

complaint

Mr J is unhappy with Cabot Credit Management Group Limited asking him to repay a debt, because he doesn't think it has sufficient evidence to enforce it.

background

Mr J contacted Cabot in 2018 to ask for further information about a debt it was asking him to repay. Cabot said the debt related to a bank account and overdraft he'd had.

Mr J said the bank has no record of the account as it was over 15 years old, so he felt Cabot should provide evidence that it's entitled to repayment.

Cabot issued its final response letter to Mr J, and in this provided him with as much information as it said it could. This included when the account was opened and closed, and the date a default entry was added to his credit file. Cabot said the bank had told it the last repayment it had received was in September 2008.

Cabot also provided Mr J with the sort code and account number and said it believes it to be the legal owner of the outstanding balance.

Mr J didn't agree so an investigator here considered the matter. He explained to Mr J that we aren't here to decide whether or not a debt is enforceable, as that would be the role of the courts. The investigator felt the fact that Mr J had been regularly paying toward the debt for over 10 years was a good indication that it was owed by him – even if full details cannot now be established.

Mr J didn't agree so the complaint has been passed to me for a 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.

I can understand why Mr J might believe the debt to be unenforceable, but as our investigator has explained only a court can decide that. Rather, we will look at what each party has said and reach a conclusion as to whether it's reasonable for Cabot to request payments from Mr J.

Cabot has given a reasonable level of detail in relation to Mr J's debt, including the account it related to and the repayments he's made over the years. Mr J has been making frequent payments dating back to 2008, some of which show as having been made through a debt charity. If this debt was something Mr J was saying never existed then I don't think he'd have been paying toward it for so long. Instead, it seems to me that Mr J feels the lack of records from the bank, in particular the lack of a signed credit agreement, makes the debt unenforceable.

But, as explained, that's not something I can decide. Bearing in mind how long ago the bank account was closed and defaulted it doesn't surprise me that neither the bank nor Cabot have full details or a credit agreement. So I'm not going to hold the lack of such evidence against Cabot in this particular case.

And whilst it may not have a credit agreement, Cabot has provided information that shows me Mr J had a debt with the bank, and to show that Cabot is now responsible for collecting that debt.

I don't consider there to be such a lack of evidence so as to suggest the debt never existed, nor that it doesn't still exist. And I don't think Mr J is arguing that either. He's been in touch with the bank asking for information and he referred to the debt as being "*my overdraft*" in his dealings with our service.

So, regardless of whether the debt is enforceable in law, I think Cabot is reasonable in asking Mr J to continue his repayments. And according to industry guidelines as well, demanding payment, issuing a default notice and bringing court proceedings don't constitute enforcement, so are still allowed.

my final decision

For the reasons set out above, I don't uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 September 2019.

Will Weston
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