

complaint

Mr R has complained about the way in which Cabot Credit Management Group Limited ('Cabot') has sought to recover payment from him in relation to a debt it purchased.

background

Cabot bought a credit card debt that belonged to Mr R in October 2017. The outstanding debt was around £3,000. Mr R agreed to pay £10 per month towards the debt in March 2018. From what I can see, he made this payment for the next two months. Following on from this, it looks like Mr R entered into discussions with Cabot about settling the debt. An agreement was reached for a reduced settlement of £1,500, payment due by 14 June 2018. As the settlement wasn't paid, a few days later, Cabot wrote to Mr R letting him know and asking for contact. It wrote to him again twice in July 2018 saying as there was no plan set up and it wasn't receiving payment that it might start legal proceedings. And the following month, as it hadn't heard anything, it wrote to Mr R to say it had passed the debt to its solicitors – who I'll refer to as 'M' – to issue a claim.

M sent a Letter of Claim to Mr R in August 2018 and in September it issued a formal claim. Mr R was unhappy with how things were being handled so he complained to M and Cabot. Mr R was concerned about the legal action that was taking place and didn't think he'd been given a fair opportunity to resolve things. He wanted to set up a payment arrangement with Cabot to repay the debt.

Cabot and M liaised with each other and responded to Mr R. Both parties didn't think they'd acted unfairly. Cabot urged Mr R to contact M to discuss his options. Following on from this, I understand Mr R did liaise with M about the account. And in April 2019, he brought his complaint to our service. In summary, he said:

- He was away in August 2018 when M sent the Letter of Claim, and he was unhappy he didn't get a chance to respond.
- He was unhappy he wasn't able to enter into a payment plan.
- He thought M purposely wrote to him in August knowing most people are away.
- He wasn't updated properly following his complaint.
- He was given conflicting information.
- He was given a Tomlin order which he didn't fully understand or why it had taken so long.
- It was having a negative effect on his health.

To resolve the complaint, Mr R said he wanted the Tomlin order removed and a payment plan set up. He said he wanted an apology for the time spent resolving the complaint and wanted court costs removed.

As it looked like there were legal proceedings ongoing when the complaint was brought to our service, we initially said this was a complaint that should be dismissed. But after having confirmed the legal proceedings were not ongoing, and that – the case having settled by consent – the court hadn't made any findings about the underlying issues, an investigator sent an assessment on Mr R's complaint.

In summary, our investigator said:

- She didn't think Cabot started legal proceedings too soon. She thought it had been made clear to Mr R well in advance that legal proceedings were a possibility. She said Cabot had contacted Mr R various times throughout 2018 when payments weren't received to let him know his account might be reviewed for legal action.
- She didn't think that 30 days was an unreasonable amount of time to give a customer to make contact, even in August. And she said Mr R was actually given slightly longer – 35 days – before the claim was issued.
- Where M was acting in the course of litigation services relating to debt collecting, it wasn't carrying out an activity we had the power to look at. So, we couldn't consider a complaint against Cabot about M's actions.
- She didn't think Cabot provided conflicting information to Mr R. She said Cabot had directed Mr R to speak to M to avoid the risk of miscommunication.
- She noted Mr R said Cabot told him his account would be placed on hold only to be told that wasn't the case when he spoke to M. But she thought this was more likely because the calls were less than 30 minutes apart and so she thought there hadn't been enough time for the message to be communicated.
- She also noted that, since the complaint had been brought to us, Cabot accepted a partial settlement from Mr R of £800 and would not be pursuing him for further payment.
- Overall, she didn't think Cabot needed to take any further action.

Mr R did not review or comment on the investigator's view – on receiving it he asked immediately that the case be passed to me to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what is, in my opinion, fair and reasonable, I've taken into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.

Firstly, I want to say I'm very sorry to hear that the matter has negatively impacted Mr R's health. I appreciate the time and effort it has taken him to bring his complaint to our service.

Secondly, I think it'd be helpful to set out why I am able to make a decision on this complaint against Cabot at all, but also to make clear which elements of his complaint I am not able to consider.

Our service was set up by Parliament under the Financial Services and Markets Act 2000 ('FSMA'). It's important to make clear that – as a public body - we don't have a general, 'at large' power to investigate any complaint. We can only investigate what FSMA and rules made under FSMA say we can – those set out the boundaries of our jurisdiction. And we have no legal power to investigate complaints that are beyond our jurisdiction.

FSMA gives the Financial Conduct Authority ('the FCA') the power to say what complaints we can and can't consider. The FCA has set these out in the Dispute Resolution chapter of the FCA Handbook (also known as 'DISP' or 'the DISP rules'). Paragraph 2.3.1 of DISP lists the complaints we can look at.

DISP 2.3.1 says we can look at a complaint where it is about a 'regulated activity'. 'Regulated activity' is defined in the Glossary to the FCA Handbook - I've included a link here:

<https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=R>

Broadly, the 'regulated activities' we can consider are those set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('the RAO').

One of those relates to when a business exercises, or has the right to exercise, the lender's rights and duties under a regulated credit agreement. So, I think when Cabot was speaking to Mr R about the repayment of the debt – it was carrying out a regulated activity which we have the power to consider complaints about.

In Mr R's case, Cabot is the respondent business. But there is another business involved that carried out legal work for Cabot – M. Sometimes we can fairly hold the respondent business accountable for certain acts or omissions carried out by one of its agents. But this isn't always possible. There are certain exclusions I need to bear in mind. As Mr R hasn't said he accepts what our investigator has said, I think it would be helpful to explain a little bit more about the relevant exclusions.

In this complaint, because Mr R is unhappy with some of M's actions, I've had to consider whether I can fairly hold Cabot responsible for any acts or omissions carried out by M.

Like our investigator pointed out, debt collecting on behalf of a third party is a regulated activity under Article 39F of the RAO and is one of the regulated activities that we can consider under the DISP rules. Debt collecting is described in Article 39F of the RAO as:

Taking steps to procure the payment of a debt due under a credit agreement... is a specified kind of activity.

If M was simply debt collecting on behalf of Cabot, I think I could fairly hold Cabot responsible for acts or omissions carried out by M. Our service has the power to look at complaints about debt collecting. But I also have to bear in mind that M is a solicitors' firm, and that activities carried out by members of the legal profession are excluded from Article 39F in certain circumstances – such as providing litigation services. Litigation services means:

Any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.

The relevant exclusions can be found in Article 39K of the RAO.

When M contacted Mr R in contemplation of starting legal proceedings, it was carrying out a litigation service because it was acting on behalf of its client, Cabot, in asserting its legal right to recover a debt. It first contacted Mr R by sending a Letter of Claim in accordance with the Pre-Action Protocol for debt claims: <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/debt-pap.pdf>.

And, again, like our investigator has pointed out, the Solicitors Regulation Authority's (SRA) website says in its case studies that:

The issue of the Letters of Claim and the steps taken under the Pre-Action Protocol would not constitute "debt collecting" since they are services which it is reasonable to expect the firm to provide for the purpose of contemplated proceedings and would fall within the exclusion at article 39K of the RAO.

What this means for Mr R's complaint is that, in this case, I'm unable to consider any of M's alleged acts or omissions when considering the complaint against Cabot – M was carrying out a litigation service. As set out above, our service can only consider complaints about matters that the FCA Handbook defines as being within our jurisdiction. That does not include complaints about litigation services.

I also note that Mr R has explained that the reason the debt became an issue in the first place was because of the interest that was being charged. This wasn't part of the complaint against Cabot that was originally brought to our service. But, for the avoidance of doubt, if Mr R is unhappy with the way the original creditor dealt with any financial difficulties – he'd have to take it up with the original creditor. This isn't something we can fairly consider against Cabot. And if Mr R is unhappy with the original creditor's response to his complaint, we may be able to look into things for him.

So with all that in mind, and while I appreciate it narrows things considerably, I've gone on to decide whether or not – in relation to the matters within our jurisdiction - I think Cabot has acted fairly up to the point Mr R brought his complaint to our service and, if it hasn't, whether it needs to do anything to put things right for Mr R.

Did Cabot act fairly?

Cabot took over the debt in 2017. It spoke to Mr R in early 2018 and he agreed a repayment plan which he kept to for two months. But he stopped making payments under the plan. For completeness's sake, although it isn't central to my decision, I note that Cabot's contact notes say that in a call with Cabot on 24 May 2018 Mr R advised that at the end of September 2018 he would be going to Vancouver, would not be returning for at least seven years, and would not be making any further payments. Following on from this, I see that Cabot and Mr R agreed a partial settlement of £1,500 for the debt, due by 14 June 2018. But the settlement wasn't made. Cabot tried to contact Mr R several times over the next few months. As it didn't hear back from Mr R, it passed the debt to M.

From what I can see, Cabot wasn't receiving payment, Mr R hadn't paid the £1,500 agreed on by the parties to settle the debt, and Cabot wasn't receiving responses from Mr R. Taking all this into account, I don't think Cabot acted unfairly or 'jumped the gun' by passing the debt over to M. I'm conscious that Cabot had a right to seek recovery of the debt and, in circumstances where (i) a partial settlement hadn't gone ahead, (ii) it wasn't receiving payments, and (iii) Mr R wasn't responding to correspondence, it was reasonable for Cabot to instruct lawyers to recover the debt.

I've already set out why I can't fairly hold Cabot responsible for M's actions in relation to the court claim. Further, I'm not satisfied that it would be appropriate for the Ombudsman service to consider complaints about a firm such as Cabot seeking to assert its legal rights in respect of a debt in the courts – those objections are properly for the courts themselves in the context of a claim.

However, I think I should point out that even if I could look at Cabot's decision to use the courts, I would not uphold the complaint. The rules for such claims are those made by the Ministry of Justice and set out in the Civil Procedure Rules, which includes a number of 'Pre-Action Protocols'. The Pre-Action Protocol for debt claims states at paragraph 3.4 that if the debtor does not reply to the Letter of Claim within 30 days of the date at the top of the letter, the creditor may start court proceedings. Given that M filed the claim on behalf of Cabot 35 days after the date at the top of the Letter of Claim and considering that attempts to arrange a settlement and payment plan stalled well before that, I'm satisfied that there was nothing unreasonable about the claim being filed on 12 September 2018.

For completeness's sake, I note that Mr R claims to have been away for part of the time between when M sent the letter before claim and when it issued the claim. However, he hasn't given a clear account of precisely when he was away, and I'm satisfied that the 30-day time limit in the Pre-Action Protocol for debt claims takes such absences into account in any event. In all the circumstances, I'm satisfied that there's nothing unreasonable about Cabot's decision to pursue legal proceedings.

Although the court proceedings were going on in the second half of 2018 and the early part of 2019, Mr R did continue to have some communication with Cabot.

Mr R contacted Cabot as he wanted to set up a payment plan directly with it because he was unhappy with M. I understand Cabot agreed to look into things and to arrange to have the account placed on hold. Mr R was unhappy that when he spoke to M shortly after, the account wasn't on hold. Given M said this call only happened within half an hour of the call with Cabot, while I can understand why Mr R was frustrated, it's not clear that Cabot acted unfairly or unreasonably here – it's not obvious to me that Cabot needed to pass these instructions on instantly. I find it more likely the instructions simply hadn't reached M at that point. After Mr R contacted it, Cabot reviewed things and responded to him within a week which I think was reasonable. And given the roles the parties were carrying out, I don't think Cabot acted unfairly by suggesting Mr R spoke to M about the debt.

Following on from this, Mr R continued to deal with M. But a few months later, he spoke to Cabot again, unhappy with how M was arranging the Tomlin order and how long things were taking. It looks like Cabot spoke to M for Mr R and asked it to contact him. I think it also suggested Mr R speak to M about the order. Again, while I can understand why Mr R was unhappy things hadn't been resolved by then, when considering this complaint, M was the one dealing with the legal proceedings. So, I think Cabot's response and suggestion Mr R speak to M was fair.

All things considered, I can appreciate why Mr R was concerned and unhappy about the legal proceedings, but I don't think there's sufficient evidence to show that Cabot has acted unfairly. Therefore, I'm not going to direct Cabot to take any further action.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 May 2021.

Simon Wingfield
ombudsman