

complaint

Mr M recently checked his credit file and found that Aktiv Kapital (UK) Limited had reported a default in August 2010 against a credit card account. He says that he stopped using this card in 2002, and he does not accept there were any amounts owing on the account. He complains that, even if money had been owed, it would have resulted in a default by 2003, which is more than six years ago and so it should not appear on his credit file. He seeks its removal from his file.

background

The debt in question was purchased by Aktiv in March 2012 from another financial organisation, which had purchased it from the credit card provider. Our adjudicator noted:

- This complaint was about Aktiv, and so she would not consider the actions of either the card provider or the other financial organisation.
- The Financial Ombudsman Service could only consider events that occurred after 6 April 2007, when we obtained jurisdiction over this type of activity.
- We cannot determine whether a debt is either unenforceable or statute-barred (these are matters for the courts), but we can consider the way in which Aktiv had dealt with Mr M's concerns.
- Specifically, we can consider whether Aktiv acted unreasonably by attempting to pursue a debt that it should have identified was likely to be statute-barred.

Aktiv provided evidence (comprising account statements and system notes from the card provider) to suggest that Mr M made a payment to the account in June 2009. Our adjudicator said this payment could reasonably be taken to indicate Mr M had acknowledged the debt at that time. Because the date was less than six years ago, she considered Aktiv could reasonably believe that the debt was not likely to be statute-barred.

Our adjudicator also said that the gap between June 2009 (when a payment was made) and August 2010 (when the default was registered) did not appear to be obviously incorrect. She concluded it was not possible to recommend that the complaint should be upheld.

Mr M disagreed with our adjudicator, saying that he did not communicate with or make payments to the card provider in 2009 – he questioned the evidence provided by Aktiv. He added that the original alleged debt to the card provider was about £4,000 in 2003, but the figure reported on his credit file was some £11,000 – he questioned how this could be considered to be an accurate figure.

Our adjudicator responded to say that where evidence is limited, the Financial Ombudsman Service bases its views on the balance of probabilities – in other words, what we consider most likely to have happened in light of the available evidence and the wider circumstances. On that basis, she remained satisfied with the evidence provided by Aktiv.

Our adjudicator noted again that she could only consider in this complaint the actions of Aktiv in relation to the debt. Aktiv had purchased a debt of a little over £12,000 in March 2012, and she felt this figure was not inconsistent with the balance of Mr M's account in June 2009 (just over £9,000).

Mr M asked for his complaint to be reviewed by an ombudsman. He said that our adjudicator was prepared to accept hearsay and unsubstantiated evidence from Aktiv.

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 evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities. I find that I have come to the same conclusion as our adjudicator, for the same reasons.

Mr M says this matter revolves around whether it is reasonable to assume the (alleged) debt (if it existed at all) should be regarded as likely to be statute-barred. I agree that, if it had been reasonable to make such an assumption, then it would not have been appropriate for Aktiv to pursue this debt.

It is generally very difficult to prove a negative, and I sympathise with Mr M. He argues that he did not make a payment in 2009, while Aktiv argues that he did do so. I agree with our adjudicator it is more likely than not that he did make this payment. On that basis, in both our adjudicator's and my view, it was reasonable for Aktiv to assume the debt was not likely to be statute-barred.

my final decision

For the reasons explained above, my final decision is that I do not uphold this complaint.

Roy Mawford
ombudsman