

complaint

Mr T complains that Hoist Finance UK Limited are asking him to repay a debt he doesn't believe he owes.

background

Mr T held a current account with a bank (who I'll refer to as "G"). He says he asked G to close this account in 1997 as he was moving abroad. Mr T says he also used to be an employee of G so he regularly updated it with his address details after 1997 as it continued to administer his pension plan.

Mr T says he moved back to the UK in 2015. In 2018 he received contact from Hoist asking him to repay around £1,000 that he owed on an overdraft he held with G. Mr T asked Hoist to demonstrate how the debt had accrued on the account as he didn't believe he'd used it after 1997. Hoist wrote to Mr T in 2019 to explain that as it couldn't find sufficient information about the debt it would treat it as unenforceable.

Soon after, G found a copy of Mr T's original account application and sent this to Hoist. As Hoist now had the original application it said it no longer considered the debt unenforceable and continued to seek repayment from Mr T.

Mr T complained to Hoist to say it had been harassing him for repayment and that the application form didn't demonstrate how he owed nearly £1,000. Hoist didn't uphold Mr T's complaint and said it was entitled to continue seeking repayment from him. It said it didn't think the level of contact amounted to harassment.

Our investigator recommended the complaint be upheld. Although he didn't think the level of Hoist's contact could reasonably be considered harassment, he thought Hoist was unfairly continuing to seek repayment. He said this was because Hoist had failed to adequately explain what the debt consisted of, such as the level of interest and charges and when Mr T had accrued this debt. He said that until Hoist could show this information, it should stop collections activity and remove any adverse information it had recorded on Mr T's credit file.

Hoist didn't agree. In summary it said:

- It didn't think the complaint was within the jurisdiction of this service due to the time limits involved in bringing complaints.
- Hoist had provided a copy of the notice of assignment, the original application form and an extract from its system notes showing what was purchased from G. So based on this information it's reasonable to conclude it's more likely than not the debt is owed.
- Mr T hasn't provided anything to show he has paid the debt off previously or that it doesn't belong to him.

The complaint has been passed to me for a decision.

my findings

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

Time limits

Hoist has said it doesn't feel this complaint falls within the jurisdiction of the Ombudsman Service. But it's not given any clear explanation as to why, other than to say it's outside of the six and three year time limits. I'll address this objection first, as I think this is a complaint we can consider.

The time limits for considering complaints are set out in the Financial Conduct Authority's handbook in DISP 2.8. The relevant rule here is DISP 2.8.2R which says that the ombudsman cannot consider a complaint if it's been made more than six years from the complained about event, or if later, three years from when the complainant became aware (or ought to have become aware) of a cause for complaint.

Mr T's complaint is that Hoist shouldn't be seeking repayment of this debt as it hasn't adequately demonstrated he owes the amount it's seeking. Mr T says Hoist hasn't been able to demonstrate how the debt accrued, he's not disputing that he once held an account with G. So the complained about event is from 2018, when Hoist first made successful contact with Mr T to seek repayment and Mr T raised his concerns about the makeup of the debt. This means I'm satisfied Mr T has made his complaint in time.

Recovery of the debt

Hoist says it has adequately demonstrated that it's more likely than not Mr T owes this debt. But while it may have demonstrated that it's likely this debt exists against an account Mr T previously held, it hasn't adequately addressed the complaint Mr T has made.

Hoist has been able to demonstrate that Mr T held an account with G, which he doesn't dispute. And Hoist's shown that according to its records Mr T owes a debt on that account. But Hoist hasn't demonstrated how that debt has arisen, which is what Mr T's dispute is about.

Mr T says he closed his account when he moved abroad in 1997. He says he kept G updated with his address details because he still held a pension plan with G – having been a previous employee. Despite this, he says he never received any contact about owing a debt until Hoist got in touch with him in 2018. Based on everything I've seen, I'm persuaded by what Mr T has said.

I say this because he has been consistent throughout about what he says has happened and he's been able to support most of that with additional evidence. Mr T has been able to provide documentation which shows he did live abroad when he said. And crucially, he's shown he did keep G updated with his address details in relation to his pension plan. Given all of this, and that he would continue to have an ongoing relationship with G – who he'd worked for previously – I believe him when he says he thought his account was closed when he moved abroad and that he believed there was nothing owing on it. I find it unlikely given Mr T's specific relationship with G that he would knowingly have left a balance outstanding on the account, but I accept it's possible he did.

But even if Mr T did leave a balance outstanding on the account, I think it's most likely to have been a small amount. I say this because it took around 12 years for the account to default from when Mr T appears to have stopped using it. So it seems the debt was building up very slowly which could only reasonably be explained through small amounts of interest and charges being added monthly until finally it exceeded whatever overdraft limit Mr T had.

This is assuming Mr T did stop using the account, which I believe he did, and Hoist hasn't been able to demonstrate otherwise.

I don't dispute that Hoist bought a debt from G registered against Mr T's old account for the value of around £1,000. But Mr T has raised a valid dispute about the makeup of this debt which Hoist has been unable to adequately respond to. Although I don't think the level of contact or the nature of it could reasonably be considered harassment, I think it was unreasonable to continue pursuing the debt in the circumstances.

I'm not satisfied that Hoist has dealt with Mr T's genuine dispute about this debt fairly. It hasn't been able to provide suitable information to show that the amount of the debt was either accurate or fair. So although it may have purchased this amount of debt from G in good faith, it was required to investigate further when Mr T raised his dispute. Hoist hasn't been able to adequately show that Mr T accrued this debt through his spending. It could just as likely – if not more likely, given the wider circumstances – been due to an accounting/bank error or a series of charges/interest.

If the debt had arisen solely of charges and interest, I don't think it would be fair that Mr T would have to pay anything towards the outstanding balance. Particularly because it doesn't appear G made reasonable attempts to contact him when the debt was escalating.

Based on all of the above, I think it's fair and reasonable that Hoist stop any further collections activity and remove any adverse information from Mr T's credit file. If Hoist can provide evidence – such as contemporaneous bank statements – that show the debt has arisen due to Mr T's spending on the account – rather than for example solely interest and charges, it can at that point continue to pursue him for the outstanding balance.

my final decision

For the reasons given above, I uphold this complaint and direct Hoist Finance UK Limited to:

- Cease all collections activity on this debt.
- Remove any adverse information recorded on Mr T's credit file in relation to this debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 11 March 2020.

Tero Hiltunen
ombudsman