

## **complaint**

Mrs B complains Movitex (UK) Limited (Daxon) is chasing her for a debt which isn't enforceable. She wants it to close the account and cease the debt collection activity.

## **background**

Mrs B tells us she asked Daxon to provide her with a copy of a valid credit agreement to prove the debt it was chasing her for was enforceable. She says it's ignored her request and she doesn't think the debt is enforceable.

Daxon told us Mrs B opened the account in 2005. It said the account was used regularly with monthly payments being made until it was notified of Mrs B's financial difficulties in 2013. Subsequently it said Mrs B made payments under a debt management plan until 2016. It said it did not accept Mrs B's assertion that she had no knowledge of the debt and only made payments under duress.

The investigator did not recommend the complaint should be upheld. She said Daxon had provided evidence of statements to show items had been ordered on the account. And these had been delivered to Mrs B at her home address. She said Mrs B had paid by cheque and card. She found the evidence indicated Mrs B had the benefit of the goods she purchased using the account. And that it was fair and reasonable for Daxon to require her to pay the outstanding balance on her account.

Mrs B didn't agree. She said as Daxon didn't have a credit agreement it couldn't enforce the debt. She wanted an ombudsman to make the 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.

I'm sorry Mrs B has experienced financial difficulties - that's never an easy situation to handle. So I can understand her concern if she was being asked to pay debts for which she wasn't liable.

I should explain how we deal with complaints of this nature - and the limitations of my role. Whilst Mrs B says the debt is not enforceable - that's something for a court to decide. All I can determine is if Daxon has reasonable grounds to believe it is entitled to seek repayment of the debt from Mrs B. And if the methods used for collection are fair.

I've seen a letter which bears signatures in the name of Mrs B and Mr B. This looks like a generic letter which may have been used for several accounts. There's no reference to any specified account - just to "*all accounts relating to Mr B and Mrs B joint accounts or single accounts...*"

The contents of the letter amount to a denial of any debt and reference to the Financial Conduct Authority sourcebook (CONC). And it concludes with assertions that if the recipient of the letter, in this case Daxon, doesn't cease collection activity it will be breaking FCA rules.

As Mrs B has referred to various aspects of law as well as FCA regulations I need to address these points. I must emphasise I do not apply the law but I do take it into

consideration along with any relevant regulations and/or industry guidelines. And I'm afraid I don't agree with the interpretation Mrs B places upon the regulations and legislation she's referred to.

Under present legislation most debts can be enforced where the debt was made or the last acknowledgement of it took place within six years of the attempt to enforce. And whilst the absence of a properly executed agreement restricts the way the debt can be enforced - it does not mean it's unenforceable. Simply that it requires a court order to do so.

And even where a debt is disputed a creditor is also allowed to take steps - short of enforcement - including asking a customer to pay and /or obtaining the assistance of debt collectors. Whilst this requires sufficient justification to show the customers claim is not valid - Daxon has provided plenty of evidence to support its view Mrs B is the debtor.

There's strong evidence the account refers to Mrs B. I've seen details of orders, payments and some letters. This includes a copy of a letter dated in 2015 and addressed to Mrs B at her home address. The letter appears to have been returned to the debt collectors and says *"husband out of work, paying creditors £1 each, cannot afford anything else.."*

There was also a payment arrangement in force until this was terminated by Mrs B in 2016. I think these are acknowledgements of the debt and give Daxon reasonable grounds to believe the debt is owed by Mrs B. And it also shows Daxon had made allowances for the financial difficulties Mrs B was facing. So I can't fairly say it was being unfair in how it sought to recover the debt.

And whilst Mrs B has said any payments already made were made under *"duress"* I've seen no evidence of this. In the absence of a signed agreement it would seemingly be open to Mrs B to insist Daxon obtained a court order if it wanted to enforce this debt. But this would run the risk of her incurring significant additional costs.

Alternatively, if Mrs B wishes to seek a payment arrangement Daxon would be obliged to treat her positively and sympathetically.

So whilst I know this will come as a disappointment to Mrs B - I agree with the investigator this complaint should not be upheld.

### **my final decision**

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 5 October 2018.

Stephen D. Ross  
**ombudsman**