

complaint

Mr D is unhappy that MKDP LLP is chasing him for a debt which he says does not belong to him. He has asked it to prove he is the owner of the debt and remove the related adverse information from his credit file.

background

Our adjudicator did not recommend this complaint be upheld. She was satisfied that the debt relates to a business loan granted by a third party bank ('Bank A') which Mr D had guaranteed. She said that although Bank A had been unable to provide a copy of the loan agreement, it had provided an account statement and a copy of the guarantee which is in Mr D's name. She noted that MKDP LLP had purchased the debt, and had a right to collect on it.

Mr D disagrees. In summary, he says that Bank A has been unable to provide evidence of the existence of the loan agreement or its valid assignment. And if this matter were to come to court MKDP would be put to strict proof to show the existence of the loan agreement with Bank A. He says that his position has been prejudiced by MKDP's failure to provide the relevant documents.

my findings

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

I thank the parties for their submissions. Where evidence is unclear or incomplete I make my findings on the balance of probabilities – which is to say, what I consider most likely to be the case based on the evidence that is available and the wider surrounding circumstances.

MKDP says that it bought the debt from Bank A – and overall, I find its submissions to be credible. The guarantee document which it has produced is an agreement between an individual and Bank A to personally guarantee the borrowings of a limited company ('B'). Although the actual loan agreement has not been provided I have seen a credible account statement which satisfies me that as of June 2012 B had outstanding borrowing of around £5,000.

The question is whether Mr D is liable for the debt. He says he is not. However, the individual providing the guarantee for the loan appears to be him. The name on the guarantee matches Mr D's full name as detailed in his passport. And the guarantee appears to have been signed by him. Overall, I find the guarantee document to be credible.

Information also shows that Mr D appears to be closely connected with B. I am satisfied from the information available to me (such as Mr D's credit file) that the address of B as registered on Companies House is Mr D's previous address. Because of this connection with B I consider it more likely that Mr D would have guaranteed its borrowings.

Mr D has mentioned that MKDP has not provided 'strict proof' of the evidence of the loan agreement and its assignment. However, I make my findings on what I consider likely to be the case, based on the evidence available to me. On balance, and in light of the matters already discussed, I consider Mr D is liable for the debt and that MKDP has a right to collect on it.

I understand that MKDP has now removed the original default it registered on Mr D's credit file. However, as I am satisfied that Mr D is personally liable for the repayment of the debt under the terms of the guarantee I am unable to fairly conclude that (after it confirmed with him that he was personally liable for repayment) MKDP is unable to register adverse information relating to his failure to make repayment.

I know this is not the outcome Mr D wants. However, he does not have to accept my findings and may pursue this matter through alternative means, such as court, should he wish to do so.

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 D to accept or reject my decision before 19 January 2015.

Mark Lancod
ombudsman