

complaint

Mrs D complains that Hoist Finance UK Limited (Hoist) are unfairly pursuing her for a debt which is not hers.

background

For ease, in my decision I will refer to Hoist when talking about their agents or representatives.

In late 2018 Mrs D received a letter from Hoist asking for payment for a debt which they had bought.

Mrs D wrote to Hoist in late 2018 saying that she was not responsible for the debt and so disputed any liability for it. She asked Hoist to stop any collections activity until they sent evidence of her liability.

In early 2019 Hoist responded to Mrs D acknowledging that she disputed the debt. Hoist went on to say they were unable to provide all the details specific to Mrs D's debt. So, they would mark her account as unenforceable, meaning they would not pursue any legal action. Hoist also said any reporting to Mrs D's credit file would be removed. Hoist asked Mrs D to contact them to make repayments towards the debt.

In response, Mrs D complained to Hoist saying that she continued to dispute that she was liable for this debt as she was not satisfied that Hoist had supplied any evidence to show that the debt was hers. Hoist responded to Mrs D in a final response letter. They said that they had contacted the bank from which the debt originated. The bank said that the outstanding balance related to a bank account number and a personal loan account number which they provided to Mrs D. These accounts were closed to the bank's recovery services in 2008 and a copy of the original credit agreement was not available. Hoist also supplied Mrs D with a copy of the banks personal banking terms and conditions from 2007.

Mrs D was unhappy with Hoist's response and so brought her complaint to us also adding that she felt the debt was unenforceable as it was statute-barred.

I sent Hoist and Mrs D my provisional decision on 6 January 2020. I explained that I thought Hoist hadn't adequately linked Mrs D to the debt. So, it should stop collections activity with Mrs D and compensate her for the stress and inconvenience caused. I've copied my findings from my provisional decision below.

my provisional decision

In my provisional decision, I said:

The Financial Conduct Authority (FCA) sets out the rules and guidelines that businesses must follow when pursuing debts of this nature. These rules are set out in the Consumer Credit sourcebook (CONC).

CONC 7.5.3 says – A firm must not ignore or disregard a customer's claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the customer's claim is not valid.

In their response to Mrs D's complaint Hoist acknowledge that Mrs D disputes liability for the debt. So, I have looked at whether Hoist have treated Mrs D fairly by providing clear justification or evidence as to why her claim was not valid.

Hoist provided two account numbers to Mrs D, one for a bank account and one for a personal loan. Hoist have also said that the original loan agreement is no longer available so are unable to evidence that these accounts are linked to Mrs D in that way.

But I don't think Hoist have provided an adequate link between these account numbers and Mrs D's name, date of birth, address or payment history - as I would expect to see.

Our investigator asked Hoist to provide evidence of their communications with the original bank in order to show that the bank have confirmed that Mrs D is liable for this debt. Hoist have not provided this evidence.

Instead, Hoist have provided a notice of assignment sent to Mrs D by the previous debt owner when the debt was purchased from them. Having again made a request for evidence of a link between the account numbers and Mrs D, Hoist have provided the same notice of assignment. I am not persuaded that this notice shows that Mrs D is liable for the debt. The notice only contains the debt balance, the account number and the fact that it was posted to Mrs D. It doesn't explain how the accounts in question were originally linked to a debt belonging to Mrs D.

After Mrs D complained to Hoist they spoke to the bank from where the debt originated. The information supplied by the bank was very limited and did not provide any persuasive information which linked the debt to Mrs D.

Therefore, I don't think that Hoist have acted fairly towards Mrs D. They have not taken reasonable steps to ensure they are pursuing the right person and have not provided clear justification or evidence as to why Mrs D's claim was not valid.

Mrs D claims that the debt is unenforceable and statute-barred. I can't decide if the debt is unenforceable or statute-barred as this can only be decided by a court. However, I can decide if a business has acted fairly. And as I have already said, I don't think this is the case as Hoist have not provided adequate evidence of the history of this debt or how it is linked to Mrs D.

Hoist have told Mrs D that they would not pursue any legal action and would remove any reporting to Mrs D credit file. However, I think it would also be fair for Hoist to stop all contact and collections activity from Mrs D until such time that they can reasonably evidence her liability for the debt.

I can see that Mrs D has been caused considerable upset by being continually pursued for a debt that she says is not hers. Mrs D has also been frustrated that she made a genuine claim to dispute the debt and Hoist did not give adequate responses to her. Mrs D has been inconvenienced having to take the time to write to Hoist and repeatedly explain her dispute. Therefore, Hoist should pay Mrs D £200 for the stress and inconvenience caused.

the response to my provisional decision

Both Mrs D and Hoist accepted my provisional decision, so the case has been passed back to me to reach a final decision.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also considered again my provisional findings.

I was pleased to see that both sides accepted my provisional decision. That means I have no reason to depart from the findings I've already reached in this case. So, my decision remains the same.

my final decision

For the reasons I've given in my provisional decision, my final decision is that I uphold this complaint. If it hasn't done so already, I direct Hoist Finance UK Limited to;

1. Stop all contact and collections activity regarding this debt with Mrs D until such time that they can reasonably evidence her liability for the debt.
2. Remove any records of this debt from her credit file.
3. Pay Mrs D £200 for the stress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 26 March 2020.

Tim Wilkes
Ombudsman