

The complaint

Mr L complains that Link Financial Outsourcing Limited cannot provide the deed of assignment for a loan it says it took over.

What happened

In March 2019 Mr L wrote to Link regarding correspondence he received in February concerning his liability for a loan. In his letter Mr L said he wanted to confirm whether Link's actions were lawful and requested the 'original instrument of indebtedness, or proof that said instrument still exists.' He also requested copies of contracts either under the Bill of Exchange Act 1882 or under the Law of Property Act 1925; a deed of assignment, not a notice of assignment. Mr L went on to say that if the documents were not in Link's possession then he would seek full recourse through the courts of law. He said he did not acknowledge any of the terms, conditions or timeframes that Link had set out in its correspondence.

Although Mr L stated his letter was not a complaint, Link opened its dispute process. In its final response Link stated it had not breached any of the guidelines that govern its organisation and business practices. It said it did not accept the content of Mr L's letter and did not consider his claim to be a valid dispute. It went on to say that as of 20 March 2019 Mr L remained liable for the outstanding balance of £3,635.42.

Mr L disputed this further and again requested the documents. He submitted a subject access request concerning his personal data. He also wrote a cease and desist letter to Link to stop its contact with him. Link responded to the subject access request but it made no further comment to Mr L regarding his request for the deed of assignment except to refer him to this service.

On 21 May 2019 a discount was applied, as a capital balance reduction, of £546.33 so the outstanding balance is now £3,089.09.

Mr L further complained, and Link issued a second final response. It said the account related to a loan Mr L had with a bank, I shall refer to as B, which was taken out on 27 December 2011 and defaulted on 18 February 2013. Link said the loan was passed to it on 29 June 2016.

Link also stated that it had contacted the original creditor to get further documentation but hadn't received any. So, it confirmed that the loan agreement was unenforceable but that the account balance remains collectable. It also said that it is acceptable for creditors to register and continue reporting of a default. It said Mr L remained liable for the outstanding balance of £3,089. It again concluded that it had not breached any of the guidelines that govern the organisation and its business practices.

Mr L brought his complaint to this service. He said Link had failed to provide the deed of assignment or proof that it exists and was acting unlawfully. Our investigator said Link had correctly told Mr L that the debt was unenforceable until documentation can be provided to confirm the debt and that Mr L could not be pursued in the courts for the outstanding

amount. But he said Link was correct when it told Mr L that it can continue reporting and registering the debt.

Mr L asked for a final decision from an ombudsman. He said he wanted legal proof that Link owns the debt. He said he could pay this company and then the original debtor may decide to try and make him pay it back. He said as Link can't provide proof of debt owed to it and cannot legally enforce the debt it is harassment by Link to communicate with him.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I realise this will come as a disappointment to Mr L but, having done so, I won't be asking Link to do anything further.

It's not a matter for this service to determine whether a debt is legally enforceable. That is for the courts to decide. Link has accepted that without further documentation from the original creditor, B, the loan agreement is currently unenforceable. I am able, however, to comment on whether I think Link has acted fairly by pursuing the debt it acknowledges is unenforceable.

Link has provided an activities and memos report along with copies of correspondence that has been sent to Mr L. There is a letter in the file dated 14 July 2016 from B which confirmed that B has assigned all of its rights, title and interest with respect to the loan account, including the outstanding balance, to A, another creditor, effective 29 June 2016. It said the balance sold was £3,635.42 as at the date of sale. B also confirmed that A was now the data controller of Mr L's personal data and that A had appointed Link to manage the account. B said that it had notified Link of Mr L's individual voluntary arrangement (IVA) as required by law and that Link would liaise directly with Mr L.

The file also contains a copy of a corresponding letter sent to Mr L, also dated 14 July 2016, from A. In it A confirms the same details of the sale of the loan, the outstanding balance, and its appointment of Link to manage the account on its behalf. It also acknowledged that the account was, at the time, protected under the terms of an IVA.

Link provided screenshots of the loan statements from B's account system which confirm the debt was noted as a write off on 14 February. This date corresponds to the date the account was defaulted. Link also has a copy of Mr L's passport on record.

Both Link and B confirm Mr L had an IVA at the time Link took over the management of the account. And in B's account file the last payment towards the loan is recorded as 4 April 2014. Mr L told this service that the IVA failed, and that he does not owe Link any money as he has no contract with Link, only with the original creditor.

While I understand Mr L thinks that Link shouldn't be communicating with him if it can't provide the necessary documents I'm satisfied that the evidence it has provided is enough to reasonably conclude that the debt arose from an account Mr L opened and operated. So under these circumstances I don't think it's reasonable or fair to expect Link to stop asking Mr L for payment or taking reasonable steps to recover the money. Although Link has acknowledged the debt is unenforceable, as I mentioned above, this is ultimately for the courts to decide. Should Link take enforcement action, nothing I have said would prevent Mr L from raising his arguments in court.

In his communication to this service Mr L has said that he is vulnerable. He has not given any further detail to me about this, but I would expect Link to take note of Mr L's admission in this regard, seek to understand more about Mr L's circumstances and respond in a sensitive and flexible manner.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 17 December 2020.

Maxine Sutton
Ombudsman