

## **complaint**

Mr F complains that Cabot Financial (Europe) Limited breached various regulations when it took action to collect a debt from him, including commencing legal proceedings.

## **background**

Cabot bought the debt from a bank that had originally lent Mr F money through a credit card agreement. But Mr F says Cabot failed to get enough information about the debt. Had it done so, he says, it would have known the debt was in dispute and it should not have started any debt collection activity.

The adjudicator did not recommend that the complaint should be upheld. She concluded that, although Cabot did not have a copy of the original consumer credit agreement, it had not acted inappropriately in seeking to recover the debt. She noted that, as part of the legal proceedings, both parties had accepted dismissal of the case with no expenses due to or by either party. In the circumstances, she did not think this service could recommend Mr F's legal costs should be reimbursed.

Mr F responded to say, in summary, that Cabot failed to provide any information under his section 78 Consumer Credit Act request or any relevant information under his Data Protection Act subject access request. He says this shows it failed to determine the status of the debt before it started its collection activities, including legal action.

## **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, 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.

Mr F has made extensive submissions on a number of issues relating to Cabot's conduct and the requirements of the Consumer Credit Act. However, I am not required to respond to every point one of the parties has made, or to answer every question raised. That is not because I have not taken into account what Mr F has said, but because my role is to focus on what I consider material to the outcome of the complaint.

It is not the role of this service to make a finding on whether there has been a breach of legislation. I am required, amongst other things, to have regard to the relevant law when deciding what is fair and reasonable in all the circumstances. I have done that here and have decided not to uphold this complaint for the following reasons.

When Cabot bought the debt from the bank, it knew that the account had been maintained for around four years but that a default was registered around six months after the last contractual payment was received. Mr F says he was in dispute with the bank about a section 78 Consumer Credit Act request. But I do not consider this information would have stopped Cabot from taking steps to collect the debt. It did not have evidence that the debt itself was in dispute and, because Mr F had met the monthly contractual payments for a number of years, it was reasonable to assume he acknowledged his liability. Cabot did not need to obtain a copy of the consumer credit agreement to satisfy itself that it could pursue Mr F for repayment.

Cabot tried to contact Mr F, but Mr F admits that he ignored all correspondence. In the circumstances, I don't think Cabot acted unreasonably when it instructed its agent to commence legal proceedings. It follows I don't consider Mr F should be compensated, either for his expenses or for the trouble and upset that the court action caused.

Mr F says the debt is unenforceable because the agreement was improperly executed. This service does not have the power to declare an agreement as legally enforceable or otherwise. This issue can only be decided by a court.

In his response to our adjudicator, Mr F detailed three other issues relating to the conduct of Cabot and the original creditor. I have considered what Mr F has said here, but this does not in my view demonstrate that Cabot is unable to seek repayment of this debt.

I appreciate my decision here will come as further disappointment to Mr F, but it is the last stage in our process and should Mr F wish to continue his dispute he will need to do so through other means.

### **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 F to accept or reject my decision before 13 March 2015.

Elizabeth Dawes  
**ombudsman**