

The complaint

Mr P is unhappy that BW Legal Services Limited pursued him for debts that weren't his. He says he was the victim of identity theft and it's unfair for BW Legal to hold him responsible for loans he didn't take out. Mr P also complains about BW Legal's verification process and customer service.

What happened

BW Legal has been pursuing Mr P for two debts on behalf of its client, who I will refer to as D. The debts related to two payday loans that had been taken out with lenders I'll call L1 and L2 in May 2013.

Mr P says he was first contacted by BW Legal in early 2017. In July 2017, he told BW Legal that he'd never taken out the loans and believed he'd been the victim of identity fraud. And that he was unhappy about being pursued for debts that weren't his.

BW Legal provided Mr P with paperwork, which it said showed he'd taken out the loans. And it asked Mr P to provide information to support what he'd said about the loans being taken out fraudulently. But Mr P didn't provide anything. So, BW Legal continued to pursue Mr P for the debts until January 2020 when D told them to close the accounts because the debt had become statute barred. And D had decided not to pursue Mr P for the debts.

Mr P's unhappy that each time he rang BW Legal asked him to provide his date of birth as part of a verification process. He says he was uncomfortable providing the information as he'd been a victim of fraud. Mr P also says BW Legal didn't respond to his request to speak to a manager and didn't properly comply with a subject access request he submitted. Mr P says he has been caused a great deal of stress and upset by BW Legal pursuing him for debts he says are not his. So, he wants compensation.

BW Legal said the information it had obtained about the loans showed Mr P was liable for the debts. It explained that it asks customers for their date of births as part of its data protection checks and always responded to contact from Mr P. BW Legal accepted that they had been a delay in complying with Mr P's SAR and had apologised. It said the delay was due to an administrative error.

Unhappy with this response Mr P brought his complaint to our service where one of our investigator's looked into things for him. The investigator made enquiries with BW Legal, Mr P, the lenders and the bank the loans had been paid into. He established that both loans had been paid into Mr P's bank account. So, he concluded that Mr P was responsible for the debts and BW Legal hadn't been wrong when it pursued him to repay the money owed.

The investigator didn't think BW Legal asking Mr P for his date of birth was unreasonable and was part of its verification process. He acknowledged that there had been a delay in BW Legal complying with Mr P's SAR but said Mr P should contact the Information Commissioners Office (ICO). So, he didn't uphold Mr P's complaint. Mr P disagreed. He maintained he never took out the loans.

As no agreement could be reached the matter has come to me to decide.

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.

Having done so I've reached the same conclusion as the investigator and for roughly similar reasons. I'll explain why.

did Mr P take out the loans in 2013?

Based on the evidence, there are only two likely possibilities in this case. They are either that Mr P took out the loans or as Mr P has suggested someone else did. And he's been the victim of fraud. So, I need to decide, whether Mr P applied for the loans.

To help reach my decision I've considered:

- The applications for each loan
- The loan agreements
- The contact between Mr P and the lenders and
- The account the monies were paid into

I've seen the information in both applications, which are dated 3 and 31 May 2013 which have been provided by L1 and L2. They include Mr P's full name, his postal address, his email address, contact numbers, his employment history and salary, outgoings and his bank account details. The applications also include how long Mr P had lived at his address, length of employment and other loans he'd taken out with the lenders over the years. In my view, only Mr P, or someone close to him would know this level of detail.

I also note that the loan applications were emailed to Mr P to sign. If Mr P didn't take out the loans, and a fraudster did, I think that using Mr P's email address to complete the application was a risky step to take, as there was an opportunity of being caught if Mr P happened to open the emails. The investigator has also confirmed that the bank account the monies were paid into was in Mr P's name. I don't think it's likely that a third party would be happy for the loan funds to be paid into an account if they weren't going to be able to access the money. And Mr P hasn't told us that anyone else would have had access to his bank account at the time.

I've also looked at the contact notes between Mr P and the lenders at the time of the loan applications. I can see that the lenders were speaking to Mr P on his phone numbers about arrears and that Mr P agreed to double payments to get his account back on track. And at one stage a default notice was sent to his home address. Like the investigator, I think if Mr P hadn't taken out the loans receiving a default notice would've prompted him to contact the lenders, but I can't see that Mr P did this.

Mr P says he has been the victim of identity fraud. But he hasn't provided any evidence to support what he's said despite being given opportunities by this service and BW Legal. So, when I weigh everything up, I think it's more likely than not that Mr P made the loan applications. And that he knew about the loans. So, I can't say BW Legal have acted unfairly in holding Mr P liable for the debts.

I know Mr P has argued that the loans were statute barred, so he says BW Legal should not have pursued him. But, it's not for this service to determine whether the debt was statute barred. Only a court can do that. My role is to determine whether BW Legal has treated Mr P

fairly and reasonably in pursuing him for the debts. And for the reasons I've already explained I think it was reasonable for BW Legal to continue to chase the debts at the time of his complaint, and I don't find they did anything wrong here. However, I note that since then, things have changed, and BW Legal have let us know that C has decided to no longer pursue Mr P for the debts due to the time that has now passed.

verification process

Mr P has queried the questions he was asked by BW Legal as part of its verification process every time, he called them – in particular that he had to provide his date of birth. But I haven't seen anything to suggest BW Legal has acted unfairly or outside its usual process here. BW Legal is entitled to decide on the procedures it uses to verify account holders, which is used to protect customers. BW Legal needs to make sure it is speaking to the account holder. So, I don't think I can reasonably say it did anything wrong when it asked Mr P to provide his date of birth so that it could verify his identity. I note that Mr P says he was uncomfortable providing his date of birth as he says he was a victim of identity fraud, but as I've already explained I'm satisfied that this wasn't the case. So, his concerns were unfounded.

contact from a manager

Mr P says that he wasn't able to speak to a manager at BW Legal when he got in contact to try and sort things out on 19 August 2019. I've looked at the contact notes provided by BW Legal and I can see that whilst Mr P wasn't able to talk to a Manager on that day, he was promised that a Manager would call him back. I can see that this is what happened on 12 August 2019 when a Manager tried to contact Mr P. Unfortunately, Mr P wasn't available, but he did speak to a Manager on 24 August 2019. So, I'm satisfied BW Legal complied with Mr P's request. From looking at the chronology of the contact between Mr P and BW Legal, I'm also satisfied that BW Legal responded to any contact from Mr P and attempted to work with him to try and resolve the matter and address any queries or concerns he had. So, I can't say BW Legal has done anything wrong here.

subject access request

Mr P says BW legal didn't comply with his SAR within 30 days. But as the investigator has already explained to Mr P, data protection issues are a matter for ICO, not this service. I won't decide whether data protection law has been breached or whether there is outstanding information not supplied to Mr P. The ICO is better placed than this service to look at BW Legal's handling of Mr P's SAR. So, Mr P should contact the ICO if he wishes to pursue the matter further.

In summary, I realise Mr P will be disappointed by my decision, but I don't believe BW Legal treated Mr P unfairly in taking the actions it did.

My final decision

For the reasons I've given, my final decision is I do not uphold Mr P's complaint against BW Legal Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 November 2020.

Sharon Kerrison
Ombudsman