

complaint

Mr C complains that Aktiv Kapital (UK) Limited recently started pursuing him for a debt which he believes he has paid in full.

background

Mr C recently received contact from agents working on behalf of Aktiv Kapital about the debt which he says he paid off in 2005. He has also said that the signature on the copy of the finance agreement which Aktiv Kapital supplied him is not his, and that the debt is statute barred because of the time it has taken Aktiv Kapital to contact him about it.

Our adjudicator did not recommend this complaint be upheld. He was satisfied that the debt is Mr C's, and did not think that it had been settled. He noted that although Aktiv Kapital had been unsuccessful in contacting Mr C about the debt since early 2010 it appeared Mr C or his daughter (who was an authorised representative on the account) had previously been in regular communication with Aktiv Kapital about the debt, and made payment to the account. He did not find that Aktiv Kapital has acted in error by pursuing Mr C for the debt.

Mr C disagrees. In summary, he says that he settled the account in 2005 and has not received any contact from Aktiv Kapital. He says the system notes are false and his daughter was not in the country at the time of the claimed contact. He says that if there were a balance outstanding why did he not receive a CCJ or get visits from debt collectors.

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 matters are unclear or in dispute 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 available evidence and the wider surrounding circumstances.

I consider that some of Mr C's earlier submissions have been inconsistent. At first he said the debt was paid off in 2005, and then he appeared to be disputing that he ever took out the finance by claiming that the signature on the agreement is not his, and that other details are incorrect.

When our adjudicator pointed this out Mr C accepted that the finance was for a boiler fitted in his property. Overall, I am satisfied that there is no longer any dispute that the debt is Mr C's and overall I am satisfied that he signed the credit agreement. However, I consider the inconsistency of some of Mr C's submissions have given me cause to doubt the credibility of elements of what he has said.

did Mr C settle the debt in 2005?

Mr C says he paid the debt in 2005 over the counter at a bank. However, he has not provided any persuasive records to show that this happened. I have checked Aktiv Kapital's records which show that Mr C or his daughter (as an authorised representative) were in regular contact over repayment of the outstanding debt up to around the start of 2010. I

consider these contact notes to be credible and I am not satisfied they are false (as Mr C has alleged).

Furthermore, I have seen copies of letters Aktiv Kapital sent to Mr C asking for repayment of the debt post 2005. Mr C denies receiving such letters but they are addressed to his correct address and overall I can see no reason why he would not have received them. I also note that Mr C appears to have responded to this communication by making payments to the account.

I note what Mr C says about the lack of certain types of enforcement action by Aktiv Kapital. However, in the circumstances this does not persuade me that the debt had been paid. Overall and on balance, I am not persuaded that the debt was settled.

is the debt time barred?

Mr C argues that the debt that Aktiv Kapital is now pursuing is statute barred as he has not been contacted about it in six years.

After considering Aktiv Kapital's credible system notes I am satisfied that from 2006 up to early 2010 Mr C or his authorised representative had been in regular contact with Aktiv Kapital about repayment of the debt. These notes show that several payments were made on the account, with the last payment in late 2009. I find it unlikely that anyone other than Mr C or persons authorised by him would be making payments to the account during this time. Overall, my impression is that Mr C actively recognised the debt and was making efforts to pay it down under a reduced repayment plan until the start of 2010.

As discussed already, there are also several letters from Aktiv Kapital correctly addressed to Mr C which are concerning repayment of the debt and appear to have been sent to him between 2006 and 2010. I also note that since 2010 Aktiv Kapital's system notes show further efforts to contact Mr C unsuccessfully, until the matter was passed to its debt collectors.

It is for a court to ultimately determine if a debt is statute barred. However, broadly, I am not satisfied that Aktiv Kapital is acting unfairly by continuing to pursue Mr C for the debt in this instance. I appreciate that this is not the outcome which Mr C wants. However, he does not have to accept my findings and may pursue his complaint by other means, such as court, should he wish to do so.

my final decision

I do not uphold this complaint.

Mark Lancod
ombudsman