

complaint

Miss H complains that MKDP LLP is wrong to chase her for payment of a debt because it was written off by the original lender – and it's statute barred and unenforceable.

background

At the end of last year MKDP contacted Miss H to ask her to repay money it says she borrowed from a third party lender in 2008. The debt was assigned to MKDP two years later. Miss H replied to say she didn't acknowledge the debt and it's unenforceable under legislation because it's more than six years old.

MKDP says Miss H made a payment towards the account in May 2009, so that extends the relevant limitation period. But Miss H denies she made that payment and says the third party lender's statements also show it wrote off the debt.

MKDP referred back to the third party lender. It responded that the person who made the payment in 2009 had to pass security to do so. And MKDP says the write off Miss H refers to is when it bought the debt. So it's entitled to ask for repayment now.

Our adjudicator doesn't recommend the complaint should be upheld. He's satisfied the debt belongs to Miss H and it was assigned to MKDP in 2010, not written off. He considers it likely that Miss H made a payment in 2009 so MKDP wasn't wrong to ask her for payment. And only a court can decide if the debt is statute barred.

Miss H disagrees. She says even if a payment was made in May 2009 the limitation period ran out in May 2015 so the debt is statute barred now. And FCA guidance says it's wrong for a lender to pursue such a debt so MKDP should stop chasing her.

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 can see Miss H is unhappy that MKDP contacted her about a debt she thought was written off some time ago. She refers me to a statement from the original lender which says the debt was "written off". But I'm satisfied that referred to the lender's decision to assign the debt to MKDP – and it doesn't mean the money was no longer owing.

I appreciate Miss H may not remember making a payment towards the account in May 2009. But the original lender says the payer gave the correct security information. And it has provided some information about how the payment was made. So I think it's fair to conclude that the payment must have been made by Miss H or on her behalf. And I'm not persuaded it was unreasonable for MKDP to contact Miss H in 2014 and earlier this year to ask her to repay the debt.

Miss H says even if there was a payment in May 2009 the relevant limitation period is six years so that ran out in May 2015. And MKDP shouldn't continue to chase her for payment going forward because the Financial Conduct Authority ¹rules (which deal with statute barred debts) say (insofar as it's relevant) *a business must not continue to contact a customer*

¹ Financial Conduct Authority Handbook CONC 7.15.8

about a [statute barred] debt after she says she won't be paying it because it's statute barred.

I have no power to declare a debt statute barred, only a court can do that. But I can look at what's fair and reasonable. So our adjudicator asked MDPK if it accepts the debt is statute barred now. MDPK has agreed it is and says it will write off the debt and stop contacting Miss H about it. I think that's reasonable in the circumstances overall. And I'm not persuaded there are enough grounds here for me to fairly uphold this complaint.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 29 December 2015.

Claire Jackson
ombudsman