

## **complaint**

Mr B complains that MKDP LLP, ("MKDP"), is pursuing him for two statute barred debts, it didn't respond to his complaint letter, and it has recorded the wrong amount for one of his debts.

## **background**

Mr B had two accounts with a lender ("L") which were sold to MKDP in July 2011. These accounts were numbered \*\*\*\*01 and \*\*\*\*07. Mr B says that the accounts are statute barred as no payments have been made on them in over six years and he has not written to L or MKDP to acknowledge the debts in that period. Mr B is also unhappy that he didn't receive a response in substance to his complaint letter to MKDP, and that it had recorded the wrong amount for one of his account balances. Mr B also wants a clear copy of the credit agreements for the accounts.

### *our adjudicator's view*

The adjudicator didn't recommend that the complaint should be upheld. She noted that a complaint about account \*\*\*\*07 had already been dealt with by this service in 2014, although she later noted that the previous complaint was not about the debt being statute barred. In that complaint the ombudsman had noted that even though a clear copy of the credit agreement hadn't been received, on balance, the ombudsman found that Mr B was responsible for the debt. The adjudicator also said that Mr B had previously acknowledged account \*\*\*\*01 in a previous complaint he brought to this service in 2014. She also didn't feel that MKDP's actions had caused Mr B sufficient inconvenience to warrant a compensation award. She also thought that the reason why MKDP didn't respond to Mr B's complaint was because of an ongoing complaint with this service.

Mr B disagreed. He referred to the ombudsman's decision in 2014 and said that this wasn't about the account being statute barred, but about the account's default date. So his current complaint hadn't been dealt with by this service before. He was also unhappy that MKDP hadn't investigated or acknowledged his complaint, and it had also failed to send him evidence of the last payments on his accounts and a readable copy of his credit agreement. Mr B also referred to the Financial Conduct Authority's Consumer Credit Sourcebook. He said that CONC 7.15 said it was wrong for a debt owner to demand payment of a debt after a consumer had said that he won't pay a debt because it is statute barred.

### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to MKDP on 5 October 2016. I summarise my findings:

I noted that Mr B had said that this service should treat MKDP's claim as statute barred under the Limitation Act 1980. Section 5 of that Act said that contract claims should not be brought to court after six years from the date on which the cause of action arose. But I could see that under sections 29 and 30 of the Act, the six year time limit can restart if Mr B had formally acknowledged the debt in writing and signed the acknowledgement. I noted that the acknowledgement needed to have been sent to the lender or the lender's agent and could be made by Mr B or his agent.

I thought it was possible that Mr B had formally acknowledged both debts within the last six years. I noted, in particular, that he had written to L in April 2014 about both debts. So, Mr B's claim that both the debts were statute barred was not clear cut. But, I also said that only a court can decide whether the debts are statute barred and therefore unenforceable. We don't hold the same powers as a court and cannot make judgements of this type.

I also noted that Mr B was unhappy that he didn't receive a response to his complaint letter. MKDP had said that it had placed his accounts on hold. I also noted that Mr B's complaint letter to MKDP dated 25 January 2016 only referred to one of the accounts. But, as Mr B's letter had dealt with some different issues to his previous complaints, I thought that MKDP should have responded to his complaint in substance. I thought it should pay Mr B £50 compensation for the trouble and upset caused to him by failing to do so.

I also noted that Mr B had requested a copy of his credit agreements. But, I could see that this issue has already been dealt with in a previous ombudsman's decision.

I also noted that Mr B would like confirmation of when his last payments were made. I had seen copies of Mr B's statements for account \*\*\*4007 and can see that payments of £36.14 were made in December 2009 and January 2010, and a payment of £7.71 was made in February 2010. I hadn't seen Mr B's statements for account \*\*\*4001, but noted that MKDP had requested these from L. When it received these, I thought that MKDP should tell Mr B the date of his last payment.

I also noted that Mr B was unhappy that the wrong balance was shown in his credit file. I could see that MKDP had said that it would amend the credit file when it received payment from L of the credited amount of £226.28 which reduced Mr B's balance. I had asked the adjudicator to ask MKDP if it had received this amount yet. MKDP said that it hadn't received this amount. But, on 1 August 2016, it had nevertheless reduced Mr B's balance and reported this to the credit reference agencies at the end of August 2016.

So, to resolve this complaint, I thought it would be reasonable for MKDP to pay Mr B £50 compensation for the trouble and upset caused by failing to respond in substance to his complaint letter dated 25 January 2016 and it should tell Mr B the date of his last payment on account \*\*\*4001.

Subject to any further representations by Mr B or MKDP, my provisional decision was that I was minded to uphold this complaint in part. I intended to order MKDP LLP to:

1. Pay Mr B £50 compensation; and
2. Provide Mr B with the date of the last payment on account \*\*\*4001 when it receives Mr B's statements from L.

MKDP responded to say that it had no further information to add to this complaint as it hadn't received the statements.

Mr B hasn't provided a response to my provisional decision.

## **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'm concerned that MKDP hasn't yet received the statements from L. I note that it has asked for the statements again recently, but these are still awaited.

As MKDP and Mr B haven't provided any fresh information or evidence in response to my provisional decision, I find no basis to depart from my earlier conclusions.

**my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of it, I order MKDP LLP to:

1. Pay Mr B £50 compensation; and
2. Provide Mr B with the date of the last payment on account \*\*\*\*4001 when it receives Mr B's statements from L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 December 2016.

Roslyn Rawson  
**ombudsman**