complaint

Ms D complains, in summary, that Cabot Financial (Europe) Limited, ("CFL"), hasn't handled her debt reasonably.

background

Ms D entered into a credit card agreement with a credit card provider ("P") in 2004. She fell into arrears and her account was defaulted by P in May 2008. Ms D entered into a repayment plan and made repayments towards the debt until September 2013, at which time there was still almost £2,000 outstanding on the debt. The debt was sold by P to a debt purchaser ("E") in May 2013 although P said that the sale was determined in August 2012. Then, E sold the debt to CFL in July 2014.

Ms D said that the debt had been settled in August 2012. She said that she'd heard nothing further about the debt until she was alerted by a third party that CFL had entered a county court judgement ("CCJ") against her in February 2016. Ms D applied to the court to have the CCJ set aside in March 2016 but the court rejected her application. CFL then applied for an attachment of earnings order to be made, which was then suspended pending monthly repayments being made by Ms D. Ms D is unhappy with CFL's actions as she said that the debt had previously been settled. And she also said that if CFL had contacted her about the matter, it wouldn't have been necessary for it to have issued proceedings.

The investigator didn't recommend that the complaint should be upheld. He said that he couldn't comment on the county court proceedings. But he thought that Ms D ought to have known that the debt hadn't been settled, and knowing that the debt wasn't settled, it would have been Ms D's responsibility to update her creditors with her address. He explained that if she'd done this, CFL might have been able to agree terms with her without the matter needing to go to court. He noted that Ms D had said that the last contact she'd had on this debt was in 2012, when she'd received a suspect letter purporting to be from P and she'd asked for proof from the sender as to who it was. She said that she'd received no response. But the adjudicator didn't think it was reasonable for Ms D to have cancelled her repayment plan in these circumstances.

Ms D disagreed and responded to say that she did receive a reply about the suspect letter saying they would look into it and would be in touch. She remained at that address for a further two years, and had no further correspondence from them. Ms D said that she received one letter from CFL in the winter of 2014, and by then she had moved to a different address. She received no further letters from CFL and thought that she should have been informed if she was being taken to court. Ms D also said that she had a copy of her credit report saying that P's debt was settled, and she didn't think it was her responsibility to try and find a company that she didn't even know was dealing with her account. She said that P was unable to help her, as they couldn't even find the account. She also said that she should have received the county court claim form.

The investigator sent Ms D copies of some of the letters CFL and its agent had sent Ms D since taking on the debt. He said that CFL had shown him records to show that they attempted to trace her on two occasions in 2014 and 2015.

Ms D responded to say that she hadn't received the letters sent to her by CFL. And as she hadn't heard anything in response to the suspect letter for two years, she didn't think she should pay a company when she wasn't even sure if they were actually who they said they

were. She also wanted to know why CFL didn't contact her within the three months after she asked for the CCJ to be set aside.

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 things are not clear, or in dispute, I make my findings on what I think is most likely to be the case. I take into account the evidence which is available to me and the wider surrounding circumstances.

I can see that Ms D has suffered considerable health issues and I have sympathy for the position in which she finds herself.

I note that Ms D has complained about the lack of contact from CFL. Ms D said that she received no contact about the debt for two years. It is difficult to know which two year period Ms D is referring to. But as this complaint is against CFL, I am concentrating in this decision on the period since CFL bought Ms D's debt in 2014. CFL said that after it had bought Ms D's account in 2014, it sent her several letters regarding the account up until March 2015. These are shown in its debt collector's notes. I have checked these notes and note that 15 letters were sent to Ms D between April 2014 and April 2015. It also phoned her nine times in this period and sent her two statements. I note that the mobile phone number they attempted to call Ms D on is the number she still uses. I can see from the contact notes that the phone was "killed" on many of the occasions they called Ms D. I note that there was a phone conversation with Ms D in 2014 when she said that the calls were harassment and she would call the police.

As no written response was received from Ms D, the account was referred to CFL's trace team to ascertain if she was resident at a new address. Ms D then contacted CFL by email in April 2015 as she had noted it had made two credit searches on her credit file but said that she hadn't contacted them. She also provided her new address to CFL. CFL then attempted to contact Ms D by letter on eight occasions between May 2015 and December 2015. I have seen copies of these letters. It seems that these letters were correctly addressed so I don't see why they might not have been delivered to Ms D. As no response was made by Ms D, CFL passed the account to its solicitors, ("S"). I don't think this was unreasonable.

I have also seen S's system notes. I have seen a copy of its letter before action sent to Ms D in January 2016 and its county court claim form issued in February 2016. Ms D said she received this but didn't reply as she thought it was a mistake. As no reply was received by S, S wrote to Ms D in February 2016 and it applied for judgement to be entered against Ms D in the same month. Ms D then phoned S twice in mid-March 2016 and referred to her credit file saying that the account had been settled. Ms D applied for the CCJ to be set aside in March 2016. S wrote to Ms D in April 2016. Her application was heard by the court in June 2016. CFL's lawyer's note from the hearing said he had spoken to Ms D and she had said that she'd received no correspondence about the debt and was unaware of it. But, this isn't consistent with other evidence I've seen. I can see that Ms D's last payment towards the debt was made in September 2013. She then spoke to the debt collector in June 2014, sent it an email in April 2015 and acknowledged receipt of the county court proceedings in February 2016. I also note that Ms D told this service in October 2016 that she did receive one letter from CFL about a year before. Then, months later she received the court claim form. But she didn't believe that these were valid as her credit file showed that the account

had been settled. She also wrote to the court to say that she thought the claim form was a mistake. But, I think it would have been reasonable for Ms D to have called CFL to check the position to prevent further action being taken.

I note that Ms D believes that her account was settled by P. But, I can see that P told CFL that its account was never settled. And CFL's actions show that they didn't think the account was settled either. I can see that Ms D has relied on the account showing as settled on her credit file for P. But, CFL said that the account would have been marked as settled when P sold the account to another party. So, I don't think that it was reasonable for Ms D to have relied on this as evidence that she no longer owed the debt. I think she should have known that she still owed almost £2,000 to P and that it hadn't been repaid. CFL said that Ms D must have been aware the account wasn't settled as the balance at the time the account defaulted was £2,294.40. And based on the monthly payments Ms D had made, which were between £6.25 and £10 per month, it would have taken approximately 19 years to repay the balance. I think it would have been reasonable for Ms D to have called CFL if she was in any doubt as to whether the account had been settled.

I can see that there was contact between S and Ms D from January 2016 until June 2016, and I think that Ms D had several opportunities to have offered a repayment plan to prevent further action being taken. I also don't think that it was unreasonable for CFL not to have contacted Ms D between issuing county court proceedings and the hearing in June 2016 as S was dealing with the matter. And in view of Ms D's repayment history, I don't think that CFL had acted unfairly in requesting an attachment of earnings order.

So, having carefully considered the circumstances of this complaint, overall and on balance, I find it difficult to conclude that Ms D was unaware of the debt, and that SFL had acted unreasonably.

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 Ms D to accept or reject my decision before 17 February 2017.

Roslyn Rawson
ombudsman