

complaint

Mr C complains that Shoosmiths LLP have been chasing him for a debt he doesn't believe he owes.

background

Mr C took out a personal loan from Lender A in 2005. Mr C says he'd taken out loans with Lender A prior to this too. The 2005 loan fell into arrears and Lender A started its recovery and collections process. A County Court Judgement was awarded against Mr C in 2009 for the outstanding balance of around £18,000.

Lender A appointed Shoosmiths to collect the debt on its behalf. Mr C raised a complaint about the PPI that was added to his loan. Lender A upheld that complaint and reduced his outstanding balance by around £5,000 (leaving around £13,000 left to pay).

Mr C raised a further complaint in 2015 with Lender A. He said he wasn't given a cooling off period with any of the loans and Lender A had failed to provide him with copies of the loan agreements from 2003/2004. Lender A didn't uphold that complaint so Mr C asked our service to investigate. An ombudsman decided that we couldn't investigate that complaint because Mr C had brought it too late.

Whilst these two complaints were ongoing, Shoosmiths had ceased collections activity. At the end of 2018 Mr C says Shoosmiths contacted him asking him to repay the outstanding balance. He complained saying the debt was statute barred as he'd not heard anything about the debt for over six years. Shoosmiths said it restarted collections activity in 2016 when his previous complaints had been closed. It didn't think the debt was statute barred.

Mr C then referred the complaint to our service. He said he was also unhappy with the issues he raised in the 2015 complaint.

Our investigator didn't recommend the complaint be upheld. He explained that the complaint points he raised in 2015 have previously been considered by an ombudsman at the service, so we couldn't consider those issues again. He said he didn't think Shoosmiths had done anything wrong in the way it had dealt with Mr C whilst trying to collect the outstanding debt.

Mr C didn't agree with the investigator. In summary he said:

- Nobody had addressed the issue that Shoosmiths and Lender A haven't responded to his request in 2009 asking for copies of his loan agreements.
- No information has ever been provided about the previous loans.
- This debt isn't owed as the outstanding balance is in dispute.

The complaint has been passed to me for a final 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.

An ombudsman at this service has previously decided that Mr C brought his complaint about the cooling off period and his request for copies of the earlier (pre-2005) loan agreements too late. Although that decision was against Lender A, it is responsible for the actions of its appointed collections agent (in this case, Shoosmiths). And Mr C's complaint at the time

concerned the overall handling of his debt by Lender A and Shoosmiths (on Lender A's behalf). This means it wouldn't be appropriate for me to now consider those same issues again in this decision.

I've also considered that a court has already decided that Mr C does owe this debt. So it wouldn't be appropriate for me to consider any issues that are directly linked to that – such as whether there was a cooling off period and whether the debt is enforceable.

Mr C initially said that Shoosmiths couldn't collect the debt because it was statute barred. However, only a court can decide if a debt is statute barred. My role is to decide what's fair and reasonable taking into account all the circumstances, which includes any relevant law and good industry practice. As a court has decided Mr C does owe this debt, I don't think Shoosmiths has acted unfairly in asking Mr C to repay it.

I can see that Shoosmiths did suspend all collections activity whilst Mr C raised his complaints against Lender A. I think this was a fair step to take as there was a possibility the outcome of those complaints might affect the outstanding balance. And in one of the complaints, it did. Once the complaints had been closed Shoosmiths restarted its collections activity. I don't think that was unreasonable as there was still a balance left to pay.

Shoosmiths sent Mr C a list of all the contact it's attempted to have with him since 2016. It says it sent letters, text messages and attempted phone calls. I've seen a copy of some of the letters it sent. From what I've seen I don't think the content or frequency of its contact was inappropriate.

It appears Mr C didn't keep Shoosmiths (or Lender A) updated with his current address, so most of the letters Shoosmiths sent weren't received. Shoosmiths had to carry out tracing activity to locate his last known address. As it was Mr C's responsibility to keep Shoosmiths (and Lender A) updated with his current details, I don't think Shoosmiths has done anything wrong in trying to trace him.

Mr C has told us about his mental health. While I appreciate his concerns about this outstanding debt and how it's affecting him, I've not seen anything to persuade me that it would be fair and reasonable to say Shoosmiths should stop its collections activity.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 September 2019.

Tero Hiltunen
ombudsman