

## **complaint**

Mr S complains that Cabot Financial (Europe) Limited, ("CFL"), has failed to send him the original credit agreement and full details of all payments and charges in relation to two debts it's pursuing him for.

## **background**

Mr S had a credit card account with a credit card provider ("P") and a current account with a current account provider ("H"). He has asked CFL for copies of the original credit agreements for these accounts and full details of the debts, including payments made and charges incurred. Mr S is unhappy that CFL is still pursuing him for money as he had asked it for copies of the credit agreements and other information about the accounts which hadn't been supplied. So, he said that CFL shouldn't be in a position to claim any money from him.

### *Credit card account*

Mr S opened his credit card account with P in April 2004. The account was closed in February 2008 as Mr S had failed to pay his minimum monthly repayments, and Mr S owed P £2,894.14. CFL bought the account from P in February 2008. In May 2008, a debt management company, on behalf of Mr S, agreed a repayment plan with CFL, in which Mr S agreed to pay P monthly payments of £2.32. Since then Mr S had made 49 payments. CFL sent Mr S a statement showing the payments made since May 2008. CFL had asked P for a copy of the original credit agreement, but it was unable to provide this due to the age of the account.

### *Current account*

CFL bought the account from H in June 2014. As Mr S failed to respond to CFL's communications, county court proceedings were issued. Mr S partly admitted the claim and offered monthly repayments of £3.05. CFL obtained judgement against Mr S in October 2015. His payments of £3.05 towards the judgement debt have been paid since November 2015. H has been unable to supply a copy of the credit agreement for the account.

The adjudicator didn't recommend that the complaint should be upheld. He could see that Mr S acknowledged the debts because he'd been making regular payments to CFL. So, he couldn't recommend that CFL stopped pursuing Mr S for payment. He noted that CFL had been able to send Mr S an account statement for the credit card account. But, he explained that the credit agreement for the credit card account wasn't available due to the passage of time, and that there wasn't a credit agreement for the current account.

Mr S disagreed and responded to say, in summary, that he considered the debts were statute barred debts. With regard to the current account debt, when he received the county court claim, he didn't have information about statute barred debts and he was scared about the court judgement. That was why he'd agreed to make repayments towards the debt. But Mr S now disagreed with the outstanding account balance. As he's not received the original agreements and statements showing his payments and the lender's charges, he believes that CFL was disqualified from chasing him for the debts. And as CFL couldn't prove the amounts due, he said that they shouldn't be pursuing him for payment.

The adjudicator responded to say that this service can't consider whether or not a consumer's debt is enforceable due to the Limitation Act 1980 (which explains what type of debts are statute barred). This is for the courts to decide. But, in any event, he didn't think

that the debts were statute barred as CFL had already obtained a county court judgment against Mr S in respect of H's debt, and Mr S had been making regular payments towards his debts over the last six years. This showed that he'd acknowledged the debts.

### **my findings**

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

It's clear that Mr S has very strong feelings about CFL's actions. I can see that he believes that his debts are statute barred. This refers to the time limits laid down by the Limitation Act 1980 which prevent a creditor taking legal action to recover a debt after a certain period. A debt may not be time barred if certain events have occurred during that period.

A debt such as a credit card or current account debt will normally be statute barred if:

- The creditor hasn't already obtained a county court judgment against the consumer;
- The consumer hasn't made a payment towards the debt in the previous six years; or
- The consumer hasn't written to the creditor admitting he owed the debt during the last six years.

Once a county court judgment has been obtained, the Limitation Act doesn't put any time limits on how long the creditor has to enforce the judgement.

In this case, I can see that Mr S has been making payments towards both P and H's debts. And in the case of H's debt, I note that a county court judgment has been obtained. So, it doesn't appear that both debts are statute barred. But, only a court can decide whether the debts are statute barred and therefore unenforceable. We don't hold the same powers as a court and cannot make judgements of this type.

I note that Mr S also believes that he shouldn't have to pay the debts as the original credit agreements and account statements for both debts haven't been supplied to him.

I asked the adjudicator to ask CFL for confirmation that they requested a copy of the credit agreement from P. It said that P was unable to provide a copy of Mr S's agreement due to the age of the account. I also asked if CFL had a copy of the credit agreement for Mr S's current account. It doesn't have this. But, I note that at the time Mr S applied for his current account in 2001, overdrafts were exempt from the requirement for a credit agreement under the Consumer Credit Act 1974. But, I have seen a copy of Mr S's account application in which he agreed to be bound by the account conditions and to repay his overdraft at any time.

I also understand that even if a copy of the original credit agreement can't be provided pursuant to a request, a creditor can still take certain steps to recover payments, even though the agreement becomes unenforceable until a copy is provided. The Financial Conduct Authority, which regulates CFL, says in its handbook that a creditor can take certain steps with a view to enforcement including demanding payment, threatening legal action and bringing proceedings. I note that Mr S is unhappy that he is being pursued for payment of the credit card debt. Mr S hasn't supplied details of the harassment he is experiencing. But,

if this consists of any of the matters I've referred to above, then these wouldn't be inappropriate.

I also note CFL is unable to obtain credit card account statements from P due to the age of the account. But I can see that CFL has supplied an account statement to Mr S for the period since May 2008 which I think is reasonable in the circumstances.

I note that Mr S made payments to CFL for his credit card debt for over seven years without disputing the debt. And I've seen no evidence that he was paying under duress or that his debt management company had acted inappropriately.

I note what Mr S said about the county court proceedings. But, if he disputed the amount of the current account balance, I think he could have reasonably sought advice about this when he received the court papers, and disputed the claim then if appropriate. As, a county court judgment has been obtained, I can't now overrule what a court has already decided.

CFL has said that it would like to refer Mr S's accounts to its Customer Operations department, so they can speak to him and arrange an affordable payment arrangement with him for these. I think this is reasonable.

I appreciate Mr S will be very disappointed with the decision I have come to here but for the reasons explained, I don't think I can uphold the complaint. Mr S may wish to continue his dispute with CFL but if he does, he will need to do so through other means as this decision represents the last stage in our process.

### **my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 April 2017.

Roslyn Rawson  
**ombudsman**