

complaint

Mrs Y complains about Hillesden Securities Limited (trading as DLC) asking her to repay a debt that she says is not hers. She says the debt was for her deceased husband and it was in his sole name. She says it was not a joint debt and she should not therefore be asked to repay the debt.

background

The adjudicator did not recommend the complaint be upheld. She was unable to conclude that Mrs Y was not originally a party to the debt and she could not instruct Hillesden Securities to stop pursuing her for the debt.

Mrs Y did not accept the adjudicator's conclusions and maintains she has never been a party to the debt.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not upheld this complaint.

Mrs Y says that the debt she is now being asked to repay has nothing to do with her as it was a sole debt in her deceased husband's name. Hillesden Securities however says that the debt is from a joint account with both Mr and Mrs Y, and Mrs Y is therefore liable for the outstanding debt.

There is unfortunately a limited amount of documentary evidence in this case. The original credit agreement would clarify who the parties on the agreement are but this is not available. Although the credit agreement is unavailable I am not persuaded that this is, in isolation, sufficient to instruct Hillesden Securities to cancel or write off the debt.

I have considered the other available documentary evidence and the verbal submissions from the parties to decide whether or not, on balance, Mrs Y is a party to the agreement.

Mrs Y accepts she spoke to Hillesden Securities about the account over the years but says this is something her and her late husband did on their separate accounts. Mrs Y's credit file shows an association to the debt but this does not show that she is actually one of the parties on the debt. It merely shows she was 'associated' with Mr Y, who was a debtor on the account. I may have expected that if Mrs Y was party to the agreement that she too would have a specific record in her name on her credit file for this debt. The absence of this may support her arguments that she has never been party to the debt. However, there is no actual requirement for the account to be recorded on her credit file and there may be reasons why it was initially recorded but dropped off some years ago.

Hillesden Securities has provided a copy of the initial information it received from the original creditor and this does show Mr and Mrs Y as joint account holders, or debtors. Some of the initial contact notes with Mrs Y also show that Mrs Y was aware in 2003 that the account was a joint debt.

While I accept that the original debt may have been in the late Mr Y's sole name, having given great consideration to the somewhat limited information in this case, I cannot be sure that it was a sole account. I think it unlikely that the initial details from the original creditor are wrong. And, I think that Mrs Y would have made it clear that she is not party to the debt when speaking with Hillesden Securities over the years. On balance, I think it more likely than not that Mrs Y is a party to the account and she has been since outset. I think it more likely than not that the contact notes from 2003 would have been considerably different if Mrs Y was not party to the account. It is likely that she would at the time have said that the account was a sole account in her late husband's name.

In the circumstances here, I do not think there are sufficient grounds to instruct Hillesden Securities to cancel the account or stop asking Mrs Y for repayment of the debt. It is possible that without a copy of the agreement Hillesden Securities may not be able to enforce the debt through the courts. This will however be for the courts to decide if action is taken to enforce the debt in the future.

my final decision

My final decision is that I do not uphold this complaint.

Mark Hollands
ombudsman