

complaint

Mr C complains that Hoist Finance UK Limited ("HFUK") are asking him to pay a debt which he has already settled.

background

I issued a provisional decision on 24 April 2019, a copy of which is attached as it forms part of this final decision. Mr C accepted my provisional findings. But HFUK have commented on the provisional decision and sent some more information for me to consider.

They have provided two letters dated 2 May 2017, both sent to the same address. One of these is the letter referred to in my provisional decision. The other is of the same date and the contents are the same except that the reference quoted is the current account reference, not the credit card reference. I'll consider below the implications of this.

Regarding the settlement conversation with Mr C, HFUK say that he was concerned about the County Court judgment, which related to the credit card account. They say he offered to pay a sum of money to settle that account. They point out that the letter which was sent to him confirming the settlement set out the credit card account number, the amount due and the offer made in settlement of that account. They say any confusion that may have occurred during the phone call ought to have been clarified when Mr C received that letter. And that, if Mr C had queried it at the time, the call recording would still have been available to confirm what had been said.

HFUK say that, although the current account has been reinstated and a Notice of Assignment sent to Mr C, they haven't requested payment of the account. But they say they think he is liable for the current account balance, so they don't accept my provisional 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. In particular, I've considered all the comments made by HFUK in response to my provisional decision.

Firstly, I need to consider whether the letters of 2 May 2017 change my mind about this complaint. In my provisional decision, I referred to the one which quoted the credit card account reference. I thought that the content matched the entry on the current account contact notes for that date, suggesting there had been cross-over between the two accounts by the debt collection agency (R). Contrary to my provisional findings, the second letter dated 2 May 2017 shows that, on that occasion at least, R didn't use one letter (with one reference) to refer to both accounts. They sent separate letters for each account, even though the content was the same. In light of this, the evidence of the letters alone does tend to suggest that the settlement related to the credit card only. This is because the settlement letter (sent out later on) only contained the credit card reference.

And HFUK say that, because they issued separate letters for both accounts to the same address over a period of time, Mr C should have known about both accounts. But they accept it's not clear whether Mr C himself ever received those letters and I agree with that.

But the letters aren't the only evidence here. My provisional findings were also based on the litigation department's call notes from June 2017. It's unfortunate that the call recording isn't available, but the contemporaneous notes are helpful. They record that Mr C queried the County Court judgment during the call, as HFUK have said. But I don't think that confirms that the credit card was the only debt which was settled. It's understandable that Mr C would have asked about the judgment, whether he was settling one or both debts.

HFUK say that any assurance provided during the call would have been isolated to the credit card account as they don't accept settlements across multiple accounts. They say that, if both accounts had been discussed, the settlement amount would have been higher. Whilst that may be HFUK / R's standard practice, the notes of the call don't indicate that this is what actually happened here. In fact, the notes specifically say "*adv this is the only acc in debt with*". HFUK haven't commented on this entry. But I still find it supportive of Mr C's recollection that he asked whether the payment would settle all his debts.

If Mr C had asked this and been told that it would only settle the credit card account, I would expect that to be recorded in the notes. It would have been a very important point and I think someone in the litigation department would have known to make a note of it. But as it isn't in the notes, I find it unlikely that it was made clear to Mr C that the payment wouldn't settle all his debt with R. And I still think that the person Mr C spoke to would (or at least, should) have known about the current account.

The settlement letter sent out after the call only referred to the credit card account. Mr C says he didn't pick up on this at the time. But I think it's reasonable for him to have relied on the conversation he had on the phone. I think that Mr C's own evidence combined with the contact notes suggests he sought, and was given, assurance on the phone that his payment would settle everything.

So, although I've carefully considered HFUK's comments, I haven't changed my mind about the fair and proportionate outcome here. On the evidence available, I think it was reasonable for Mr C to think he was settling all his debt. So I don't think HFUK should seek payment of the current account balance from Mr C. And they should pay him compensation of £50 for the stress and inconvenience caused by this situation.

my final decision

For the reasons above, I uphold this complaint. My final decision is that Hoist Finance UK Limited should:

- not pursue Mr C for the current account debt;
- remove any adverse entries about the current account which appear on Mr C's credit file after June 2017; and
- pay compensation of £50 to Mr C for the distress and inconvenience this situation has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 June 2019.

Katy Kidd
ombudsman

copy of provisional decision

complaint

Mr C complains that Hoist Finance UK Limited ("HFUK") are asking him to pay a debt which he has already settled.

background

Mr C had a current account and credit card with a third party bank, which I'll call S. Both accounts were in arrears. In December 2014, S assigned its rights in both accounts to a company within HFUK's group of companies. That company then appointed a debt collection agency (which I'll call R) to manage the accounts.

R wrote to Mr C several times in the period from 2014 to 2016, asking him to clear the outstanding balance. Mr C says this was a difficult time for him and he didn't always read his post. But in June 2017, he made contact with R and agreed a settlement figure, which he then paid.

In October 2018, Mr C received a letter about an outstanding balance of around £160. He didn't know what the outstanding balance was for. He thought he had already settled his debt with the payment he made in June 2017. So he complained to HFUK. They didn't uphold the complaint because they said there was an amount outstanding on an account. They provided a statement from S which showed how it had accrued.

Mr C wasn't satisfied with HFUK's response, so he brought his complaint to this service. Our investigator found that the settlement payment made by Mr C had been for the credit card debt only. He found that the balance Mr C is being asked to pay relates to the current account. So he thought that HFUK were requesting payment of a genuine debt and had done so fairly.

Mr C was disappointed with our investigator's findings so the case has been passed to an ombudsman for review. Mr C says that, when he agreed the settlement in June 2017, he believed he was settling all debt, not just the credit card account.

my provisional findings

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

Mr C accepts he had two accounts with S (the credit card and the current account). But he says that, when he called about settling debts in June 2017, he was given assurances over the phone that he would have no more debt after the settlement figure had been paid. He says he negotiated to settle all debt and questions why he would have agreed a significant settlement figure only to leave some £160 outstanding to the same company.

HFUK say that the settlement payment was for the credit card account only, which now has a zero balance. The debt which they are now chasing relates to Mr C's current account and consists of an unarranged overdraft plus related interest and charges dating back to 2011. HFUK have produced statements from S which show how the balance has accrued.

So I need to look at what was agreed between Mr C and R in June 2017 and decide if it's fair that HFUK are still asking Mr C to pay the outstanding amount. I asked HFUK if they have a recording of the call from June 2017, but they don't. They have provided a screenshot which confirms this. So I requested more information from them about the settlement. They've provided some further documents, including a letter from R which confirms their acceptance of Mr C's settlement offer.

The reference quoted on this letter is the one R used for the credit card debt. And the account number stated on the letter is the credit card account number. So this suggests that the settlement related to

the credit card debt only. Mr C says he didn't pick up on this at the time. But I don't find this letter to be conclusive that the settlement related to the credit card only. There is evidence which suggests otherwise and I'll set this out below.

The contact notes for the current account debt show that, when Mr C complained to HFUK in October 2018, he told them he had paid off the debt. When they explained that the letter he received was about the current account (as opposed to the credit card), he said they should have told him this at the time he made the settlement payment. The notes say: "*advised this was not visible [sic] at the time not linked*".

R was appointed to manage both the accounts and R's contact details were provided. Those contact details were the same for both accounts. And they are the same contact details which were given to Mr C in the Notice of Assignment dated October 2018. So the accounts were both assigned at the same time, to the same business and were being managed by the same debt collection agency under the same roof.

I have compared the contact notes for each of Mr C's accounts. They follow a very similar pattern. Activity by R on one account usually takes place within a day or two of activity on the other account, if not on the same day. This is the case from October 2014 through to early 2016. The mirror contact picks up again in June 2016 through to 22 May 2017 when the notes on the current account say "*Multiple LAS results received account closed*". HFUK have explained that LAS means "living as stated" and relates to tracing activity which R undertook to verify where Mr C was living. So the account in question was closed in May 2017. There is no further activity on that account until October 2018 when the Notice of Assignment was sent to Mr C, prompting this complaint.

The notes for the credit card account have the same entry on 22 May 2017. But, unlike the current account, the credit card account was reinstated in June 2017. Activity then continued on the credit card account until later that month, when the settlement payment was received. So it seems that the accounts had been managed in much the same way until June 2017. From that point, only the credit card account was active and R do not seem to have been pursuing the current account debt.

HFUK have confirmed that the settlement payment was applied to the credit card account. But this doesn't persuade me that it wasn't accepted in settlement of all debts.

HFUK have provided a copy of a letter dated 2 May 2017 which was sent to Mr C by R. It says they are aware he may be experiencing difficulties paying and they want to help him. The reference quoted on this letter is the credit card account reference. But the date and content of the letter seem to match the entry on the contact notes for the current account on 2 May 2017. I haven't been provided with a letter of the same date which specifically refers to the current account debt.

So I think it's reasonable to conclude that the letter is the one mentioned on the contact notes. The notes on this account say "*gen settlement offer lettr vuln*". The same entry appears on the notes for the credit card account. This suggests that, on this occasion at least, there was cross-over between the credit card and the current account on R's systems. It also suggests that, even where they only used the reference from one of the accounts on their correspondence, the content may have related to both accounts.

HFUK have also provided the litigation department's call notes from June 2017. The notes are not comprehensive but they clearly relate to the settlement conversation. They say "*cst adv wants conf few things*", which is in line with what Mr C has said about seeking assurances on the phone before making the settlement. The notes also include the comment "*adv this is the only acc in debt with*". There is no mention of the second account. I find this to be supportive of Mr C's position that he sought assurances in the phone call that the payment would settle everything he owed to R.

And I find it likely that the person speaking to Mr C would have been aware of (or at the very least, had access to information about) both accounts. I say this because it appears both accounts were with the same department (the users on both sets of contact notes have the prefix "LG" in front of the

person's name). And the settlement call took place less than a month after the last activity on the current account.

So I find it likely that, when Mr C agreed a settlement with R in June 2017, R did have – or at least should have had - visibility of both accounts. And I find it likely that the settlement did relate to both debts. I realise that HFUK maintain it related to the credit card debt only, but I think the evidence I've referred to above suggests that Mr C was calling to settle all his debts with HFUK and was given assurances that he had done so.

So, on balance here, I'm persuaded that HFUK accepted Mr C's offer in settlement of his overall debts. But, in being fair to both sides here, HFUK's mistake was to tell Mr C that his debts had been settled when they hadn't. So I also have to consider that the amount that Mr C hasn't settled still technically remains outstanding. But while that's the case, I think the fair and proportionate thing to do here is for HFUK to agree to stop pursuing Mr C for this amount. For these reasons, I don't think it's fair for HFUK to seek payment of the current account debt from Mr C now.

So I intend to uphold this complaint. And, because this situation has caused stress and inconvenience to Mr C, I think HFUK should pay him compensation of £50.

my provisional decision

For the reasons above, and subject to any further information I receive from the parties, I intend to uphold this complaint. My provisional decision is that Hoist Finance UK Limited should:

- not pursue Mr C for the current account debt;
- remove any adverse entries about the current account which appear on Mr C's credit file after June 2017; and
- pay compensation of £50 to Mr C for the distress and inconvenience this situation has caused him.

Katy Kidd
ombudsman