

complaint

Mr L had a credit card with Capital One (Europe) plc. In October 2009 Mr L paid Capital One a lump sum payment of £2,000 to clear the outstanding balance on his credit card. Mr L says that he made this payment in full and final satisfaction of the outstanding balance. But then Capital One instructed a debt recovery company to pursue payment of the balance. Capital One denies that it reached an agreement with Mr L to accept £2,000 in full and final settlement. It says that the call ended before an agreement was reached.

Mr L is unhappy with the way that Capital One has treated him. Mr L wants it to pay him compensation for the distress caused to him and his wife as the matter has dragged on for over three years.

background

In 2009 Mr L received a default notice from Capital One. He contacted it to offer £2,000 to settle the debt. Mr L then paid £2,000 to Capital One a month later. The bank says that it did not agree to settle on that basis. Instead it says that an offer was made to Mr L to pay just under £2,500 in settlement. As Mr L only paid £2,000, the lender says that the discounted settlement offer lapsed and it pursued Mr L for payment of the full outstanding balance on his card.

In May 2010, Mr L received a letter from a debt collection company demanding payment of the full remaining balance. Mr L contacted the debt collection company to tell it that he had already settled his account. Just over a month later, Mr L received another letter, this time from a firm of solicitors acting on behalf of Capital One. The firm said it would take legal action if Mr L did not pay the outstanding balance. Again, Mr L contacted the firm and told it that he had previously settled the debt. Mr L suggested to the firm that it should contact Capital One.

Mr L did not hear anything further until May 2011 when Capital One wrote to him to say that his debt had been sold to another business (B) and that B would start reporting against his credit file within 30 days of the letter.

B wrote at the same time asking Mr L to pay the outstanding balance to it and not Capital One. Mr L told B that there was no debt as he had settled his credit card in 2009. Finally, in October 2012, B wrote to Mr L to tell him that Capital One had confirmed that the balance on his credit card account had previously been settled.

Capital One denies that B contacted it regarding Mr L's account. It says that Mr L's account was not included in the reports sent to B and that it was an error on the part of B to write to Mr L telling him the debt was settled.

The adjudicator concluded that Mr L's debt had been settled by the payment of £2,000 in 2009. He directed Capital One to correct the adverse entry on Mr L's credit file, to mark the debt as settled and pay Mr L £100 compensation for the distress and inconvenience caused. Capital One disagreed with the adjudicator's conclusions. It said that B was wrong to tell Mr L that his debt had been settled. It asked the adjudicator to clarify what credit entry should be removed as Mr L had originally defaulted his account.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I have read the internal contact note given to us by Capital One. It says that in September 2009 it spoke to Mr L about a settlement figure. Capital One offered Mr L the chance to settle the debt on the basis he pay £2,000. It also offered a debt notice cancellation to him. Mr L understood that if he paid Capital One £2,000 it would be in full and final settlement. I find that Capital One accepted the payment that Mr L made in full and final settlement of the outstanding debt.

Capital One has sent us a copy letter that it says its debt recovery agent sent to Mr L proposing a settlement figure of just under £2,500 payable in three instalments. The letter is undated and not on headed notepaper. Mr L says that he did not receive this letter. Even if I found that it had been sent to Mr L, it would not change my opinion that Mr L believed he could settle the debt by paying £2,000. Mr L has said that once he paid Capital One £2,000 in October 2009 he heard nothing further until May 2010. It is entirely reasonable for Mr L to have assumed that the debt was settled and that no further action was needed on his part.

B wrote to Mr L in 2012 to tell him that the debt had previously been settled. Capital One says it cannot find any evidence that it told B that the debt was settled. But B has sent us a record that indicates that Capital One did tell it that the debt had been settled and was therefore to be recalled from B.

I consider a fair settlement to this complaint is for Capital One not to collect from Mr L any more than the original £2,000 that I have found it agreed to accept from Mr L. So it must write off any additional interest, charges and legal fees it has added to the debt.

Capital One should also recall the debt from B (if it has not already done so) to include instructing B to remove the default it registered separately. Capital One should also arrange for the default it registered to be marked as 'partially satisfied' in October 2009. This is because it is not in dispute that Mr L paid less than the full amount then outstanding to Capital One. The information on the credit file should be a fair and accurate reflection of his credit history.

Mr L tells us that he was chased over a long period for payment of the alleged balance. I have no reason to doubt Mr L when he says this put a strain upon him and his wife. I consider it right that Capital One compensate Mr L for this, and I assess £200 to be fair and reasonable. In making this award, I have taken into account the amount Capital One has written off in accepting a smaller settlement than the original debt.

my final decision

My decision is that I uphold the complaint. In full and final settlement, I order Capital One (Europe) plc to:

- recall the debt from B, if it has not already done so; and

- write off any alleged outstanding balance on Mr L's credit card including any interest, charges and/or legal charges; and
- amend Mr L's credit file to record the debt to Capital One as having been partially settled in October 2009; and
- pay Mr L £200 for his distress and inconvenience.

Gemma Bowen
ombudsman