

complaint

Miss K has complained that Cabot Financial (Europe) Limited is wrongly pursuing her for a debt.

background

Cabot is chasing Miss K for a debt, which she says does not exist, is not hers and is unenforceable. She also wants Cabot to remove the default notice from her credit file.

Cabot has explained that the debt was transferred to it from a third party, to whom Miss K originally owed the debt. Miss K feels that no information should be sought from the third party and that any evidence it puts forward should be discounted. She also feels that any submissions or evidence provided by Cabot after she brought her complaint to this service should be discounted. Miss K has cited a considerable amount of law in her submissions, in particular the Consumer Credit Act 1974 (the CCA) and the Consumer Credit Sourcebook (CONC). She says that Cabot is in breach of the Act and CONC guidance, making any debt unenforceable.

The adjudicator did not recommend that the complaint should be upheld, as she was satisfied that the debt existed and was owed by Miss K. Miss K disagreed, maintaining that the debt does not exist, is not hers and is unenforceable, and explained that she feels this service is aiding and abetting Cabot in perpetrating a fraud.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First, I must make it clear that this service is entirely independent and does not 'take the side' of one party to a complaint or another. Instead, we look impartially at all of the evidence before us, to reach a conclusion that we consider to be fair and reasonable in the circumstances of the particular complaint. In order to do so, we take account of the law and industry guidance, but are not bound by it.

In this case, Miss K has cited the CCA and CONC to show that the debt is unenforceable. The sections she has referred to primarily refer to the provision of documentation. I am not satisfied that these sections apply here, because the documentation has in fact now been provided. However, even if they do, I must still look at what I consider to be fair and reasonable overall. I have therefore set out my conclusions below, in respect of what I feel is fair and reasonable in all of the circumstances of this specific complaint.

Miss K has also argued that this service should not take into account any information provided by the original lender, as it is not relevant. I disagree. As Cabot says the loan was assigned to it from the original lender, the documentation relating to when the original loan was taken out is very relevant. Miss K has also argued that we should not look at information provided to us after the complaint came to this service. Again, I disagree. Although it is regrettable that Miss K was not provided with this information earlier, the fact is that it exists and forms part of the circumstances surrounding the complaint, and going to the heart of whether or not the debt exists. If I were to discount it, I would be ignoring an important part of the facts of the situation. This service is impartial, and looks at the evidence and submissions of both parties, to reach a balanced decision.

Miss K has also argued that some of the documentation is illegible, so must be discounted. Having looked at it, I am satisfied that it is legible. Miss K has also said that her signature has been forged, but I have seen no evidence to support this.

This service has been provided with a notice of assignment of the debt from the third party original lender (which it says it sent to Miss K in 2010), and account details from the original lender. Miss K has not provided any evidence that she paid off this debt, and she has argued it does not exist. However, I am satisfied it does, as we have been provided with a credit agreement which she has signed, and, as I noted above, I am satisfied that both the document and the signature are genuine.

Taking all of the above into account, I am satisfied on balance that the debt exists, is owed by Miss K and was assigned from the original lender to Cabot. Given this, I consider it fair and reasonable for Cabot to pursue Miss K for the debt and to have recorded it against her credit file.

my final decision

For the reasons given above, it is my final decision not to uphold this complaint. I make no award against Cabot Financial (Europe) Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss K to accept or reject my decision before 12 February 2015.

Elspeth Wood
ombudsman