

complaint

Mr H complains that Cabot Credit Management Group Limited (Cabot) is pursuing him for an unenforceable debt. He wants the outstanding balance written off and compensation for the trouble and upset this matter has caused.

background

Mr H entered into historical credit card agreements with three separate financial providers, which have been assigned to Cabot. It has been in contact with Mr H since 2011 regarding one of the agreements and since 2017 regarding the other two.

Mr H says that his debts are not enforceable because he hasn't been provided with a copy of the signed consumer credit agreement and other contractual documentation. He believes that Cabot cannot pursue him for the debt without these. He also doesn't think Cabot has the right in law to chase the debt and appointed a solicitor to look into this matter for him.

The solicitor complained to Cabot, on behalf of Mr H. He said Cabot had failed to provide the original credit card agreements and as such these debts are unenforceable and so Cabot should not be pursuing Mr H for them. He further complained the communication with regard to the collection of these debts to be aggressive. Further concerns were raised about the affordability of the original credit agreements.

Cabot says it requested copies of the original agreement from the original lenders but has been unable to provide them to Mr H. It says it accepts the view that the debts are unenforceable but says this is neither the same as, nor an admission that the debts do not exist or that Mr H isn't responsible for or expected to repay any outstanding debts. It says it provided Mr H with a Notice of Assignment for each account and this evidences the transfer of the rights to collect the debts to itself. It also doesn't accept any of the correspondence to be of an aggressive nature.

Our investigator looked into things for Mr H. He didn't uphold the complaint. In summary, he said that Cabot doesn't need to provide an original copy of the agreement. Cabot was entitled to collect the debt as it had been assigned the debt. Only a court can decide if the debt is enforceable and Mr H would need to take his complaint there. He didn't agree the correspondence he reviewed was of an aggressive nature and so didn't agree Cabot had done anything wrong.

Mr H was unhappy with this view. His solicitor says Mr H finds it very unfair that Cabot should pursue him for a debt it can't prove exists. He asks for an ombudsman review.

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've looked at all the information from both parties afresh. Having done so I've reached the same view as the investigator. I know this will disappoint Mr H and his solicitor. I'll explain why.

I think it important to say at the outset that I've only considered aspects of Mr H's complaint that relate to the actions taken by Cabot. I've not looked at the concerns raised about unaffordable or irresponsible lending by the original lenders. Any complaints in this regard should be raised with them.

Mr H and his solicitor raise a number of legal arguments to show why Cabot is not entitled to pursue him for the credit card debt. He says the original credit agreement is not enforceable, as he has not been provided with the original documentation. Mr H doesn't appear to dispute that he had a debt with any of the third parties, he doesn't say he didn't sign an agreement with them, or that he was unaware of the terms; rather the original agreement is missing so not enforceable.

As the investigator pointed out in his view, this service cannot decide whether a credit card agreement is enforceable. We decide cases based on what is fair and reasonable, and do not decide issues of law. These issues are decided by a court. If Mr H wishes to pursue these issues, he should issue legal proceedings.

I've looked carefully at the information provided by Cabot and I'm satisfied there is evidence to show Cabot bought these debts from the respective lenders and properly issued the notice of assignment in each case, to Mr H's given address. I haven't seen anything to suggest Cabot shouldn't ask Mr H to make payments towards these debts.

I've carefully considered the communication between Cabot and Mr H. I have reviewed the frequency and content and I'm not persuaded there is anything here to suggest communication of an aggressive nature.

From what I've seen Cabot have acted fairly and reasonably since purchasing the debts from the original lenders and so I won't be asking it to do anything further.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 May 2020.

Wendy Steele
ombudsman