

complaint

Mr O complains that Paragon Finance PLC (Paragon) is pursuing him for an unenforceable debt. He wants it to return all monies paid.

background

Mr O's credit card debt with a third party was sold onto Paragon. Mr O says that his debt is not enforceable because he hasn't been provided with a copy of the signed consumer credit agreement and other contractual documentation. He believes that Paragon cannot pursue him for the debt without these. Furthermore, he doesn't think Paragon has the right in law to chase the debt.

Paragon provided a copy of the reconstituted credit agreement and terms and conditions, as the third party original credit provider did not provide the original agreement.

The adjudicator did not uphold the complaint, in summary he said that Paragon doesn't need to provide an original copy of the agreement. Paragon was entitled to collect the debt as it had been assigned the debt. Only a court can decide if the debt is enforceable and he would need to take his complaint there. He felt that Paragon has done nothing wrong.

Mr O was unhappy with this view and says in summary that the copy of the agreement contains a number of errors and is just a copy of the application form. He also raised a number of legal arguments about why Paragon has no right to collect monies.

The adjudicator considered the new information, but did not change his original view which was that only a court can decide if the agreement is enforceable.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I agree with the adjudicator for much the same reasons.

Mr O raises a number of legal arguments to show why Paragon is not entitled to pursue him for the credit card debt. He says the original credit agreement is not enforceable as he has not been provided with the original documentation, just a copy of the terms of agreement. He also raises a number of legal arguments about assignment of the debt. As the adjudicator pointed out in his view, this service cannot decide whether a credit card agreement is enforceable. We decide cases on the basis of what is fair and reasonable, and do not decide issues of law. These issues are best decided by a court. If Mr O wishes to pursue these issues he should issue legal proceedings.

Mr O does not appear to dispute that he had a debt with a third party, he does not say he didn't sign an agreement with the third party, or that he was unaware of the terms; rather the original agreement is missing so not enforceable. Paragon has provided a copy of the terms and conditions and reconstituted agreement and does not have to provide the original. In these types of cases the original agreement is often missing due to the passage of time. It would not be fair and reasonable for the debt to end just because the original signed agreement is missing. The terms and conditions explain that the debt can be sold or transferred and Mr O was sent a letter explaining the debt was sold. I find Paragon is entitled to pursue the debt and it is not fair and reasonable to award any compensation.

I find that Paragon is entitled to pursue the debt and if Mr O wishes to raise issues of enforceability he should take this complaint to the courts.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 March 2017.

Clare Hockney
ombudsman