

The complaint

Mr L complains Lowell Financial Ltd are asking him to repay a debt on a credit card they shouldn't be. Mr L's also unhappy they're reporting the debt to the credit reference agencies (CRA's).

What happened

The information I have shows the credit card in question was taken out on 29 July 2011 with a lender I'll call C. The information shows the account was sold by C to Lowell on 18 February 2016. On 6 April 2016 a notice of assignment (NOA) was sent to Mr L to say Lowell were now the owner of the account.

Within a few days Mr L had contacted Lowell to tell them to stop processing his data. And since then he's sent them many emails and letters expressing concerns over this debt. I've summarised what I consider to be his key points:

- Continued contact from Lowell about this debt is harassment and is having a significant impact on him and his family – including stopping him from getting a new mortgage
- Lowell have failed to provide a copy of the application he apparently completed with C. Because of that he doesn't think it's right for them to ask him to repay this debt
- He also doesn't think it's right for Lowell to report this debt to the CRA's because it was defaulted with C previously in 2012 / 2013 so it has to come off his credit file
- Although he'd previously said he did have an account with C, he was mistaken and actually he's never held an account with C, so this is fraudulent.
- He's got a letter from C who have said he doesn't have an account with them, and isn't happy Link are ignoring this evidence of his.

Across a number of responses over the years Mr L has been contacting them. Link have said:

- They didn't think their contact asking Mr L to repay a debt that they believed was his, was harassment
- Lowell couldn't provide a copy of the actual application, but they did provide a copy of a reconstituted agreement, and statements showing what'd happened on the account – all the information they received from C showed the account was his, so they were right to ask him to repay it
- They asked C for evidence the account had been defaulted, and said C had told them the account hadn't ever been defaulted before Lowell purchased it – so they were right to report the account conduct to the CRA's
- Based on the information they had they believed the account to be Mr L's, but he should contact C if he felt the account had fraudulently been taken out in his name
- Link asked C about the letter, and they'd told Link it related to a different credit application. So the account was still Mr L's, and he was still responsible for the debt

It later transpired the account Mr L is disputing was opened online with C, who have said they wouldn't have held a signed application for Mr L because of that.

Unhappy with their responses, in August 2020 Mr L asked us to look into things.

One of our investigators did so – which included asking C for an explanation on why they'd sent Mr L a letter saying he didn't have an account with them. C replied to explain the letter was for a fixed term account which Mr L didn't take up. But they explained he did have the credit card Lowell had quoted. They provided statements of the credit card account which showed Mr L's name and address – as well as an internal screenshot showing Mr L's name, address and date of birth.

After considering all the evidence Mr L, Lowell and C had provided, our investigator didn't uphold the complaint. She explained Lowell aren't responsible for the original application of the credit card – so her role is to decide whether there's enough evidence to say if Lowell have acted fairly and reasonably in asking Mr L to repay the debt. And, having considered everything, she felt there was enough evidence to say Lowell were acting fairly.

Mr L didn't accept this. He provided another copy of the letter from C saying he didn't have an account with them and said he wanted a copy of his application which showed his signature – but knows Lowell can't provide one because he never signed any such agreement. Mr L also said he'd spoken to his solicitor and asked why Lowell are allowed to register an account as being in default on his credit file when it's already been paid off.

Mr L also provided information from the CRA's which he said showed Lowell reporting the debt since 2016, when the account was opened in 2011. He said he'd asked C for information about the IP address used to open the account, which they'd provided, and it was a different internet provider to the one he uses. As Mr L didn't accept our investigator's outcome the case has 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.

Mr L has sent a substantial amount of emails to Lowell over the years he's been in dispute with them about this account. I'd like Mr L and Lowell to know I've read every single email that we've been provided with – but I'll only be commenting on the key issues in this complaint as I see them.

The key issue for me to decide is whether Lowell have enough information to be reasonably satisfied they're asking Mr L to repay a debt that's his.

To decide this, I've looked at the information C have sent to Lowell. This information includes a reconstituted credit agreement, statements and internal screen prints. I've also taken into account what Mr L has said during the course of his contacts.

Are Lowell acting fairly by treating the debt as his?

There's no requirement for credit providers such as C, or debt collectors such as Lowell, to provide the actual copy of a credit agreement if a reconstituted agreement can be produced. In Mr L's case, I can see that's what happened and that he's unhappy with it. But the rules allow for a reconstituted copy of the agreement to be sent so I can't say Lowell have acted incorrectly by doing this.

That on its own wouldn't be enough under the rules. There also has to be some evidence of the account activity. So, I've looked at the statements provided. These show Mr L's name and includes the same address he's given our service when contacting us. The statements are dated from September 2011 to April 2016. This appears to be correct given the account was taken out at the end of July 2011 and sold to Lowell in February 2016. The statements show, for a period of time, what appears to be normal use of a credit card. Later on, the statements seem to show a payment arrangement was reached and smaller payments of £10 and then £20 were being made with no interest being applied or purchases made to the account.

The internal screen shot includes Mr L's name, address and date of birth. Again, the name and address match with the statements – and the date of birth given to us matches what C have recorded on their systems.

In addition, the emails Mr L sent Lowell from April 2016 did say he'd had an account with C, but the account had been defaulted in 2012 / 2013. It's not until August 2020, over four years after Mr L started his dispute with Lowell, where he's said he was confused and that actually he never held an account with C. I think Lowell wouldn't be acting unreasonably by thinking, up to this point, he'd confirmed he had an account with C.

So, taking all of that information into account then, I think Lowell are acting fairly by treating the debt as Mr L's given all the personal details provided match his, asking him to repay it, and reporting it on his credit file.

Are Lowell subjecting Mr L to harassment?

I've also interpreted Mr L's comments about harassment as being because Lowell are asking him to repay the debt and won't remove it from his credit file. But, for the reasons I've explained above, I'm satisfied they're acting fairly in treating the debt as his.

I've also not seen anything to suggest Lowell have harassed him when contacting him – from what I can see, he's actually contacted them on more occasions than they've contacted him.

C's letter saying Mr L doesn't have an account with them

Mr L told Lowell he didn't take out an account with C and produced the letter which said he hadn't.

In that scenario, I'd expect Lowell to have asked C about this, and I can see they did. C told Lowell this was for a different type of account and Mr L had taken out a credit card. This is the same information they told our investigator, and I don't think Lowell have acted unreasonably in relying on the information C have given them. And, if this information is wrong in Mr L's opinion, he could raise his concerns with C.

With that information in mind, combined with the other information I've referred to above, I think Lowell again are still acting correctly by asking Mr L to repay the debt.

Mr L says the account was defaulted in 2012 / 2013

In relation to Mr L's comments about the default having been recorded in 2012 / 2013 this clearly would be a concern. I wouldn't expect an account to have been defaulted on more than one occasion. In Mr L's situation, I'd expect Lowell to have asked C what happened with this and whether the account had been defaulted before.

I can see Lowell did that, and C said the account hadn't ever been defaulted before. Mr L has also said he'd got evidence of this happening, but Lowell have said he's never provided it. I also can't see he's provided this evidence either, to Lowell or to our service – so in the absence of anything to the contrary I can't say that Mr L's credit card debt was defaulted in 2012 / 2013.

Other concerns

Mr L has also raised a number of other concerns – such as he never took out the account.

As I said earlier, I'm only considering whether Lowell have enough evidence to fairly expect Mr L to repay the debt. Whether the debt is his or not isn't something I can decide in this decision. If Mr L wishes to pursue his further concerns, he may wish to discuss them with C directly.

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 L to accept or reject my decision before 30 August 2021.

Jon Pearce
Ombudsman