

complaint

Mr C complains that a debt Cabot Credit Management Group Limited ("Cabot") are pursuing him for is unenforceable and that they've been aggressive when chasing him for it.

Mr C has been represented by a third party in this complaint but for ease I will refer to Mr C throughout this decision.

background

Mr C took out a couple of credit cards with a company I'll call "N" in 2010. The debts were sold to Cabot in 2017 and they are now pursuing him for those debts which they say he's defaulted on.

But Mr C says, as they've failed to supply him with a copy of the credit agreements and a statement of the accounts, as is required by section 78 of the Consumer Credit Act, the debts aren't enforceable on him. He says that it's clear, given the time that's elapsed since he asked for a copy of agreements, that it's not possible for Cabot to provide the information and he therefore says the debts are irredeemably unenforceable and it's unfair to leave him in a state of limbo while Cabot sit on debts they can't enforce.

He also complains that Cabot:

- have been aggressive in their correspondence and communication with him and have not taken account of his circumstances.
- are responsible for the credit being irresponsibly provided to him
- should remove or amend adverse data on his credit file pertaining to these debts

Cabot didn't agree. They said they were still waiting on the relevant documentation from the original creditor and whilst they couldn't currently enforce the debts it didn't mean they weren't owed.

So Mr C referred his complaint to this service and our investigator provided his opinion. He explained that this service wasn't able to determine whether a debt was enforceable – only a court could do that. But he noted that Mr C had continued to make payments towards the account when Cabot took over its management and that Cabot had explained the current balances. So he was persuaded there was evidence the debts were Mr C's and that Cabot were therefore being fair when pursuing him for payment.

He explained that Cabot hadn't provided the original credit and in those circumstances any complaint about irresponsible lending should be referred to N, who had. And he said, as he was unable to decide whether the debt was enforceable, he also couldn't advise the credit reference agencies to remove it from Mr C's credit file as he couldn't establish whether an error had been made.

He reviewed the correspondence that had been sent to Mr C by Cabot but he didn't think there was evidence Cabot had been aggressive or had harassed him and overall, he didn't think it would be fair to ask Cabot to take any further action.

But Mr C disagreed and he asked for a final decision 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.

I know it will disappoint Mr C but I agree with the investigator's view. Please let me explain why.

The appropriate forum to decide technical arguments as to whether a credit agreement is enforceable is not the Financial Ombudsman Service, but a court. But, as the investigator has explained, we are able to decide whether Cabot is being fair in pursuing Mr C for the debt.

Mr C made a request to Cabot under section 77/78 of the Consumer Credit Act (1974). This legislation says that the creditor (in this case Cabot) needs to supply the debtor (in this case Mr C) a copy of the executed agreement.

But as Cabot has not been able to provide this, the legislation says that until they can, the debt isn't enforceable. Cabot accepts that the debt can't currently be enforced.

They argue that Mr C is still potentially liable so they should be allowed to continue to hold the debt against him. But there are implications for Mr C as his credit file may be damaged by the debt.

is Cabot being fair in pursuing Mr C for the debt?

I think there's enough evidence here to suggest on a balance of probabilities that the debt in question is Mr C's. I say that because:

- Mr C has been making payments to Cabot for this debt through a debt management company and I don't think that would be likely if it wasn't his
- Mr C accepts that he held credit cards with N
- Cabot have been able to provide balances for the accounts they say Mr C is responsible for and were originally with N

So I think, given the evidence I've detailed above, Cabot are being fair in pursuing Mr C for the debts.

should reference to the debt be removed from the credit files?

As there's currently no decision on whether the debts are enforceable I don't think it would be fair for me to suggest any record of the debts was removed or amended on Mr C's credit file. That would only be fair once a decision was made about whether the debt was Mr C's and could therefore be enforced.

are Cabot responsible for any irresponsible lending?

It was N who provided the credit and I therefore think it's fair to suggest that any complaint about irresponsible lending should be made to them and not to Cabot.

was the correspondence aggressive?

I've reviewed the correspondence that Cabot sent to Mr C but I don't agree that it was aggressive. It appears to be factual and not too frequent or rude. So I don't think I've seen evidence that Cabot have done anything wrong here and overall I don't think they need to take any further action.

my final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 November 2019.

Phil McMahon
ombudsman