

## **complaint**

Mr W complains that Home Retail Group Card Services Limited offset a refund of fees due to him against an outstanding balance he believed had been settled by an earlier full and final settlement agreement.

## **background**

Mr W held a store card issued by Home Retail Group. He fell into arrears in 2011 and Home Retail Group appointed a third-party debt collector to recover the debt. In March 2011 he made a payment to the debt collector in, what he says, the debt collector described as full and final settlement of the debt – albeit the payment didn't cover the full amount of the outstanding debt.

Home Retail Group contacted Mr W in April 2017 following a review of fees charged to customers who, like Mr W, had a store card account. It said it had identified fees that had been charged incorrectly, and that Mr W had been incorrectly charged fees totalling more than £130, including interest.

It said it was refunding the incorrect fees, plus interest, by clearing the outstanding balance on his account. It sent him a cheque for £7 – representing the amount the refund exceeded the balance on his account.

Mr W believes he is entitled to receive the full refund amount. He says that the outstanding debt had been cleared in a full and final settlement, and that at no point had he been asked to repay the outstanding amount. He also says that the Limitation Act 1980 should apply as Home Retail Group has taken this action beyond the relevant six-year period.

One of our investigators reviewed the matter but didn't uphold the complaint. He didn't agree that the Limitation Act applied because, in making the complaint, Mr W had acknowledged the debt (which keeps the 'clock' running for recovery proceedings). He also felt that the full and final settlement agreement meant that Home Retail Group would stop chasing Mr W for the debt, not that the outstanding debt had disappeared. He felt that it was fair that Home Retail Group had got the money it was owed and Mr W had received the balance.

Mr W disagreed with our investigator and asked that the matter be considered by an ombudsman.

## **my findings**

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

Mr W says he'd agreed with Home Retail Group's debt collector that the payment he made was in full and final settlement of the debt. He says this was agreed when he made the payment over the telephone. He says he asked for written confirmation at the time but none was received. Home Retail Group has provided me with a statement it sent to Mr W on 5 April 2011. It shows the payment made by Mr W, and the account balance shows he still owed £130. So the information it provided to him at the time showed that there remained an amount outstanding – although Home Retail Group agreed not to pursue him for this.

Mr W has said that because more than six years had passed since he'd been contacted about the debt, the Limitation Act prevented Home Retail Group from recovering the debt. I should say here that I disagree with our investigator on this point – I do not accept that in making this complaint Mr W acknowledged the debt. Making a complaint of this nature is materially different from the sort of debt acknowledgement that can prevent recovery proceedings from being time-barred, e.g. where a debtor makes token periodic repayments.

The Limitation Act could apply if Home Retail Group was now attempting to enforce the debt, or employing debt collection practices to recover the debt. But that is not the case here. The question here is whether or not Mr W is entitled to the refund.

I said above that the debt was never written off. In agreeing a full and final settlement, Mr W benefitted from paying less than the full amount he owed, without fear of being pursued for the outstanding balance due. If he were to receive the full refund he would effectively benefit twice, once with the reduction in the debt, and secondly with a refund of amounts he never actually paid.

Home Retail Group has a legal right to offset, and it has fairly relied on the terms and conditions of the account which clearly allowed a right of set-off.

So I find that it was reasonable and fair for Home Retail Group to offset the refund against the outstanding debt.

### **my final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 June 2018.

Gordon Ramsay  
**ombudsman.**