

complaint

Mr P is unhappy about the way Hoist Finance UK Limited (Hoist) pursued him for a debt. Mr P was dealing with Hoist's appointed representatives, which means Hoist is responsible for their actions. To keep things simple, I'll refer to both as "Hoist" in this decision.

background

I set out the background to this complaint in my earlier provisional decision. But to help with ease of reading, I set out the background again here.

Mr P opened a credit card account with a third-party provider in 2004. His account fell into arrears in 2009, and the original lender then sold the debt to Hoist.

In July 2015, having acquired the debt but failing to reach a payment arrangement, Hoist took Mr P to the County Court in June 2016. The Court entered judgment on 17 June 2016. Hoist continued to pursue Mr P for this debt, and in 2017, Mr P contacted them requesting an explanation of where the debt had originated.

Hoist told him the debt related to an account he had between 2004 and 2009 from another business. Mr P understood the debt to have been settled and so he asked for more information. Unfortunately, Hoist was unable to provide any further clarity.

In February 2018, following personal information provided by Mr P, Hoist instructed its solicitors to discontinue the litigation against Mr P. In a letter dated, 13 March 2018, its solicitors served a Notice of Discontinuance. This meant the Judgement was cancelled and the CCJ set aside. Hoist carried on pursuing Mr P for the debt he owed. Mr P complained about this to Hoist, as he didn't think they could pursue him for the debt as the CCJ had been removed. He complained to Hoist, as he understood the letter to say no further legal action could be taken and so he didn't think the debt was enforceable.

On 22 January 2019, Hoist issued its final response. It said, it had discontinued litigation after Mr P provided information regarding his personal circumstances but it had also explained this didn't change his liability for the outstanding and as such, it was within its rights to carry on pursuing him for the debt.

Mr P wasn't satisfied with Hoist's response and as such brought his complaint to this service. Whilst we investigated Mr P's complaint, he raised a further complaint that Hoist didn't supply him with enough details about the debt.

Our investigator looked into Mr P's complaint and gave a view. She said that we as a service can't determine if a debt is enforceable. But we can look at whether a business acted fairly by pursuing a debt. She didn't think that Hoist acted unfairly in pursuing the debt and from what she'd seen Mr P remained liable for the outstanding balance. She noted that Mr P had suffered from ill health for quite some time and that he had held more than one account with the original lender. One of these accounts had been settled with another third party collection agency, and as Hoist hadn't been able to clarify the information, she understood why Mr P had become confused. She contacted the original lender and was able to identify the original account quite quickly. She thought Hoist could have obtained the necessary clarification Mr P was seeking with relative ease and had they done so matters could have been resolved much earlier. She asked Hoist to pay Mr P £150 for trouble and upset he'd suffered because of this.

Hoist disagreed. It said that we, as a service, couldn't look into their pursuit of Mr P as a County Court had already assessed Mr P's liability for the debt in June 2016. It also said the information about the debt wasn't easily accessible to them at the time and it had provided all the clarification available to Mr P, so it didn't accept it should pay Mr P the £150 suggested.

Our investigator issued a second view. In it, she said she had considered the issue of jurisdiction raised by Hoist. She explained, as Hoist had discontinued the court claim, no court order has been made and so she didn't think this complaint is out of our jurisdiction, nor is it one that we should dismiss. She also pointed out Hoist had a regulatory responsibility under the Standard of Lending Practice and the Consumer Credit Sourcebook (CONC) to provide Mr P with the correct information about a debt that it's pursuing. She remained of the view that Hoist hadn't acted fairly and reasonably, and she said it should compensate Mr P for the trouble and upset caused.

Hoist responded, said it accepted the findings of the investigator and would pay £150 for trouble and upset and would write off the outstanding debt. Both parties accepted the settlement. But Hoist didn't honour the redress or provide written confirmation to Mr P that the debt had been written off. Our investigator contacted Hoist numerous times but it still failed to honour the agreed outcome.

On 6 April 2020, a representative from Hoist spoke with our investigator. He said the offer to write off the debt wasn't authorised and as such had been withdrawn but agreed to pay the £150 compensation.

Mr P disagreed. He feels it is very unfair of Hoist to withdraw their offer especially as he has explained the effect the stress and delay this matter has caused him. He asked for an ombudsman review.

In my provisional findings, I looked at all the information from both parties afresh. I reached the same overall conclusion as our investigator, but I reached a different decision for how Hoist should put things right.

I explained I'd read and considered the whole file, but I concentrated my comments on what I think is relevant. I said, if I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

I explained where the information I've got is incomplete, unclear or contradictory, as some of it is here, I have to base my decision on the balance of probabilities. That is to say, what I think is more likely to have happened.

I said as Hoist continued to raise the issue of whether our service can look at this complaint, I considered this first.

Hoist says that in June 2016, the county courts gave a judgement into Mr P's liability for the debt. It says this service doesn't have the jurisdiction to look at the merits of a complaint in which a court has already decided. I said I don't agree, and I explained why

The grounds on which an ombudsman may dismiss a complaint are set out in the Dispute Resolution Rules (DISP), which is set out in the Financial Conduct Authority's (FCA)

handbook. Whilst I understand this case has been the subject of court proceedings, DISP doesn't say an ombudsman can't look into a complaint that has been dismissed by a court. With that in mind, I've seen that in February 2018, the court ordered that the judgement entered in June 2016 should be set aside and the claim be dismissed following an application from Hoist solicitors to serve a Notice of Discontinuance to Mr P. So, I said I was satisfied I can look into the merits of Mr P's complaint.

Did Hoist act fairly by pursuing Mr P's debt?

I said, it's not for our service to decide whether a debt is legally enforceable – only a court can decide this. However, we can look at whether a business has acted fairly by pursuing a debt. I think it's clear from what our investigator found, that Mr P's debt arose from a credit card account with a third-party provider he'd previously opened and operated between 2004-2009.

The solicitor letter notifying Mr P that the legal action had been discontinued sent in March 2018, also said:

"Please be advised this does not mean you are no longer liable for the debt and a specialist team from ...Hoist may contact you to discuss this further..."

Mr P became confused about the origin of this debt as he had settled a credit card debt with the same original lender and asked for clarification to ensure this wasn't duplication. Following a discussion between this service and the original lender, he has now accepted this debt is his. Considering this, and from the evidence Hoist has provided, I said I don't think it has been unfair by holding Mr P liable for repayment of the debt.

Customer service issues

Mr P has said, despite numerous requests, Hoist didn't give him enough information about his debt when he asked, and he thought he'd already settled the debt. I said I understood for Mr P, receiving letters about debts, which he'd thought he'd settled must have been very upsetting. It can be confusing when debts are transferred between businesses, and I said I can see why he didn't recognise the debt at first because of the various businesses involved in the debt and its recovery.

I explained there are several regulatory responsibilities a business must undertake when a customer asks for clarification and/or information about a debt it is pursuing. These are set out in the Consumer Credit sourcebook (CONC).

CONC 7.5.3 says: *"A firm must not ignore or disregard a customer's claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the customer's claim is not valid."*

I said from what I've seen, Hoist didn't provide Mr P with enough evidence/information of the debt it was chasing. It originally told Mr P the debt originated from a previous lender and this was relating to an account that defaulted in 2004 – 2009. But Mr P told them he thought he'd already settled this debt with another business and wanted more information.

I appreciated Hoist's view that they gave Mr P what information they had at the time, but I said I thought they could've easily found out more information about the account. I said this as our investigator contacted the original lender and found that Mr P had two debts with the business, and he had cleared one of these. Information that I think would've helped Mr P

understand what debt Hoist were pursuing him for. So, for these reasons I said I don't think they acted fairly here, and for that reason, I was minded to partially uphold the complaint.

Although the debt would've remained, Mr P told us this was a difficult and distressing time for him. He was suffering with significant mental health issues, something that Hoist were aware of. So, I said I understood, for Mr P, thinking he was being pursued for a debt he thought was settled, only added further stress to his circumstances.

Following the investigators second view in December 2019, Hoist sent Mr P an email on 7 February 2020. In it, it agreed to pay Mr P £150 for the trouble and upset this matter had caused and confirmed it would not seek to recover the outstanding balance, it said the account had now been closed. Unfortunately, Hoist didn't honour this offer, nor did it pay the redress it had agreed to. This resulted in Mr P becoming ever more frustrated and distressed as he sought to end this matter.

On 6 April 2020, a Hoist representative told this service the offer to write off the debt wasn't authorised and as such, it was now formally withdrawing that offer. It agreed to pay Mr P £150 for trouble and upset to close the complaint. This being around two months after it had agreed a settlement with this service.

I said I found this particularly unfair. Not least because Hoist is fully aware of Mr P,'s mental health position, indeed it discontinued its legal action in 2016 because of the personal information Mr P provided. It made the offer to write off the debt voluntarily, only to withdraw it two months later, even though it has said it doesn't intend to take any further legal action to recover the debt. I said I could see how this has understandably caused Mr P further unnecessary distress and inconvenience.

Hoist said whilst Mr P may wish to complain about its actions to withdraw the offer it objected to its being addressed within this complaint as it wasn't part of Mr P's original complaint to this service. I explained that as Hoist has objected, I haven't considered the withdrawal of the offer to write off the debt within this decision, but I have looked at all the actions taken by Hoist and whether they are fair and reasonable.

I said if Hoist remains of the view that it intends to ask Mr P to repay the debt it should ensure it acts fairly and reasonably in doing so. It should consider all Mr P's personal and financial circumstances and accept what Mr P can reasonably afford to pay. If Mr P feels uncomfortable in dealing directly with Hoist, I would encourage him to seek support from one of several free debt advice services, such as Step change. Further, if Mr P feels Hoist isn't being sensitive to his position and acting fairly and reasonably he is of course able to raise a further complaint with this service. I said he may also choose to raise a separate complaint regarding the withdrawal of the offer to write off the debt.

Taking all the circumstances into account, I said I'm persuaded Hoist hasn't acted fairly and reasonably in the circumstances of this complaint and I increased the redress for the trouble and upset caused to reflect this.

I said I intend to direct Hoist Finance UK Limited to pay Mr P £500 for the trouble and upset this matter has caused. I invited both parties to make any further submissions they wish me to consider before making my final decision.

Hoist agreed with the findings of my provisional decision. It accepts it had caused Mr P significant trouble and upset.

Mr P wasn't clear what my provisional decision meant about the outstanding debt and any redress.

my findings

I thank both Mr P and Hoist for their responses. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Hoist agreed with my provisional decision and although Mr P has requested some clarity and remains dissatisfied with Hoist's lack of communication regarding this matter, he hasn't sent any new information about the findings in my provisional decision. On that basis, I think I've no reason to change the conclusions I reached in my provisional decision.

For clarity, Hoist has withdrawn its offer to write off the outstanding debt, it did so two months after making the offer and objected to me considering this decision within this complaint. I understand Mr P has made a separate complaint regarding this matter and so I'm not able to reach a determination about this within this decision. I have considered the actions Hoist has taken in its dealings with Mr P and, taken into account Mr P's personal circumstances which Hoist were also aware of. In doing so, it follows I have reached the same conclusion as that of my provisional decision. That is that I don't find Hoist have acted fairly and reasonably in its dealings with Mr P and this has caused Mr P significant trouble and upset for which he should be compensated.

my final decision

For the reasons I have given, I uphold this complaint and direct Hoist Finance UK Limited to:

- Pay Mr P £500 for the trouble and upset this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 September 2020.

Wendy Steele
ombudsman