not that Mr W made the payment in August 2012, that would probably be the date when Hoist's right of action (to recover the debt) accrued, which would mean it wouldn't become time-barred until August 2018 (assuming no later payments or acknowledgements occurred).

Robinson Way told Mr W that the original creditor was unable to provide it with a copy of the statement to evidence the payment. But I've seen the communication from Barclaycard, the original creditor, to HPH which confirms that regular payments were made through another third-party debt collector during the period November 2011 to August 2012. This reduced the balance of the debt from around £1,300 to around £1,200. This evidence is sufficiently authoritative to be persuasive on the balance of probabilities. I have no reason to believe that Barclaycard would fabricate this information, particularly because they no longer have a vested interest in this matter.

Mr W says the FCA's rules prevent Hoist recovering this debt. I disagree with his interpretation. Rule 7.15.4 of the FCA's Consumer Credit Sourcebook (CONC) simply says that a firm must not attempt to recover a statute barred debt if the lender or owner hasn't been in contact with the customer during the limitation period. In other words, it mirrors the provisions of the Limitation Act 1980 (and, indeed, it would be surprising if the regulator's rules were at odds with or undermined the law). Accordingly, the FCA allows a firm to recover a debt when it has been in contact with the customer during the limitation period.

Our investigator said that, because she hadn't seen sufficient evidence that payments had been made by Mr W, she didn't think there had been contact within the limitation period.

I have explained above why I disagree with the investigator and think that it is reasonable to believe that payments were made by – or contact was made with – Mr W during the limitation period. And Hoist made contact with him shortly after it purchased the debt. So I am satisfied that it and/or its predecessor-in-title made contact in line with CONC Rule 7.15.4.

So I don't find that Hoist has acted unfairly or unreasonably in contacting Mr W about this debt or seeking recovery of it despite the passage of time. I understand that my decision will

be disappointing for Mr W. But it doesn't prevent him from defending his position – including pleading a Limitation Act defence – should the matter end up before the courts.

Mr W replied to my provisional decision. He disagreed with my findings and said that the evidence the debt is his is non-existent.

my findings

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

As neither party has provided any new evidence for me to consider, I'm not upholding this complaint for the reasons I've set out before.

Mr W has made a number of points but he has not provided me with any reason why I should change my decision. I explained in my provisional decision why I believed that the evidence was sufficiently authoritative to persuade me that, on the balance of probabilities, Mr W had made payments towards the account in 2012.

I acknowledge Mr W's disappointment, but as I said earlier, he can plead a Limitation Act defence should the matter end up before the courts.

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 W to accept or reject my decision before 31 August 2018.

Gordon Ramsay
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