

complaint

Mr J complains that Cabot Credit Management Group Limited is pursuing him for a debt he believes is unenforceable.

background

In 2017 Cabot told Mr J it had taken ownership of a debt he owed to another lender under a hire purchase agreement. Mr J began to make regular payments to Cabot through a debt management plan.

In November 2018 Mr J asked Cabot to provide a copy of the original agreement he'd taken out with the other lender. Cabot said it wasn't able to get hold of a copy of the agreement because of the age of account – which was opened in 2005.

Mr J asked Cabot to write off the debt and close the account. Cabot declined Mr J's request. Mr J then offered to pay £100 in full and final settlement of the balance. But Cabot didn't agree to this either.

Cabot told Mr J that while it was unable to provide the credit agreement, the account was unenforceable. But the balance still remained due and payable. It said it was happy for him to continue to make payments through his debt management plan.

Mr J made a complaint to Cabot saying that he wanted it to close the account as it didn't have a credit agreement. Cabot said it agreed that the account was currently unenforceable meaning it was unable to start any legal proceedings. But the balance on the account was still outstanding and remained due and payable so it was still entitled to collect any monies due.

Mr J brought his complaint to us. Our investigator didn't think Cabot had done anything wrong. He said our service couldn't say if a debt was enforceable but Cabot was still entitled to chase him for the outstanding debt and update his credit file accordingly.

Mr J disagreed with our investigator's view. He said he didn't feel that the payments were due because Cabot couldn't provide the credit agreement 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 don't have the power to decide whether a debt is legally enforceable, only a court can decide this. But I can consider whether or not Cabot has acted fairly by pursuing Mr J for the outstanding debt.

Cabot has sent us a copy of a letter it sent to Mr J in 2017, letting him know it had ownership of the debt. Mr J has queried the name of the original lender with us. But the company he says he took out the hire purchase with is a trading name of original lender showing on the document Cabot has provided.

From what both sides have said, I understand Mr J has made several payments towards the debt since Cabot took it over. And he also offered to pay £100 to Cabot in full and final settlement of the balance. So I think Mr J accepts that the debt exists.

But Mr J feels that the debt isn't enforceable because Cabot hasn't provided a copy of his credit agreement with the original lender. Given the age of the debt, I don't think it's surprising that Cabot isn't able to get hold of this.

The relevant industry guidance says that a business shouldn't mislead a customer as to the enforceability of an agreement. I can see that Cabot has told Mr J that the account was currently unenforceable and it was unable to start any legal proceedings against him.

The guidance also says that if the creditor doesn't comply with its duty to provide a copy of the credit agreement it does not mean that the debt disappears, and it is perfectly acceptable for a creditor to seek to pursue the debt. It is also acceptable to register accurately any arrears or default with a credit reference agency.

So I don't think that Cabot has acted unfairly towards Mr J as it is entitled to pursue him for the debt that remains outstanding.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 November 2019.

Anne Muscroft
ombudsman