

complaint

Mr H complains that MKDP LLP is wrongly chasing him for a credit card debt that's unenforceable and statute barred. And he says it should remove a default from his credit record.

background

In 2014 Mr H found that MKDP had registered a default against his credit file. He asked for a copy of the relevant credit agreement – under sections 77-79 of the Consumer Credit Act 1974 ("CCA"). But MKDP didn't provide that within the time required. And Mr H says MKDP has failed to comply with its obligations and substantiate the debt - so it's unenforceable and the default should be removed.

MKDP says the default was properly applied by a third party lender in 2011. And it was changed into MKDP's name when it bought the debt. And the money is still due and owing, so it would be wrong to remove the default now. It has sent Mr H the credit agreement and considers there's no reason he shouldn't repay the debt.

Our adjudicator didn't recommend that the complaint should be upheld. She says only a court can decide if a debt isn't enforceable. And she's satisfied Mr H had the benefit of the borrowing, so it's not unreasonable for MKDP to ask him to repay it.

Mr H says MKDP should have provided the information he requested much sooner. And the debt is more than six years old, so it is time barred under the Limitation Act 1980. And the default should have fallen away by now.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. I have come to the same conclusions as our adjudicator for much the same reasons.

I can see that Mr H was upset when he discovered a default on his credit file. And he feels strongly that MKDP should stop asking him to repay a debt incurred years ago. He considers any claim arising from the debt is statute barred - because he had no contact about it for some time - and he says the courts won't enforce it. So he wants MKDP to stop contacting him and remove the related default from his credit file.

It's not within the remit of this service to decide if a claim is statute barred or whether a debt is enforceable. Only a court can do that. But I am satisfied that this debt was incurred by Mr H and he had the benefit of the money. And, I am not persuaded that it was unreasonable or unfair of MKDP to seek repayment from him.

From the evidence I have seen, I consider the original lender wasn't wrong to file the default in 2011. MKDP bought the debt in 2013. And it is obliged to report information accurately to credit reference agencies. So I can't reasonably criticise it for maintaining the default in the circumstances.

And I'm satisfied MKDP wrote to Mr H (at the address he gave this service) to tell him about the assignment and ask for repayment. So I can't fairly hold it responsible for the fact that Mr H didn't know why a default in MKDP's name appeared on his credit record.

Mr H says defaults shouldn't stay on credit files for more than six years. And he considers this default should have been removed by now - because the account it relates to is older than that. But the default was only filed in 2011, so I can't properly require MKDP to remove it on those grounds.

I realise this decision is likely to come as a disappointment to Mr H. But, for the reasons I have given, I'm not persuaded MKDP has done anything wrong. Mr H doesn't say that he is in financial difficulties. If he is, then MKDP is obliged to treat him positively and sympathetically. And Mr H may wish to contact one of the free sources of debt advice such as StepChange¹ for assistance going forward.

my final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 21 May 2015.

Claire Jackson
ombudsman

¹ 0800 138 1111