

complaint

Mr D complains about a debt which Cabot Financial (Europe) Limited is asking him to repay.

background

In summary, Mr D says that he does not acknowledge the debt, and that Cabot has not provided sufficient evidence to show that it is his debt or that it is entitled to seek repayment from him. He says that Cabot has harassed him, and he wants it to pay the fees he has claimed.

Our adjudicator did not recommend this complaint be upheld. In summary, she said that based on the evidence provided (including a prior letter sent by Mr D to Cabot in relation to the debt) she had no reason to doubt the account is Mr D's. And she did not consider that Cabot had harassed Mr D or that it was unable to collect on the debt. She said that Mr D's claims that Cabot pays him fees of £17,000 are completely without foundation.

Mr D disagrees with the adjudicator's findings. In summary, he says:

- Cabot has concocted certain correspondence, which he does not recall signing;
- any prior acknowledgement or payment of the alleged debt was made under duress;
- the photocopy of the alleged credit card agreement is in dispute and is not legal or enforceable under the Consumer Credit Act 1974;
- Cabot has unlawfully harassed and threatened him, an example being it passing the debt to its agents for collection when the matter was already seriously in dispute;
- the legal requirements to assign the debt have not been complied with so Cabot has no right to make any claim against him;
- Cabot's actions are wholly and utterly illegal and that it (and its agent) has committed criminal offences;
- the notices and correspondence which he sent to Cabot created a legally binding agreement. And when it continued to contact him and failed to prove its claim it incurred a cost each time as laid down in his fee schedule, which it should not ignore;
- Cabot must prove that an enforceable debt exists.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I thank the parties for their submissions. Where matters are in dispute or unclear I make my findings on the balance of probabilities – which is to say, what I consider most likely to be the case based on the evidence available and the wider surrounding circumstances.

Mr D has made substantial submissions which I have read and considered. However, I will be focusing on the matters which I consider central and material to his complaint.

Mr D has made reference to criminal offences and illegal acts by Cabot (and its agent). I remind him that this service is not a regulator or criminal investigator, but provides informal civil dispute resolution. If Mr D wishes to pursue allegations of this nature he should contract the relevant regulatory agencies.

I note that Mr D has made several references to the legal enforceability of the debt and related technical issues. To clarify, I give regard to relevant law and good practice when coming to my findings, however, ultimately my decision is based on what is fair and reasonable in the particular circumstances of this complaint. If Mr D wishes to continue to dispute the legal enforceability of the debt then this matter would be better suited to a court.

Here, I consider the central issues to be:

- is the debt likely to be Mr D's?
- can Cabot fairly collect on the debt?
- did Cabot or its agent harass Mr D?

Turning to the first issue, I have considered the evidence on file and am persuaded that the debt is likely to be Mr D's. Cabot has provided a copy of the relevant credit agreement which Mr D appears to have written on and signed. Furthermore, it has provided linked account statements from the original lender showing Mr D's name and address details and the original spending and payments to the account. It has also provided account information to show that Mr D has been making £1 token payments to the debt from 2008 up until late 2013. I find this information to be credible and it persuasively indicates to me that the account is likely to be Mr D's.

There is also a signed letter showing that Mr D and his partner wrote to Cabot in 2009 about their financial difficulties and asking if Cabot would consider writing the debt off. I consider this letter (and the enclosures sent with it) to be a clear acknowledgment of the debt. Mr D says the letter is fraudulent; however I am not persuaded it is. Mr D says that any acknowledgement or payment in connection with the debt was made under duress – however, there is a lack of compelling evidence to show that this is the case.

Overall and on balance, based on the evidence provided I consider the debt is Mr D's. As a result I consider that he can reasonably be asked to repay it. The next issue is whether Cabot is the party which can fairly seek repayment. I note that it says it purchased the debt from the original lender and that Mr D was sent a notice of assignment by that lender in 2008.

Mr D says that the legal requirements for valid assignment have not been complied with. However, I have seen information, such as the credible notice of assignment which satisfies me that Cabot is fairly entitled to collect on the account balance. If Mr D wishes to continue to dispute the legal assignment of the debt then he is free to do so in court.

The next issue is whether or not Cabot or its agent harassed Mr D. Looking at the information available to me I am not persuaded that the contact would amount to harassment. I consider that Cabot made reasonable efforts to write to Mr D to clarify his dispute about the validity of the debt on more than one occasion. Based on the information available to me I do not find it has acted unreasonably (or contrary to industry good practice) in continuing to seek repayment from him in this instance.

Mr D has placed considerable emphasis on what he says are legally binding notices he served on Cabot – which he says meant that any future contact by it or its agent would amount to harassment (and incur fees). Ultimately, and on balance, I am satisfied that the debt relates to spending which Mr D made, and that he can fairly be asked to repay this by Cabot. I do not agree that he can fairly rely on these notices to prevent future contact, or that he has any reasonable basis for claiming fees.

I remind Cabot that when coming to any future repayment arrangement it is required to react positive and sympathetically to any financial difficulties which Mr D may be experiencing at the time.

I know this is not the outcome which Mr D wants. However, he does not have to accept it, and may pursue this matter by alternative means, such as court, should he wish to do so.

my final decision

For the reasons outlined, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 23 February 2015.

Mark Lancod
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