

complaint

Mr H complains that MKDP LLP is wrong to chase him for a debt that's unenforceable and statute barred. And he says it should remove a default from his credit file.

background

Mr H says this debt is more than six years old and time barred under the Limitation Act 1980. And he considers it's unenforceable under section 77-79 of the Consumer Credit Act 1974 ("CCA") - because MKDP didn't give him a copy of the original credit agreement when he asked. He wants MKDP to stop seeking payment and remove the related default on his credit record.

MKDP bought the debt from a bank. It says the original lender issued a final demand and Mr H was sent statements that prove he owes the money. And MKDP notified Mr H the debt had been assigned. So the debt is properly due and Mr H should repay it.

Our adjudicator doesn't recommend the complaint should be upheld. He found no evidence the default was wrongly recorded. And he's satisfied that Mr H was told about the debt and assignment and had the benefit of the money. So it's not unreasonable for MKDP to look for repayment. And it's up to a court to decide if the agreement is unenforceable or statute barred.

Mr H says he never received the final demand or notice of assignment. And the debt is unenforceable so MKDP should stop chasing it.

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 is unhappy because MKDP asks him to repay a debt he had no contact about for some time. He argues that the debt is statute barred – meaning it has been too long since he was chased for repayment so it can't be recovered through the courts.

The Limitation Act 1980 sets out how long a creditor has to take certain action to recover a debt. Mr H says the relevant limitation period here is six years – and he opened the bank account more than six years ago so that time has run out.

But a limitation period only starts when a legal claim can first be brought – regardless of the date the contract was entered into. And only a court can decide whether a claim is statute barred. I have no power to do so. And I can't find that MKDP was wrong to pursue the debt on those grounds.

Mr H considers the debt is unenforceable because MKDP hasn't provided a copy of the original credit agreement. As our adjudicator has explained that's also a question only a court can decide. And it's not within the remit of this service to find that the debt is unenforceable on those grounds either.

I'm satisfied, on balance, that Mr H was still using this account in September 2009, a final demand was sent in 2010 and MKDP wrote to him about the debt assignment in April 2013. I appreciate Mr H says he never received that correspondence. But the address used in it is the same one he provided to this service. So I can't fairly hold MKDP responsible for that. And, in the circumstances overall, I'm not persuaded the default was wrongly recorded. Or that MKDP has acted unreasonably or unfairly in seeking repayment.

I appreciate Mr H considers the default should have fallen away from his credit record by now. But I'm satisfied the default was filed by the original lender in 2010. MKDP bought the debt in 2013 so the relevant default was registered against the debt in its name then. And I'm not persuaded there are grounds for me to require MKDP to remove it now.

I appreciate this decision is likely to disappoint Mr H. But he doesn't have to accept it and he remains free to pursue any other remedies that might be open to him.

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