

complaint

Mrs H complains about the way MKDP LLP has dealt with her requests for information about a debt it said it had acquired, and how it dealt with the debt.

background

Years ago Mrs H had financial difficulties and made arrangements to pay a number of debts through a debt management plan. By 2014 one of the debts (for a credit card issued by a bank) had been acquired by MKDP. Mrs H ended the plan and in late December 2014 asked MKDP for information about the debt. It wrote asking for payment of a £1 fee. She says she paid the fee soon after, but heard nothing until July when she received a letter threatening litigation over the debt. After Mrs H queried why she had not received the information requested, MKDP said it had only received the fee in August. By October Mrs H had still not received the information. Initially Mrs H told us she thought the debt should be written off.

Our adjudicator did not recommend that the complaint was upheld. He said that MKDP's records showed it only got the fee in August and Mrs H had not been able to provide proof she had sent it in January. MKDP had tried to get the requested copy of the credit agreement and account statements from the bank, and the adjudicator was satisfied it had done all it could. He noted that Mrs H had suggested that without a copy of the credit agreement, the debt was not enforceable. But he said that that would need to be decided by a court. From what he had seen it appeared that the debt was Mrs H's and was outstanding.

Mrs H asked for an ombudsman to consider the complaint. She asked for copies of paperwork showing the payment being received in August and queried whether it was right for MKDP to have passed the debt on to another company whilst the complaint was being considered. She said that, even if MKDP did not get the payment until August, it had failed to supply a copy of the credit agreement within the relevant time limit. She felt the whole sequence of events required more detailed investigation, especially now another organisation was involved. She said she now wished to negotiate a settlement of the debt.

my findings

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

It is unfortunate that Mrs H has not been able to provide any evidence to show that she paid the £1 fee back in January 2015. But from what she says, it seems she simply enclosed the payment with a copy of the letter requesting the payment. And from what MKDP says it seems she made the payment with a £1 coin rather than a cheque, or any more traceable method. The only documentary record I have seen of the payment is a note on MKDP's computer system made on 6 August saying "Customer sent in £1 coin for CCA request". That is three days after MKDP received a letter from Mrs H in which she said she had previously sent the payment. But MKDP's system notes contain no record of any contact from Mrs H from when the letter was sent requesting the fee in January until August. Also, if Mrs H was keen to get the information, and had paid the fee in January, I might have expected her to chase up with MKDP why she had not received the information, before it contacted her for payment in July.

I recognise that it is certainly entirely possible that what Mrs H says about paying in January is correct. But I am afraid that it is unlikely that further investigation would find more

significant evidence about that. And without more evidence, I just don't think that I can reasonably conclude that she had paid back then.

From the point in August after which it is undisputed that Mrs H had paid the fee, I think MKDP made reasonable efforts to get the information from the bank. It also let Mrs H know that it had put the account on hold. But it appears the account had been closed by the bank in 2003 and statements simply were no longer available. Banks are not obliged to keep full records of closed accounts indefinitely. The bank sent MKDP a copy of the application form for the credit card quite quickly, but MKDP made a number of further requests to the bank to try to get more information. Those do not seem to have been successful. Eventually in November MKDP did respond to Mrs H's complaint and enclosed a copy of Mrs H's original application for the credit card. That copy is of poor quality, as is the copy sent by the bank to MKDP (it is likely that that the original paper document no longer exists - only a scan of that). But it does appear to be a credit card application to the bank, signed by Mrs H.

With hindsight, it probably would have been better if MKDP had sent Mrs H the copy credit card application as soon as it got it. But I don't think it was unreasonable for it to try to get more detailed information (eg on the terms of the agreement) from the bank first, in the hope of being able to send a more complete set of information. I don't think MKDP could reasonably be expected to have done significantly more to try to provide a full and legible set of information.

It seems that the account was on hold (as regards collection) while the complaint was being considered by MKDP. But MKDP was entitled to pursue the debt again after investigating the dispute about it. MKDP had written to Mrs H in 2013 when the debt was assigned to it from the bank, to inform her of that situation and about the amount then outstanding. Mrs H accepts that only the courts could decide about legal enforceability of the debt. But I am satisfied that this debt does relate to money which Mrs H had borrowed under a credit agreement, and I don't think I could say it was unfair for MKDP to be approaching her about settling that debt.

Mrs H tells us that more recently she has been contacted by another business to say the debt had been sold on to it. I can see why she would be disappointed that another business is now involved: but MKDP was entitled to sell the debt on. However later she refers to the account being owned by two organisations. I haven't seen the relevant letter. It is possible that rather than selling the debt on, MKDP has simply asked the other business to collect the debt on its behalf. Again it would be entitled to do that. But in either case Mrs H would need to contact the nominated business directly to negotiate any possible settlement of the debt.

While I appreciate that Mrs H has suffered some frustration over this matter, I do not think I have adequate grounds to expect MKDP to have written this debt off or to offer other redress. I hope she is able to reach some suitable agreement with the business now seeking to collect the debt.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 24 March 2016.

Hilary Bainbridge

ombudsman