

complaint

Mr H complains that MKDP LLP is wrongly pursuing him in respect of a debt that was owed by his previous limited company (since dissolved) and not by him.

background

Mr H says that he applied for a credit card, following an approach by salespeople in a public area. He says that he was specifically given to understand that the credit card account would be in the name of his limited company, and says that any alteration to the application forms to show otherwise was not made by him.

Mr H says that he used the card for company expenses. About two years later, Mr H found it necessary to dissolve the company. There was a substantial debt outstanding on the credit card account, which the card issuer later assigned to MKDP.

When MKDP contacted Mr H about paying the debt he told it that the card had been a company card and he was therefore not personally liable for the debt. The original card issuer told MKDP that the card had been issued to Mr H as a sole trader and so MKDP continued to regard him as personally liable to pay the debt.

As things remained unresolved, Mr H brought his complaint to this service where it was investigated by an adjudicator. From the evidence, the adjudicator found that the credit card agreement had been taken by Mr H in his personal name, and not in respect of the limited company. Because of that, the adjudicator did not consider that the complaint should succeed.

Mr H did not agree with the adjudicator's conclusions and said that he would like to have the complaint reviewed. He also said that he had lodged data access requests with the original card issuer and would be providing the ombudsman service with evidence to show that he had used the card for payments associated with jobs his company had done.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The debt that Mr H is disputing dates back several years, and has been assigned to a new financial services business, so the available evidence about the credit card account that gave rise to the debt is limited. However, the most important piece of evidence – the consumer credit agreement between the original card issuer and Mr H – is available and has been fully considered.

The card that Mr H applied for was a business credit card. It was available to sole trader business, partnerships and limited companies. Mr H says that the sales people who called to him to get his attention said that the card was for “companies”, which he has taken to mean that it could only be held in the name of a limited company.

But there is nothing on the application form to say that. Mr H's business style, as set out in the form, is not a limited company and the box marked 'sole trader' has been ticked. More significantly in my view, Mr H has signed the signature box to the agreement as the customer. Just under where he has signed is a different signature box, which is prominent because it contains a lot of bold type as well as being enclosed, which is headed:

LIMITED COMPANIES ONLY

To be completed and signed by the principal contact for and on behalf of limited companies. [capital letters and bold type are as in the original]

Mr H did not sign, or put any information in, that box – as I would have expected him to do, if as he says he wanted to contract with the card issuer only as a representative of his limited company rather than in his own right.

I appreciate that Mr H says the form was completed by a salesperson, and that he simply signed it without really looking at what it said. But I do not consider that this helps his case, because not reading a contract before signing it does not ordinarily prevent a person from being bound by it. And it would not have been necessary for Mr H to take more than a superficial look at the form and agreement to appreciate that he was signing as the borrower.

There is no indication that the card issuer intended to contract with Mr H's limited company rather than with him. So I do not consider that evidence of Mr H using the card for expenses of his limited company would make any difference to his liability for the debt.

From the evidence, I find that MKDP is entitled to ask Mr H to repay the disputed debt. I realise that Mr H had to deal with significant personal difficulties in the run up to dissolving his company, and that he has since suffered bereavements. I have considerable sympathy for him, but I am afraid these things would not affect his liability for the debt. MKDP will, however, be aware of its duty to deal fairly with Mr H when negotiating repayment arrangements.

my final decision

My final 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 8 June 2015.

Jane Hingston
ombudsman