

The complaint

Mr B complains Arrow Global Limited are asking him to repay a debt he doesn't think they should be.

A number of other companies have been involved in contacting Mr B about this debt, but as Arrow are responsible for the complaint, I've just referred to them in this decision.

What happened

Mr B was contacted on 20 March 2020 by Arrow asking for repayment of a debt they said had been defaulted over ten years ago. He contacted them and said given the date of default was over ten years ago, as well as not having a record of it being defaulted, wouldn't it now be statute barred? He also asked them to tell him what the debt related to.

Arrow wrote to Mr B on 22 April 2020, and explained the debt was for an overdraft. Mr B said he'd lived at the same address for many years, so couldn't understand why he'd not been contacted about the debt. Mr B said any payments he'd been making he understood were towards a loan, not an overdraft, that he'd had with the same bank – and says he's never knowingly paid for a debt that was written off.

Arrow replied to the complaint. They said the limitation period of six years is if the account hasn't been acknowledged – and this can be in writing or by making a payment. Arrow said the outstanding balance is still enforceable because the last payment was made on 25 April 2016 for £10. Arrow added they'd written to Mr B, and sent him multiple text messages, between 2016 and 2020 but received no response. As a result of this, they didn't uphold Mr B's complaint.

Unhappy with this Mr B asked us to look into things. In doing so, he said after contacting a number of different parties he'd been told this was for an overdraft. He explained he'd never knowingly paid towards this overdraft because as far as he was concerned the debt had been defaulted in August 2009 and written off in 2013 after he'd complained about bank charges. He added he'd paid £500 in settlement of the overdraft when it was written off. Mr B says he asked for correspondence to help him understand the timeline and what's happened, but he was told there wasn't anything that could be provided. Mr B said it concerns him that he'd not been contacted for four years regarding the debt and as far as he's concerned the debt is now statute barred. Mr B asked us to confirm that an account he believed to be written off can't be resurrected after ten years without a default notice being issued and action taken.

One of our Investigators looked into things. He explained we don't have the power to decide whether a debt is enforceable, this can only be done in court. But we can decide if we think Arrow has acted unfairly by asking Mr B to repay a debt that's very likely not going to be enforceable in court. Our Investigator addressed the points raised by Mr B:

- The overdraft had been written off by the bank – there was no evidence to prove this had happened. Arrow said they'd asked the bank, who said they had no records of this agreement.
- If a default isn't issued then they can't enforce the debt – he's not seen anything to suggest not issuing a default has an impact on the enforceability of the debt.
- Due to lack of contact, wouldn't the debt now be statute barred – our Investigator explained the debt is likely enforceable if it's been acknowledged within the last six years, and he'd seen Mr B's payment towards the debt in April 2016.
- Overall – he felt there was no indication the debt wasn't enforceable, so he didn't think Arrow were acting unfairly in asking Mr B to repay the debt.

Mr B replied and didn't accept this outcome. He asked a number of questions, which I've summarised below:

- Where is the evidence the default notice was sent
- If the bank didn't write off the debt, why didn't they enforce it in over ten years
- What evidence is there the debt has been transferred over legally
- Where is the evidence to say he's acknowledged this debt – as opposed to believing it may have mistakenly related to something else
- How can a debt be enforced if there's no original evidence the debt still exists
- If this was a legally enforceable debt, why hasn't it been enforced in over 11 years

And Mr B summed up his concerns by saying it appears our Investigator said because he couldn't disprove the above points, Arrow don't have to, and he's required to pay the debt.

Our Investigator replied, and said:

- We can't consider whether the debt is enforceable or not, only whether it's clearly not enforceable and Arrow have continued to ask for payment in such circumstances.
- He'd seen the Notice of Assignment (NoA) from when Arrow bought the debt – and this shows the account purchased was an overdraft and included those account details. So, he felt Mr B did know what debt had been bought and had knowingly made a payment to that debt. Because of this, he felt the debt had been "acknowledged".
- And his understanding is that generally Arrow need to hold Mr B's repayment history and copy of the original lending agreement – but not all overdrafts require a lending agreement.

Due to this, overall our Investigator didn't feel Arrow were asking Mr B to repay a debt that would clearly be unenforceable in court.

Mr B didn't accept this. He asked for the paperwork we held, and that was processed as a Subject Access Request (SAR). Mr B added he didn't think it was reasonable for him to be expected to remember every detail, which is why paperwork should be provided. And, regardless of the confusion caused by the time lapse, he's satisfied the bank he held his overdraft with did write it off – because if they didn't why would they have taken so long to assign it. He said he didn't receive any of the documents Arrow say they sent him, including the NoA, how can it not matter there's no default notice, and due to this he thinks his view that the overdraft was written off is correct.

After receiving the SAR, Mr B wanted it noted that, as there's no default notice, the debt could also have been statute barred in 2013 which might explain why it's not been enforced. Because Mr B didn't accept the outcome our Investigator reached, the complaint's been passed 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.

I think it's important to explain, like our Investigator did, that I can't decide whether the agreement is enforceable as Mr B has asked us to do – that is something only a court can decide. I can consider whether I think Arrow have acted fairly in asking Mr B to repay the debt, taking account of whether the debt would clearly be unenforceable if this matter went to court. So, I've noted Mr B's point about the debt potentially being out of time in 2013 which might be why the debt wasn't enforced, but it isn't something I'll comment further on.

Mr B has raised several issues, so I've addressed them under separate headings.

Was the debt written off – and other actions Mr B says his bank should or shouldn't have done

Mr B has said, from the beginning of him knowing this debt was for an overdraft, that he understood it to have been written off – and explained he'd paid £500 towards it which he believed was the final settlement.

But here I'm considering the actions of Arrow in asking him to repay the debt. So, upon being told about this, I'd have expected Arrow to contact Mr B's bank, and ask for confirmation of whether the debt was written off or not. Having bought the debt in good faith then beyond that, there's very little I think Arrow would be able to do – if the debt was written off by Mr B's bank but later sold to Arrow, then this would be a mistake by them, not Arrow. And, it'd need to be Mr B's bank who tells Arrow this, so they know to no longer ask for the debt to be repaid.

Arrow have said Mr B's bank replied to Arrow and said they had no evidence of writing the debt off. We've asked them for evidence of this reply from Mr B's bank to them, but they've said it was over six years ago so they don't have any records. This isn't surprising to me, or unusual as financial businesses aren't always required to keep records over six years. Mr B also unfortunately doesn't have evidence of the debt being written off. So, I need to decide what I think is most likely, based on the information I do have. Arrow have been able to provide Mr B's account statements. The account was seemingly defaulted in August 2009 with a balance of around £5,500. Going back over them, I can't see any payments of £500 being made in the months prior to the account seemingly defaulting – something Arrow have said they also told Mr B in November 2013. Under the circumstances, I can't say Arrow are acting unreasonably in asking Mr B to repay the debt – as there's no evidence to back up what he's said about it being written off.

Mr B has also raised a number of questions about why the debt hasn't been enforced in such a long time. It's important to say that enforcing the debt, and asking for repayments to it, are two different things. Enforcement of the debt would be an action that the legal owner of the debt would usually take in court. But, as I've explained above, this complaint is against Arrow for asking for repayment of the debt, so I can't say why Mr B's bank may or may not have carried out certain actions.

The assignment of the debt – and has it been acknowledged

Mr B has said he's not convinced the debt was taken over properly by Arrow, so asks how he can be expected to pay for it when he's not been told about this.

Arrow say they sent the NoA to Mr B, and have provided a copy of it to us. The NoA is dated 19 July 2013, and is correctly addressed to Mr B. I appreciate Mr B says he didn't receive this, which is possible. But as Mr B has said it's not necessarily reasonable to expect him to remember every detail several years on. Memories can and do fade over time, so it's also possible Mr B did receive this, and simply doesn't remember now.

So, on this point I think it's more likely than not Arrow did send the NoA correctly to Mr B – which means I'm satisfied they've fulfilled their obligations to notify Mr B about the transfer of the debt to them. And, as it was addressed correctly, it seems more likely than not he did receive it.

In relation to whether the debt has been acknowledged within the last six years I think it has. Arrow have said they've written to Mr B on many occasions and sent a lot of texts as well. Mr B says he didn't receive any of these contacts, but as Arrow have Mr B's correct address, it seems more likely than not to me he probably did receive at least one of these contacts since the debt was taken over by Arrow in July 2013.

But, even if I accepted Mr B didn't get any of these letters or texts, then I still think the debt has been acknowledged. I say this because after Arrow took over the account, payments were made to it from February 2014 until 25 April 2016. Mr B has said these payments were made in error, as he understood the payments to be made regarding a loan.

The NoA, which as I've said I think Mr B more likely than not did receive, says the debt is for an overdraft and includes the account details. So, on balance I think this would have been enough for Mr B to know that he was paying off his debt for the overdraft. In addition, if someone had paid money for several years to a debt they believed had been written off, I'd have expected them to get in touch with Arrow and ask for the money to be repaid shortly after realising they might have been paying for something in error. Mr B has said he realised he was paying in error for this debt in April 2016. But I've not seen anything to suggest Mr B did ask for the money back or contact Arrow about it.

So, taking everything into account, I do think Arrow properly notified Mr B about taking over the debt, and Mr B acknowledged the overdraft debt by knowingly making payments to it for just over two years.

Does the lack of evidence of a default make the debt clearly unenforceable

Mr B has made this argument, but I can't agree.

During the course of this complaint Mr B was told his account defaulted in August 2009 and he's not disputed this. Given the time that's passed any default would have been removed from his credit file, and his bank wouldn't be expected to still have any paperwork.

So, I don't think the lack of evidence now of the default means it was never applied. I've seen Mr B's statements, and these show from January 2009 onwards he was over his agreed overdraft limit. In August 2009, when Mr B says his account was defaulted, it looks like it was transferred to the bank's recoveries department.

Given the timespan of when Mr B wasn't within his agreed overdraft limit, and the transfer to the bank's recoveries department, it seems likely the account was defaulted.

So, I don't think the absence of evidence of the default means Arrow can't ask Mr B to repay the debt. And, as I've mentioned above, there is evidence of the original debt in the form of bank statements.

Summary

Taking everything into account, I'm satisfied Arrow are acting fairly in asking Mr B to repay the debt. I'm not clear on Mr B's current financial situation, but I'd encourage him to engage with Arrow to try and reach an agreement for how to repay this debt. I'd also remind Arrow they're obliged to treat Mr B positively and sympathetically if he's in financial difficulties currently.

My final decision

For the reasons I've explained above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 November 2021.

Jon Pearce
Ombudsman