

## **complaint**

Mr G complains that MKDP LLP (MKDP) is unfairly trying to recover a debt from him. He says it hasn't provided information he asked for about a debt it is trying to recover. He wants MKDP to stop what he thinks is its illegal activities, remove the debt from his credit file and stop processing data about him.

## **background**

MKDP contacted Mr G about an outstanding credit card debt he's had with a bank. It told Mr G that the bank had sold the debt onto MKDP and it now wanted him to pay.

When Mr G first talked to MKDP about the debt he said he was talking to StepChange about his options. MKDP gave him some time to do that but Mr G didn't go back with a proposal. In early 2015 Mr G told MKDP he didn't acknowledge the debt and asked it to provide certain information to prove it was his, and that MKDP was legally entitled to ask him to pay. He says he's not convinced by the responses he's got that MKDP is a genuine organisation that's entitled to ask him to repay anything.

Our adjudicator didn't recommend that this complaint should be upheld. She thought that MKDP had provided Mr G with an acceptable copy of his credit agreement and said it had given her copies of his card account with the bank. The amount owing on that account matched the amount MKDP was asking Mr G to pay and she thought it likely that the card account with the bank had been Mr G's.

Mr G responded to say that he didn't think the adjudicator had addressed his complaint. He says, in summary, that she has interpreted a phone call as him acknowledging that he owed money – but says a debt can't be acknowledged in this way. He says MKDP were using tactics to pressure him into discussing the debt that were outside the FCA guidance for such things. He goes on to say that his complaint is not about whether the reconstituted credit agreement fulfils the legal requirements for such items, but about inconsistencies within the document, and thinks that we've been less than impartial in our investigation. He also thinks we were wrong to suggest he contacted MKDP about repaying the debt when he thinks their activities aren't legitimate.

## **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'd like firstly to apologise to Mr G if our initial opinion came across as anything other than impartial and well considered. I understand Mr G isn't well, and it wasn't our intention to add to any stress he's already suffering. And I can assure him that I've looked at all of the points he's made. I'm going to deal with the main issues he's raised rather than answer every individual comment, but as I said, I have read all of his correspondence.

I'll answer the points Mr G's made in his latest email to us, as he says this gives a breakdown of MKDP's errors and the particulars of his complaint. If I think there are any other relevant points I'll add these at the end. I've grouped his comments into what I believe are his main areas of concern.

*Is MKDP legitimate?*

Mr G points out that companies offering credit must be authorised by the Financial Conduct Authority (FCA) and act in accordance with its Consumer Credit sourcebook (CONC).

MKDP LLP is on our database of businesses regulated and authorised by the FCA, so I'm satisfied it fulfils the first point.

Mr G also says that MKDP hasn't made it clear who it is or what its role is. MKDP has previously explained to Mr G that it sent him a "notice of assignment" when the debt was transferred to it from the original lender, and Mr G hasn't challenged that. I haven't seen any evidence that it's anything other than a legitimate company. Mr G's made some other comments about MKDP generally. I don't think these are relevant to my decision, which is only about the individual circumstances of *this* complaint.

*Are MKDP's actions reasonable?*

Mr G says MKDP isn't following CONC 7.3.1, which says

*"In relation to debt collecting and debt administration, the definition of customer refers to an individual from whom the payment of a debt is sought; this would include where a firm mistakenly treats an individual as the borrower under an agreement and mistakenly or wrongly pursues the individual for a debt"*

Mr G says MKDP makes people think it can take action over a debt when it can't. In particular he says he was "cajoled" into talking about the alleged debt before he'd had time to think about whether it or the company was legitimate. He says MKDP is relying on that conversation as a "bargaining chip". He goes on to say it's not possible to acknowledge a debt over the phone.

The last point is not something this service is qualified to comment on – Mr G may have to challenge that in court. I can only decide whether I think MKDP has acted reasonably when it contacted him. It's told us how it checks that a portfolio of debt being transferred to it belong to the individuals in question. I see no reason to doubt that it followed its guidelines when this account was transferred. It's also sent us copies of statements for the debt which look genuine: the address matches the one Mr G gave us on his complaint form. The balance in the last statement matches the amount shown on later correspondence to Mr G. I think it's reasonable for MKDP to think it probably *is* Mr G's debt, although I appreciate he's now said he doesn't acknowledge it. So I also think it reasonable for MKDP to contact him on that basis.

Mr G also gave us an example of how MKDP *might* have accepted an offer of payment *if* he'd acknowledged the debt. He says this is a breach of guidelines. I'm not going to take that into account as it doesn't relate to what actually happened. I listened to the initial phone call he had with MKDP. In that call Mr G told MKDP that he was going to approach StepChange – a debt management charity – to help him. MKDP said it was willing to wait until he'd done that and could make a proposal for payment. That seems reasonable to me. MKDP tells me that Mr G didn't make contact again, nor could it reach him by phone for several weeks after that. Instead he told MKDP – about two months later – that he didn't acknowledge the debt and asked for certain information that proved it was his. It was only after MKDP had supplied that that it re-commenced collection activity. That seems reasonable to me.

*Has MKDP complied with Mr G's request for information?*

Mr G's says his main complaint is that he isn't satisfied with the information given to him when he made a request under s(78) of the Consumer Credit Act.

Mr G says he asked for a full statement of account for the alleged debt and only got a two line summary. I've seen a number of statements for the account with Mr G's name and address on them. I don't know if MKDP sent these to Mr G, or whether it got these from the bank at a later date, but I can see that the last statement balance matches the one on the summary sent to Mr G. I'd expect MKDP to send the full set of statements to Mr G if it hasn't done so already.

MKDP has explained to Mr G that a reconstituted copy of his agreement is a suitable response to his request, and Mr G isn't challenging that. He does however say that the copy agreement he's been sent is fraudulent: he thinks that's clear because of discrepancies within it. In particular he asked for an explanation of why there's one interest rate for standard purchases (14.9%) in one part of the agreement and a different rate in the terms and conditions (19.9%).

I asked MKDP to explain that and MKDP in turn asked the bank that originally provided the agreement. The response I got wasn't particularly helpful: I'm told the bank said the lower rate was for standard purchases and the higher for cash advances. Checking the rates shown on the statements referred to above I can see that interest was charged at 14.9% per annum on standard purchases and 27.95% on cash advances. Those figures match with the rates shown in the first part of the agreement.

That means MKDP hasn't been able to explain the figure of 19.9% for standard purchases that's shown elsewhere. It might simply be that there was a mistake in the terms and conditions. Whilst that's less than satisfactory it does happen. If that's the situation, I'd look to see if a customer has been disadvantaged. It doesn't appear that Mr G has, as he's always paid the lower of the rates (14.9%) for standard purchases.

I can't say that the discrepancy means that the copy agreement is fraudulent, because other than this it looks like other similar agreements. Nor can I decide whether it would be admissible in court as only the court can decide that. But I think MKDP has now tried to answer Mr G's question, even if it's been unsuccessful.

Finally Mr G thinks it reasonable for him to ask for a signed copy of his agreement given his doubts over the debt and his feeling that he's being bullied. I agree it's a reasonable request – but as explained above, a reconstituted copy is sufficient. I've not seen anything that shows me MKDP is bullying him.

I'm sorry that Mr G is unwell and that the stress of dealing with this complaint hasn't helped his health. But overall, I don't think that MKDP has done much wrong. Mr G might find that talking again to StepChange is useful as it might be able to help him deal with MKDP going forward, or explain any other options he might have. That is, of course, entirely Mr G's decision.

**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 Mr G to accept or reject my decision before 5 October 2015.

Susan Peters  
**ombudsman**