

## **complaint**

Mr B complains that Moorcroft Debt Recovery Limited, ("MDRL") unfairly tried to collect a debt from him. He said that it didn't have any right to do this, and that the debt was statute barred. He also said that MDRL was in breach of the Data Protection Act 1998 as it contacted the original creditor.

## **background**

Mr B had a credit card account with a card provider, ("P"). P sold the account to a debt purchaser ("D") in January 2012, and D sold the account to another debt purchaser ("A") in November 2015. A outsourced the management of the debt to MDRL in October 2016. Mr B complained that as there was no contract between A and himself, MDRL had no right to try and collect the debt from him. Mr B also said that the debt was statute barred. He is also unhappy that when he notified MDRL about this, it contacted P, which breached the Data Protection Act 1998.

The adjudicator didn't recommend that the complaint should be upheld. He noted that P's terms and conditions enabled it to sell the debt onto a third party, and there didn't need to be a new credit agreement between Mr B and the new debt owner. He explained that the new debt owner was able to pursue Mr B for the debt or instruct a third party to do so. In this case, A had instructed MDRL to act on its behalf. The adjudicator also noted that Mr B said that the debt was statute barred, and so MDRL shouldn't pursue him for the debt. He could see that as part of the debt sale information, the last credit was included which was made in November 2011. Whilst he couldn't say that the debt wasn't enforceable, he said that there appeared to be no reason why the debt shouldn't be collected. When Mr B raised a dispute with MDRL, he didn't think it was unreasonable for it to check the information it had was correct and if there were any reasons why they shouldn't try and collect the debt from him. The adjudicator understood that Mr B thought that MDRL had breached the Data Protection Act by contacting P about the dispute. But, he thought that it would be more appropriate for this issue to be looked at by the Information Commissioner's Office ("ICO").

Mr B disagreed and responded to say, in summary, that the adjudicator hadn't taken his dispute with P and the legal requirements into account in regard to transferring data and the sale 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.

I note that Mr B said that the adjudicator hadn't taken into account the laws relevant to his complaint and he has provided us with numerous references to the laws he believes are applicable. But, we offer an informal dispute resolution service. Although we do take account of applicable law, regulations and good industry practice, we also consider the evidence we've received from the parties, and the overall facts and circumstances of the complaint to arrive at what we think is a fair outcome for the particular situation.

I also note that Mr B has many grievances against P, but I don't think I can hold MDRL responsible for what went on before it took over the debt.

Given the other different aspects to this complaint, I've considered them individually below.

### *assignment of debt*

Under the Consumer Credit Act 1974, a “creditor” includes the person to whom the creditors rights and liabilities under the credit agreement have passed by assignment. I note that P’s agreement terms allowed for its customers’ accounts to be assigned. So when Mr B’s account was assigned to A, the rights and duties of the original creditor (here P) were passed to A. So, A has the right to collect the debt without the need for A and Mr B to enter into a new agreement. And A is entitled to outsource the collection of the debt to third parties, in this case MDRL.

### *statute barred debt*

Mr B argues that the account is statute barred. This refers to the time limits laid down by the Limitation Act 1980 which prevent a creditor taking legal action to recover a debt after a certain period. In English law, a debt can become statute barred after six years. A debt may not be time barred if certain events have occurred during that period.

A debt will normally be statute barred if:

- The creditor hasn’t already obtained a county court judgment against the consumer;
- The consumer hasn’t made a payment towards the debt in the previous six years; or
- The consumer hasn’t written to the creditor admitting he owed the debt during the last six years.

I have no power to declare a debt statute barred, only a court can do that. But, I can see that MDRL wrote to Mr B in November 2016 to say that the last payment on the account was for £1.70 on 16 November 2011. As this was in within the previous six years, I don’t think that MDRL has acted unfairly in pursuing the debt.

### *MDRL’s communication with P*

I asked the adjudicator to check with MDRL whether it had spoken to P. A responded on behalf of its agent, MDRL, to say that P had provided account information to A when the debt was sold to show that the final payment of £1.70 was made on 16 November 2011. So, I can’t say that MDRL has acted inappropriately here.

I appreciate Mr B’s strength of feeling and recognise that he is unlikely to accept this decision. My role as an ombudsman is to consider the individual complaint and decide whether something has gone wrong. But a court may take a different view of the situation. Should Mr B not accept my final decision, then any rights he may have to take action in the courts against MDRL are unaffected and he will be free to pursue his arguments in any court action that may arise, if he so wishes.

### **my final decision**

My decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 8 May 2017.

Roslyn Rawson  
**ombudsman**