

complaint

Mr B complains that Hillesden Securities Limited harassed him for a debt that it knew to be statute barred.

background

Mr B defaulted on a credit card account in May 2003. Hillesden held the account from June 2003 but had no contact with Mr B until June 2009. When Hillesden finally contacted him, Mr B said that the debt was statute barred. Hillesden pursued Mr B for repayment of the debt for the next three years.

Our adjudicator recommended that the complaint be upheld. He was satisfied that Hillesden had not met the Office of Fair Trading (OFT)'s debt collection guidance regarding statute barred debt. He recommended that Hillesden pay Mr B £250 to reflect the distress and inconvenience caused.

Hillesden accepted this. However, Mr B considered the award less than he should receive. As a result, the matter has been referred to me for review and determination.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I upheld the complaint and slightly increased the award to Mr B.

Under the Limitation Act 1980, "*an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued*". In other words, Hillesden was not able to take court action more than six years after Mr B's account defaulted (ie after 30 May 2009).

The OFT's debt collection guidance says that "*statute barred debt still exists and is therefore recoverable*". However, it also says that "*businesses should not use unfair methods (including misrepresenting the legal position) if seeking to recover statute barred debt*".

Unfair methods include:

- "*misleading debtors as to their rights and obligations (for example, stating or implying that debtors may be the subject of court action... when it is known, or reasonably ought to be known, that the relevant limitation period has expired)*";

and

- "*continuing to press a debtor for payment after he has stated that he will not be paying a debt because it is statute barred*".

Hillesden's internal notes for the account show that Mr B first told Hillesden the debt was statute barred in July 2009. However, for the next three years Hillesden continued to demand payment from him, told him that he was being transferred to its 'Debt Surveillance Programme' and threatened further legal action. It ignored Mr B's claim that the debt was statute barred until June 2012. In the circumstances, I agree that Hillesden did not meet the OFT's requirements.

Our adjudicator's recommendation to award £250 is less than Mr B believes he should receive. Given Hillesden Securities' repeated demands for payment and threats of legal action over almost three years, when it "*reasonably ought to be known*" that the debt was statute barred, I agree. Having considered the general levels of awards this service makes in this area, I assess a fair award at £350.

I understand Mr B may still consider my award to be inadequate however I do not have powers to award punitive damages against Hillesden. Mr B is under no obligation to accept my decision and remains free to continue to pursue the matter elsewhere, including in court.

my final decision

My final decision is that I uphold this complaint and order Hillesden Securities Limited to pay Mr B £350 to reflect the distress and inconvenience this matter has caused him.

Simon Begley
ombudsman