

## **complaint**

Mr L complains that Cabot Credit Management Group Limited (trading as Cabot Financial (Europe) Limited) are out of time to chase him for a debt. He wanted them to stop chasing him.

## **background**

Mr L said Cabot were chasing him for a debt that was statute barred. He'd complained to Cabot in December 2016 and it'd said it would take 16 weeks to reply rather than eight weeks required by financial regulations. He said they had no factual evidence to prove the debt wasn't statute barred. He said he made his last payment over six years ago. He provided copy bank statements to show he hadn't made any payment in early 2016. He also provided a copy credit record showing the debt was in default throughout 2011. He felt Cabot's continued action was harassment.

Cabot said Mr L's loan was taken out in 2010 and the loan agreement terminated in the same year due to a failure to pay the minimum contractual amount. Cabot took over the debt in December 2016 and contacted Mr L. Initially it said that Mr L made a payment in early 2016. But it investigated and discovered this was a credit of interest back to the account. But it said the account records showed Mr L had paid £1 into the account on 30 November 2011. This was within the timescale for chasing the debt so it felt it was reasonable to continue. With respect to the time taken to reply to Mr L it said there wasn't a specific timescale to reply to a dispute re the ability to chase a debt.

I issued a provisional decision. I said that Mr L didn't dispute the debt being chased was his. But he says it can't be chased due the time since the last payment.

I considered whether it was reasonable for Cabot to chase the debt in the light of the information it held. I thought it seemed odd that Mr L would make regular £1 monthly payments to the account during 2011. But I saw a copy account statement for the period from early 2011 to early 2012. This showed the regular £1 payments from May to November 2011.

Mr L said the statement was false. Mr L said the statement didn't identify who made the payments during the later part of the year. But I thought that wasn't uncommon and I didn't think that I could simply conclude the payments weren't made by Mr L. So I thought there was reasonable evidence to allow Cabot to pursue him for the debt. My conclusion doesn't mean that the evidence is valid just that on the face of it there seems to be reasonable evidence of payment within the last six years.

Mr L referred to his credit record for that year. While I could see it showed the account was in arrears I thought it was still possible for him to make a small payment and for the account to continue to be shown as being in default. So I didn't think that proved the payments weren't made.

On balance I thought there was reasonable evidence a payment was made within the last six years and Cabot acted reasonably in contacting Mr L about the debt.

Mr L also complained that Cabot took longer than eight weeks to reply to his complaint. I think the actions Cabot were taking in chasing Mr L for a debt are covered by the regulator's rules on complaints. I think his argument that the debt was time barred was enough to be taken as a complaint Cabot was doing something he didn't think it should. I say that because I thought trying to recover a debt is the provision of a financial service within the regulations.

So I think it should've replied within the 8 weeks specified by the complaints rules. So I thought Cabot made a mistake.

I considered the impact of that mistake and whether to make an award for distress and inconvenience. I thought the impact was moderate. I said that because I concluded that it was reasonable for Cabot to chase Mr L so the delay in replying wouldn't have made much difference.

I proposed to uphold this complaint in part. I proposed to direct that Cabot Credit Management Group (trading as Cabot Financial (Europe) Limited) should pay Mr L £75 for distress and inconvenience

Cabot said it didn't agree. It said the Credit Services Association Code of Practice differentiated between a dispute and a complaint. It said a dispute was a denial of facts in relation to the debt and a complaint was an expression of dissatisfaction about the way Cabot had conducted itself. It thought it'd acted correctly and shouldn't need to pay £75.

Mr L said that Cabot claimed the £1 payments came from another bank. He said he'd supplied evidence from that bank to show he'd never made those payments. He also said the loan account wasn't opened in 2010 but 2005. He felt he'd provided enough evidence to show the debt was time barred. He said Cabot had caused him alarm and distress which had affected his health. He also said the agreement didn't contain all the terms required at law so shouldn't be enforced.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered what Cabot says about the difference between a dispute and a complaint. I don't agree that this is a dispute rather than a complaint. I think it was clear Mr L wasn't satisfied with the way Cabot was conducting itself. Even if that isn't correct the code states that disputes should be dealt with promptly and recovery activity should cease while investigating a valid dispute. I don't think Cabot replied promptly and I think the issues raised by Mr L are valid.

I have also considered what Mr L has said. He points to evidence that he didn't make payments in 2011. However it isn't for this service to determine whether a debt is time barred which is a matter for the courts. I considered whether Cabot had reasonable grounds to contact Mr L. I can see that there is conflicting evidence around the 2011 payments and the recent evidence provided by Mr L certainly strengthens his argument. I have already commented that it seems unusual that Mr L would've made £1 payments at that time. But it is for the court and not this service to determine the acceptability of the evidence presented.

Mr L also says the debt didn't contain all the terms to show it was enforceable at law. That again is a matter that the courts need to consider.

I have also considered Mr L's comments about the impact on his health.

Having reconsidered everything I remain of the view that a payment of £75 is fair and reasonable in the circumstances.

**my final decision**

I uphold this complaint in part.

I direct that Cabot Credit Management Group (trading as Cabot Financial (Europe) Limited) should pay Mr L £75 for distress and inconvenience.

Cabot Credit Management Group (trading as Cabot Financial (Europe) Limited) must pay the compensation within 28 days of the date on which we tell it Mr L accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Cabot Credit Management Group (trading as Cabot Financial (Europe) Limited) considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 November 2017.

Colette Bewley  
**ombudsman**