

complaint

Mr T complains that Arrow Global Limited ("Arrow") continued to demand payment of a debt even though it's statute barred.

background

Arrow bought Mr T's store card debt in 2011. Mr T says he hadn't made any payments towards the debt since the end of 2005 when he fell into financial difficulties.

Mr T says he first heard from Arrow (through a debt collection agent) in 2012. He made four payments towards the debt in 2012. Mr T then told Arrow that as the debt was more than six years old it was statute barred.

Arrow said that Mr T started making payments in 2011 so the debt wasn't statute barred. Mr T denies making these payments.

Our adjudicator didn't consider that Mr T's complaint should be upheld. He explained the term statute barred refers to a time limit set out in the Limitations Act. It only applies to the enforcement of a court order in relation to the debt. It didn't stop Arrow seeking repayment of the debt. And as Mr T made payments in 2012, the debt was no longer statute barred.

Mr T is unhappy with our adjudicator's conclusions. He says Arrow bullied him in to making payments in 2012. He is certain that he didn't make any payments in 2011 and hadn't heard anything about the debt since 2005.

my provisional findings

Subject to any further representations by Mr T or Arrow, my provisional decision was that the complaint should be upheld.

This service can't declare a debt statute barred. But I could consider whether Arrow treated Mr T fairly once he told it that the debt was more than six years old.

Arrow gave us a record of payments that shows a series of £2 payments being made against Mr T's account since the beginning of 2010. Mr T said he never made these payments. I found Mr T's account persuasive and consistent. He gave us evidence of four payments that he says he made to Arrow in 2012. These payments don't appear on the statement Arrow gave us. It can't trace the payments and says Mr T must've made them in relation to another debt. I found Mr T's recollection of making these four payments to Arrow is credible. He paid cash over the bank counter so wouldn't have needed to have a bank account himself. All of this led me to question whether Arrow mixed up details from another account.

Mr T also said he'd only recently opened a bank account. He gave us a copy of his credit report that supported what he said. Some of the payments on the record of payments Arrow gave us were in cash, but a few in 2013 and then 2014 were made by cheque. I was satisfied that Mr T didn't have a bank account at this time. So I wasn't persuaded that he would've been able to make any payments by cheque.

Further entries on the statements are marked "BACS". It wasn't clear whether the reference to BACS payments meant they were made by the debt collection company to Arrow or if it referred to BACS payments allegedly made by Mr T. Again, as Mr T didn't have a bank

account until very recently, I found it more likely than not that Mr T didn't make these payments.

As I accepted Mr T's version of events, I agreed that by the time he made the payments in 2012, the debt was more than six years old. I didn't find that the payments restarted the limitation period as they were made after it had already expired.

The Office of Fair Trading's Debt Collection Guidance (that was in force at the time) says it's potentially unfair to pursue the debt if the debtor has heard nothing from the creditor during the "relevant limitation period". And it's potentially unfair to continue to demand repayment after a debtor says they will not pay because the debt is statute barred.

In Mr T's case, I was persuaded that he didn't hear anything from Arrow until 2012. Arrow didn't give me any evidence that it or any other debt collection company made contact before 2012, other than to show us the statement detailing the alleged repayments.

Mr T says he told Arrow the debt was statute barred in 2012. I had no reason to doubt what he said. I found Arrow didn't treat Mr T fairly when it continued to demand repayment of the debt.

For these reasons, I considered Arrow should stop pursuing Mr T for the debt and tell the debt collection company the same thing. If the debt was still showing on Mr T's credit files, Arrow should ask all the credit reference agencies to remove it. I also found it reasonable to require Arrow to compensate Mr T for the upset and trouble he suffered as a result of Arrow continuing to seek repayment of the debt, particularly after he told it the debt was statute barred. I considered £250 to be a fair award.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. . In cases like this, where the evidence is inconclusive, I reach my decision on the balance of probabilities. That means I'll look at all the available evidence and decide what I think is most likely to have happened.

Arrow disagrees with my provisional decision. It says it can't find any record of an account with the same number that Mr T used to make the lump sum payments in 2012.

Arrow suggested that Mr T might've given money to a third party to make the payments on his behalf. It also said the payments continued to be made after it sent a final response to Mr T.

I take what Arrow says in to account but I still find what Mr T has told me to be credible and consistent. Even if Mr T is mistaken about the payments in 2012, I don't have any reason to believe that he gave money to a friend to make payments on his behalf. Mr T says he didn't make the small monthly payments as Arrow alleges and I am persuaded this is the case.

My view has been reinforced by the print out that Arrow gave me in response to my provisional decision. The document details a series of small £2 credits that Arrow says Mr T made.

In September 2010, a note appears on the print out. It says another debtor has been using the wrong reference to make payments. The other debtor's reference number is identical to

that used for Mr T apart from one number. So all payments allegedly made by Mr T up to September 2010 were reapplied to the correct account for the other debtor. Given this administrative error, I can't be certain that Mr T made any of the future payments either. And there isn't any indication on the print out that Mr T was contacted to make up the shortfall once the misapplied credits had been applied to the other debtor's account.

Overall, I consider Mr T's complaint should be upheld. I find it fair to require the bank to take the steps I outlined in my provisional decision.

my decision

My decision is that I uphold this complaint and direct Arrow Global Limited to do the following in full and final settlement:

1. Stop pursuing Mr T for the debt that's the subject of this complaint
2. Remove any reference to the debt from Mr T's files that are held with all of the credit reference agencies; and
3. Pay Mr T £250

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 19 February 2016.

Gemma Bowen
ombudsman