

complaint

Mr H complains that as Capquest Debt Recovery Limited ("CDR") has been unable to provide the credit agreement it can't prove that a debt is his and that the outstanding amount should now be cancelled and he should be reimbursed all of the payments he has made on that account. Mr H also asks that his credit file is updated to show this account as settled in full.

background

In August 1988 Mr H opened a bank account. Via that account Mr H had an overdraft and a loan facility.

The bank says that in or around 2008 Mr H defaulted on his payments to his overdraft and loan. It sold the debt on to another company at the beginning of 2012.

In January 2012 Mr H was written to by both the bank and the company that had purchased the debt. The company said that it had appointed CDR to manage the account on its behalf.

A repayment plan for Mr H was set up by CDR at the rate of £10pm. Between 2012 and 2018 Mr H made payments to the account and there was also correspondence and phone calls made by both CDR and Mr H to each other.

In August 2018 Mr H asked CDR for more information about the debt that it was managing. He also asked for a copy of the original signed agreement with the bank. CDR said that due to the amount of time that had passed this agreement could no longer be located and provided to Mr H.

Mr H complained to CDR saying that as there was no clear evidence in the form of a signed agreement that he owed the money the debt should be cancelled and the payments he'd made towards the debt should be repaid with interest.

CDR said that it would uphold his complaint in that it wasn't possible to provide a copy of the signed agreement for the bank account and loan and that this meant that the debt was unenforceable. CDR said it wouldn't pursue him for the balance although the outstanding amount would remain due.

CDR said that there wouldn't be a reimbursement of the payments Mr H had already made to the account as these had been validly made towards the debt.

Mr H disagreed with what CDR had said and complained to this service. Our investigator didn't recommend that Mr H's complaint should be upheld. He said CDR had confirmed that the debt was unenforceable which was in line with The Financial Conduct Authority ("FCA") handbook. This handbook sets out the FCA's legislative and other provisions for firms and consumers on the financial conduct rules that must be complied with and sets out that if a copy of an executed agreement can't be supplied then the debt isn't enforceable by a court of law.

Our investigator said that due to the time that had passed since the account had been opened he didn't think it was unreasonable that any agreement signed at that time could no longer be located.

However, our investigator said that although no copy of the original signed agreement could be provided that there was sufficient proof there was a debt outstanding and money was owed to the company. CDR had provided a copy of a bank statement for the account from 2005 which showed a negative balance; copies of letters set over a number of years seeking and acknowledging payments made by Mr H towards clearing the debt; contact notes showing an agreed payment of £10 per month had been set and copies of statements showing payments being made by Mr H and the debt reducing.

Our investigator said that from the evidence he was also satisfied Mr H had previously acknowledged the existence of the debt.

Our investigator said he didn't think CDR had acted unfairly in collecting the debt and he wouldn't request that it reimbursed any of Mr H's payments.

Mr H disagreed with our investigator's view. He said that if there wasn't enough evidence for CDR to enforce the debt on behalf of the company then there was insufficient proof the debt existed. He said the decision should be made on the documents alone.

As the parties were unable to agree the complaint was passed to me.

my findings

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

Where evidence is missing or contradictory then I must decide what I think is the most likely thing to have happened. Here it isn't disputed that there is no copy of the agreement between Mr H and the bank, however I have seen copies of other documents. I've seen a bank statement for Mr H from 2005, copies of letters between CDR and Mr H, CDR's notes of contact between itself and Mr H and letters that show the balance was reducing due to payments being made.

I've seen that CDR has confirmed that this debt is unenforceable due to the lack of the original agreement. This is because under the Consumer Credit Act 1974 a consumer has a right to request a copy of their credit agreement and if this can't be supplied then the creditor, in this case the company that purchased the debt from the bank, can't seek a court judgement against the consumer. This is also set out in the FCA Handbook.

However, if a debt is unenforceable this doesn't mean that the creditor can't ask for the debt to be paid and it doesn't necessarily mean that the debt doesn't exist.

From the evidence I've seen I'm satisfied that Mr H held a bank account for a number of years and that a debt that had accrued on that account which was sold on by the bank. I say this because looking at the letter of assignment sent to Mr H in January 2012 informing him the debt had been passed on to another company quotes the same account number as shown on the bank statement that has been provided.

I'm also satisfied that looking at the contact notes created by CDR and the numerous letters it sent to Mr H that CDR requested payment from Mr H on behalf of the company from 2012; set up a payment plan of £10 per month and chased up payments if they were missed. I've also seen that the outstanding balance on Mr H's account which was being managed by CDR was reducing and it isn't disputed by Mr H that he made payments to this account.

Looking at the evidence, I think CDR has acted fairly in managing Mr H's account on behalf of the company that had purchased the debt. It was reasonable that CDR sought payments from Mr H to clear the outstanding balance of this debt. CDR didn't delay in its initial contact and I think it's reasonable to say that Mr H accepted the debt was his as he agreed to meet the payment terms in order to clear the balance from 2012.

When CDR was asked to provide the agreement to Mr H it contacted the bank but, on discovering a copy wouldn't be forthcoming, told Mr H that this debt was unenforceable. I can't reasonably say that CDR hasn't acted in accordance with the laws and rules for debt collection. It was entitled to manage the account and seek payment of the debt from Mr H even though the company who owned the debt hadn't been provided with a copy of the agreement by the bank.

So I think there is sufficient evidence to say that Mr H had an outstanding debt with the bank that was sold on to another company. The company who purchased the debt passed the account to CDR for it to be managed on its behalf. CDR sought payment for that debt and those payments were made by Mr H. I don't think it's reasonable or fair to require these payments to be reimbursed to Mr H. I'm satisfied Mr H's payments were validly made to clear the balance of the debt that CDR was entitled to collect.

For the reasons given above I'm not upholding Mr H's complaint.

final decision

As set out above I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 May 2020.

Jocelyn Griffith
ombudsman