

complaint

Mr B complains that there was no contract between MKDP LLP and himself, and that MKDP sold his debt onto a party ("C") that wasn't regulated by the Financial Conduct Authority ("FCA").

background

Mr B had a current account with a bank ("H"). He said that H had failed to resolve a dispute with him. H had then sold his account onto MKDP in August 2013. Another business ("C") acquired MKDP as a business, in around 2015, so Mr B's debt was acquired by C. Mr B said that MKDP has no contract with him, and no right under the Data Protection Act 1998 to obtain his data. He also said that H hadn't served a default notice. Mr B is also unhappy that MKDP has passed his data without his authority to C, which Mr B said was an unregulated company. He said that this was a clear breach of data protection.

The adjudicator didn't recommend that the complaint should be upheld. He had seen nothing to say that the debt couldn't be bought by MKDP. He explained that as MKDP had bought the liability for a pre-existing debt, there was no need for MKDP to enter into a new contract with Mr B. Whilst the adjudicator noted that the debt had been acquired by C, which doesn't hold permissions from the FCA, he explained that the Financial Services and Markets Act 2000 makes provision for this. It is permitted as long as the business:

- isn't the original lender;
- isn't providing or promising to provide credit;
- isn't carrying out debt adjusting, counselling or collecting;
- has entered into a servicing arrangement.

The adjudicator noted that C wasn't the original lender, or promising credit, and that the debt was being serviced (or collected) by a company that does have permissions from the FCA. Because of this, he could see no reason for C to acquire the debt.

Mr B disagreed and responded to say, in summary, that the adjudicator hadn't taken 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.

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. When Mr B's account was assigned to MKDP, the rights and duties of the original creditor (here H) were

passed to MKDP. So, MKDP had the right to collect the debt without the need for MKDP and Mr B to enter into a new agreement.

Financial Services and Markets Act 2000 ("FSMA")

I note that the adjudicator has provided Mr B with the provisions of paragraph 55 of FSMA under which the acquisition of the debt by C would be permitted.

debt dispute

I cannot see that MKDP was aware that the debt was disputed when it bought the debt from H. So, I can't see that it has done anything wrong here.

default notice

I note that Mr B disputes that H defaulted his debt. But, I think that it would be more appropriate if he raised this with H. So, I don't propose to deal with this aspect of Mr B's complaint in this decision.

Data Protection Act 1998 ("DPA")

I note that Mr B believes that MKDP is in breach of the DPA by transferring his data to C. But I note that MKDP was acquired by C in 2015. So, as C had acquired MKDP's accounts and the data in those accounts as a consequence of the acquisition, I can't say that MKDP acted unreasonably here. But, if Mr B still has concerns about this, I think it would be more appropriate for him to raise this with the Information Commissioner's Office ("ICO"). Essentially the ICO is in a better position than us to make a legal finding on whether something complies with the Data Protection Act. We can decide whether we believe what's happened is fair and reasonable and that's what I've done here.

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