

complaint

Mr K complains about Cabot Credit Management Group Limited ("Cabot's") management of a debt they say he owes them.

background

Mr K has been represented by his solicitors in this complaint but for ease I will refer to Mr K throughout this decision.

Mr K says that:

- a debt Cabot say he has with them is unenforceable as Cabot haven't been able to supply the original agreement;
- they've made charges to his account and should not have done so;
- they've been aggressive in their pursuit of the debt;
- they've reported the unenforceable debt to the credit reference agencies and should not have done so.

In response to Mr K's complaint Cabot said:

- the debt was a credit card debt with a company I'll call "B". It was originally sold to them in February 2013;
- they accepted that the debt was currently not enforceable by a court but didn't accept that the debt didn't exist. They said Mr K had made payments towards it and that they had provided him with the necessary Notice of Assignment when they took over the debt from B in February 2013. They said this demonstrated Mr K accepted the debt was his;
- they explained they hadn't made charges or added any interest to the debt;
- they didn't think they'd been aggressive in their pursuit of the debt;
- they hadn't reported a default to the credit reference agencies.

Mr K was still dissatisfied with Cabot's response. So he referred his complaint to this service and our investigator provided her opinion. She explained that it wasn't for this service to decide whether a debt was enforceable and that only a court could do that. She didn't think Cabot had made any charges or added interest to the debt. She asked Mr K for a copy of his credit file so she could review if markers had been applied. But as a credit file wasn't provided she explained that it wasn't possible for her to provide any further comment.

She reviewed the correspondence that had taken place between Mr K and Cabot but she didn't think there was evidence that Cabot had been aggressive. They'd simply stated the debt owed and had asked Mr K to reach out to them if he was experiencing financial difficulties. She went on to consider if Cabot hadn't considered Mr K's financial difficulty but, having reviewed the limited communication there had been, she could not find evidence that Mr K had explained his financial difficulties to the business. She noted that Cabot's correspondence with him had explained they may be able to agree to a repayment plan and that they'd signposted Mr K to relevant debt charities. So, overall, the investigator didn't think Cabot needed to take any additional action.

Mr K disagreed with the investigator's opinion. He said that Cabot were not in a position to assure themselves any debt was due as they didn't have a copy of the original agreement.

He said the debt had negatively affected his credit rating and he therefore 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 agree with the investigator's view. I know that will disappoint Mr K so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

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 we are able to decide whether Cabot is being fair in pursuing Mr K for the debt.

Mr K 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 K) 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 hasn't been able to provide this information as the original lender can't locate it. So they accept that the debt can't be enforced.

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

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

I think there's enough evidence here to suggest that the debt in question is Mr K's. I say that because I've seen Mr K has made payments towards the debt when it was held by B. He's also made payments to Cabot through a company who are managing repayments to his creditors. I think it's unlikely this company would make payments if there was any concern the account wasn't Mr K's

I'm required to decide if Cabot are being *fair* in pursuing Mr K for the debt and I think, given the evidence I've detailed above, they are being.

charges and interest

I can't see that Cabot have applied charges or interest to the debt since it was transferred to them so I don't uphold this part of Mr K's complaint.

reports to credit reference agencies

Mr K has not provided a copy of his credit file for me to review so it's not possible for me to make any findings here. I note that Cabot have explained they haven't reported a default but I've not seen evidence either way.

have Cabot been aggressive in their pursuit of the debt?

I don't think there's evidence of this. I've reviewed the correspondence Cabot have sent and their system records. They sent statements of the debt that was owed and letters offering discounts on the account balance. In some of those letters Cabot explained that Mr K should contact them if he was experiencing difficulty paying his debt. I've not seen correspondence, or been referred to communication, that appears aggressive.

So I don't think there's evidence here that Cabot have done anything wrong and I'm not asking them 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 K to accept or reject my decision before 16 July 2020.

Phil McMahon
ombudsman