

complaint

Mr R complains about Cabot Financial (Europe) Limited pursuing him for a credit card debt which he does not recognise. He says that the account was opened fraudulently.

background

I set out the background of the complaint and my initial conclusions in my provisional decision dated 28 October 2014, a copy which is attached and forms part of this final decision. In it I explained why I intended to partly uphold Mr R's complaint and invited both parties to let me have further submissions, if they wished before I issued my final decision.

Cabot has not provided any further comment.

Mr R disagrees with my decision. He maintains that the debt does not belong to him and has made further detailed submissions.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find no reason to depart from my provisional decision and I partly uphold the complaint.

I hope that Mr R does not take it as discourtesy that I have not responded to every point that he has made. The purpose of this final decision is to focus on the issues which I consider to be material to the outcome of his complaint. Mr R has referred to how this matter would be looked at differently by the courts. It may be helpful to explain that we are an informal alternative to the civil courts - and take a different approach to resolving disputes, we decide cases on a fair and reasonable basis, rather than on the persuasiveness of legal arguments.

As outlined in my provisional findings, I agree that Cabot's letter of 28 February 2008 does indicate that its approach was speculative; However, I am satisfied from Cabot's system notes that it had undertaken tracing checks before sending its initial letter to Mr R in January 2008.

I have already acknowledged the failings of Cabot to carry out an adequate investigation into Mr R's concerns about the debt. Mr R says that the recent transaction information provided should be inadmissible as this was not available to Cabot when it continued to pursue the debt. I disagree, I do not consider that I can properly require Cabot to write off the debt or remove the debt from Mr R's credit file, without considering all the information available about whether the debt belongs to him or not.

I note that Mr R has provided further detail about his whereabouts which appears to be inconsistent with the transaction history; he has not provided any evidence to support his version of events, which is understandable given the passage of time. He accepts that his details are on the credit agreement, but says that the account was opened fraudulently.

I am not persuaded that the debt does not belong to Mr R. The account was opened in March 2001 and repayments were maintained by direct debit, the last payment being made by cheque in December 2004. Both payment methods would have been traceable which is not a characteristic of fraud, nor is the spending pattern on the account. Overall I am

satisfied on the balance of probabilities that Mr R opened the account and the debt belongs to him.

Mr R says that the credit agreement would be legally unenforceable, as the terms and interest rates differ throughout the agreement. Only a court has the power to declare an agreement unenforceable. I must decide whether it is fair and reasonable for the debt to be written off. With exception of the first page which matches Mr R's details and signature, I have found the terms of the document to be mostly illegible.

Whilst I agree that there appears to be some variation in the terms and therefore it is entirely possible, that not all the original terms and conditions have been provided. I do not consider that this means that the debt does not belong to Mr R. Taking all the evidence into consideration, I am satisfied that the debt belongs to Mr R for the reasons outlined above. In addition I am satisfied that the agreement has not been falsified by Cabot, as the copy provided to this service by the original lender appears to be the same.

Mr R also raises a new issue regarding the role of Cabot's in house solicitors and whether their correspondence complies with the Solicitor's code of conduct. This was not part of Mr R's complaint and if he has not already, he should pursue this separately with Cabot to give them an opportunity to respond.

I provisionally considered that it was fair for Cabot to pay Mr R £400 compensation in recognition of the distress caused by its failures. In the circumstances, I do not consider that there is any reason to warrant an increase in award.

Mr R is concerned that Cabot may continue to pursue the debt. As Cabot has already agreed not to contact Mr R further in respect of the debt, I do not consider it necessary to order it to do anything else. If at some point in the future Cabot or an assignee pursues the debt further, then Mr R may wish to refer this matter to this service.

I appreciate that Mr R will remain disappointed with my decision. However, as Mr R has noted a court may take a different view of the situation and, if Mr R does not accept my decision, he will be free to pursue his arguments in any court proceedings that may arise, if he so wishes.

my final decision

My final decision is to partly uphold this complaint and direct Cabot Financial (Europe) Limited (trading as Cabot Financial) to:

- pay Mr R £400 in compensation for the distress and inconvenience caused by contacting him when the debt was statute barred and also in recognition of how it handled his dispute.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 26 February 2015.

Karen Dennis-Barry
ombudsman

Provisional Decision

complaint

Mr R complains that Cabot Financial (Europe) Limited (trading as Cabot Financial) has harassed him for a credit card debt that does not belong to him and failed to promptly provide him with information about the debt when he requested it. Mr R says that Cabot's actions have caused him significant distress and he has been declined credit on more favourable terms.

background

Cabot purchased the disputed credit card account from the original lender in March 2005. When Cabot first contacted Mr R in January 2008 he disputed the debt and indicated that his details had been used fraudulently to obtain the credit card. Mr R requested information relating to the account and there was an exchange of correspondence in 2008, 2010 to 2011 and again in 2013. Mr R has said that Cabot has continued to harass and intimidate him by pursuing the disputed debt and as a result of their actions he has been declined credit.

Cabot did not uphold Mr R's complaint. It considers that Mr R owns the debt. It says that it has already apologised and offered £100 for contacting Mr R in 2013, after it had agreed that the debt was statute barred.

Our adjudicator did not recommend that the complaint should succeed. She was satisfied that on balance Mr R was the owner of the debt and considered the £100 redress to be reasonable. Mr R did not accept the adjudicator's findings and has requested that his complaint is reviewed by an ombudsman. He wants Cabot to;

1. write off the debt
2. delete all his personal data from their records
3. pay him £6,534.04 for the distress, inconvenience and financial loss caused.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am minded to partly uphold the complaint. Where necessary and/or appropriate, 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 evidence that is available and the wider surrounding circumstances.

Although I have read all the submissions made by Mr R, I do not intend to respond to every point he has raised – nor am I required to. The purpose of my decision here is to set out my findings and to focus on what I consider to be the central issues, material to the outcome of his complaint.
should Cabot have initially pursued Mr C for the debt?

In summary Mr R says that when Cabot initially contacted him they had no real evidence linking him to the debt. He says that Cabot failed to adhere to industry guidelines on tracing debtors; as they should not have disclosed the debt to him, but should have sought verification information from him to check whether he was the debtor, instead of sending demands from the outset.

The system notes indicate that Cabot carried out tracing checks before sending its collection letter to Mr R in January 2008. In February 2008 Cabot wrote to Mr R requesting that he confirm that he previously lived at an address linked to the debt. From this letter I can see why Mr R considers Cabot's approach to be speculative, but as I have noted Cabot would have been reasonably certain that Mr R's name and address was a match with the details provided by the original lender, when they first contacted him. For this reason I do not uphold this aspect of the complaint.

was it unreasonable for Cabot to continue to pursue the disputed account?

Mr R considers that Cabot have intimidated and harassed him by continuing to pursue the disputed debt. Mr R says that he believes the account to be fraudulent.

Mr R has raised concerns about the credit agreement being falsified by Cabot. I should say that I consider the document provided by Cabot to be a credit agreement rather than an application form, as indicated at the top and bottom of the first page. I do not consider that there is any evidence to suggest that Cabot has falsified the credit agreement, as Mr R has indicated.

Mr R has also raised concerns about Cabot removing a default entry on his credit file in January 2011 and then reapplying it, inserting his middle name. There does not appear to be an explanation for its removal, as under normal circumstances this should have remained until June 2011. Cabot has confirmed that when it re-applied the default, it inserted Mr R's middle name as it had updated its records following further checks. I do not consider this update to be unfair.

I note that the first name used on the credit agreement is a shortened version of Mr R's first name, which the tracing checks list as Mr R's alias. The date of birth on the agreement match Mr R's details, Mr R's previous address is linked to the account and I would agree with the adjudicator that the signature on the agreement is not dissimilar to the one he has provided on his complaint form. In addition, the spending trend on the account for everyday purchases and the repayments made on the account do not indicate fraud.

Whilst I accept that there are some discrepancies which have not been explained, for example the address on the agreement being different to the address on the statement. Overall, I am persuaded on balance that the debt belongs to Mr R. Therefore, I do not consider that Cabot has unfairly pursued Mr R for the debt. For this reason I do not consider that Cabot should write off the debt.

Cabot's contact after the debt became statute barred

Cabot's system notes indicate that the debt became statute barred in October 2010. The OFT set out that it is unfair to "*mislead debtors as to their rights and obligations (for example, stating or implying that debtors may be the subject of court action... when it is known, or reasonably ought to be known, that the relevant limitation period has expired)*".

Cabot's in house solicitor's sent Mr R two letters in January 2011, threatening legal action, when it ought to have known that the debt was statute barred. In the circumstances, I am of the view that Cabot did not meet the OFT's requirements in this respect.

In June 2011 Mr R wrote to inform Cabot that he considered the debt to be statute barred. Cabot agreed that the debt was barred in August 2011. Cabot has acknowledged that they should not have contacted Mr R again in February 2013. It has apologised for this error and offered to pay Mr R £100 in compensation. Mr R does not consider this amount to be enough to compensate him for what he feels amounts to intimidation and harassment.

Whilst I am not convinced that Cabot's contact with Mr R in January 2011 and again in February 2013 amounts to harassment or intimidation, I am in no doubt that its further contact would have caused Mr R distress. Having considered the general levels of awards this service makes in this area and the circumstances of this case, I believe that a higher award of £200 to be fair and reasonable.

A statute barred debt still exists, but is not enforceable. For this reason I do not consider that Cabot is under any obligation to write off the debt nor remove Mr R's details from its records. If Mr R has any future concerns about Cabot's handling of his details, he may wish to contact the Information Commissioner's Office.

decline of credit

Mr R says that he was denied credit in 2011 on more favourable terms because of the adverse information recorded by Cabot on his credit file; he accepts that the letter of decline provided does not specifically give a reason for its decision, but says that this is because financial businesses are restricted to saying that credit scoring has been used in reaching the decision.

As previously outlined by the adjudicator the availability of credit is often subject to a variety of different factors, such as the lenders own criteria, the amount of credit already extended, and the applicant's income, amongst other things. In any event, I am persuaded that the debt belongs to Mr R; therefore I do not consider Cabot's credit reference reporting to be inaccurate or unfair. For this reason I am not minded to uphold this part of the complaint.

customer service

Having reviewed the correspondence between Cabot and Mr R, I can see that there were significant delays in providing the account information that Mr R had requested. Whilst Cabot has pointed to the delays caused by the original lender and I can see that Cabot has been prompt in requesting the information and chasing progress with them. However, I do not consider that this absolves Cabot for the delays in providing the information requested. I say this because, as the owner of the debt, it is responsible for ensuring that arrangements are in place to provide account information in a timely manner.

I am also satisfied that Mr R's complaint could have been handled better. It is clear there were some delays in Cabot providing responses and failures to acknowledge his correspondence. Cabot says that it has repeatedly asked Mr R to provide evidence of his identification, address history and requested that he clarify his concerns about the documentation it sent him, but Mr R failed to elaborate or provide the information it requested.

The debt collecting guidance is clear that the onus is on Cabot to demonstrate that the debt belongs to Mr R. It is clear that there has been an error by Cabot in respect of investigating the specific concerns first raised by Mr R in May 2008, which related to the agreement appearing to be an application form, the name, address and the handwritten account number on the credit agreement not matching the details on the statements.

Despite Mr R's numerous requests for an explanation of the discrepancies, Cabot simply sent Mr R further statements, without addressing the specific concerns raised. I do not consider that this was adequate.

For the reasons above, I consider that Cabot has not provided Mr R with an adequate level of customer service. Therefore, I am minded to uphold this part of his complaint. In light of this, I consider that Cabot should pay Mr R £200 to reflect the way that his complaints, queries and information requests were handled. I am aware that this is considerably less than Mr R would consider to be appropriate. However, I am of the view that this award is reasonable given the individual circumstances of the case.

my provisional decision

Subject to further submissions, my provisional decision is to partly uphold this complaint and direct Cabot Financial (Europe) Limited (trading as Cabot Financial) to:

- pay Mr R £400 in compensation for the distress and inconvenience caused by contacting him when the debt was statute barred and also in recognition of how it handled his queries, information requests and complaint.

Karen Dennis-Barry
Ombudsman