

complaint

Mr S complains that he has been pursued for a debt that is more than ten years old by Link Financial Outsourcing Limited. He says that it is so old he has no recollection of the debt or any paperwork. He also complains that Link has access to personal information he supplied to another lender more than 20 years ago.

background

Link contacted Mr S regarding a consumer credit debt that it now owned. He said he had no knowledge of the account and that there was no evidence associating the debt with him.

Link advised Mr S that the debt was a loan for a bathroom, taken out with First National Bank in 1996. The account was transferred to GE Money who assigned the debt to Link in July 2004, after Mr S defaulted in April 2004.

Link sent him a copy of the original credit agreement and told him that a Credit Reference Agency had identified his current address as being associated or linked to their customer with the same name. It said that without information to the contrary, it accepted this information to be reliable.

Mr S brought his complaint to this organisation. He said that he had no knowledge of the debt as he was being contacted 13 years after Link purchased the debt. He also said that time provisions in the Consumer Credit Act 1974 and the Limitation Act 1980 prevented Link from pursuing him for this debt.

Our investigator sought further information from Link and it told him that it had obtained a County Court Judgment against Mr S in 2009. Based on this, he didn't think Link had acted unfairly when asking him for payment, as this service cannot declare a debt to be statute barred.

The case was passed to me as Mr S wanted an ombudsman to look at it. He said the judgment had been removed from the register as it was more than six years old, and he had been receiving credit reports that showed he had no judgments against him. In parallel with this complaint, Mr S has asked the Court to explain why the CCJ is still active.

He also complained that Link had access to his personal information in breach of data protection legislation. As data protection issues are usually a matter for the Information Commissioner, our investigator advised Mr S to raise that part of his complaint with her office. I commented on this aspect of his complaint in my provisional findings.

I issued a provisional decision in March 2018. Here's what I said:

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

The main issue I have to consider is whether Link is entitled to pursue Mr S for this debt, and whether it was fair and reasonable to do so.

When first raising this complaint, Mr S said it was so old he had no knowledge of the debt. A critical element of my consideration into whether Link has done anything wrong is whether Mr S is in fact the debtor. Link has provided me, and Mr S, with a copy of the original

agreement. I also have a copy of his complaint letter with his signature. Mr S has a distinctive signature, and the signatures on both documents are almost identical. For that reason, I am satisfied that it is more likely than not that it is Mr S's signature on the loan agreement and that he took out the loan. Further to that, a court has also decided that he owes Link the money.

Mr S says that the Limitation Act 1980 applies and that he should not be pursued for the debt. I accept that section 24(1) of the 1980 Act does deal with court judgments. It states the following:

...an action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable.

But the courts have interpreted "an action...upon any judgment" in section 24(1) to mean "a fresh action, and does not include proceedings by way of execution" in the same action. So, the judgment debt itself is not time-barred after six years, merely any fresh action to revive the judgment if the creditor still hasn't executed it after that time. The authority for this is the House of Lords' decision in the case of Lowsley v Forbes [1998] 3 WLR 501. In other words, section 24(1) of the 1980 Act only time-bars fresh action to enforce the judgment; it doesn't stop a creditor executing the original judgment if, like in Mr S's case, it hasn't already done so.

Mr S says that the debt is not legally enforceable because it is not on the register of judgments and does not appear on his credit record. Mr S has asked the court to explain why the judgment is still active but he has not received a response. I understand that the register only holds details of judgments for six years. But as I have already said, the judgment, and therefore the debt, still exists. So I don't find Link was acting unfairly or unreasonably in asking Mr S to repay the debt.

Mr S complains that Link had access to his personal information in breach of data protection legislation. There was a term in the consumer credit agreement he entered into that allowed the creditor to assign the debt and the agreement to another creditor. When this happened, Link became the owner of the debt, and was therefore entitled to contact Mr S, using the information contained in the original agreement.

I appreciate that my decision will disappoint Mr S. He may still resist the matter in court if Link ultimately seeks to enforce the debt via enforcement action. But if the court were to grant an enforcement order, Link would then have six years in which to, for example, send in the bailiffs to seize goods or force his bank to offset the debt against his assets or earnings. Only after six years would recovery action be time-barred; and even then, limitation is merely a defence to plead rather than an automatic bar to proceedings.

Mr S replied to confirm that he has still not received a response from the court to his question about the status of this judgment.

my findings

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

As neither party has provided any new evidence and/or arguments for me to consider, I don't think this complaint should be upheld for the reasons I've set out before. I acknowledge

Mr S's disappointment that this decision comes before he has received a response from the court. But as I said earlier, he can raise the issue with the court should Link seek to enforce the debt via enforcement action.

my final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 May 2018.

Gordon Ramsay
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