

The complaint

Mr F has complained about Lowell Financial Ltd pursuing him for two accounts. He says one of them was taken out fraudulently in his name, and he says the other is unenforceable.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

This complaint surrounds a credit card and a short-term loan which were opened in 2015 and 2016 respectively, and which were sold to Lowell in 2019 and 2018 respectively.

Mr F says the credit card was taken out fraudulently in his name. And he says Lowell shouldn't be contacting him about the short-term loan as it's an unenforceable debt. He's also complained about Lowell's handling of his complaint and a subject access request.

Our investigator looked into things independently and didn't uphold the complaint. Mr F asked for an ombudsman's decision, so 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.

Regarding Mr F's dispute about the allegedly fraudulent lending of the credit card: that complaint should be looked at against the original lender, rather than Lowell. Because it was the original lender who lent the account, and not Lowell.

In different circumstances, we might have looked at such a dispute in a case against Lowell – for example, if the original lender no longer existed. But that's not the case here. And it wouldn't be fair to hold Lowell responsible for the original lender's actions, which took place long before Lowell were ever involved, when the original lender still exist and are still perfectly capable of being complained about. Mr F can either make a complaint to the original lender directly himself, or he can ask our investigator to help him get a complaint going. And if he's then unhappy with the answer the original lender gives him, he may then be able to bring that matter to us as a separate case to this one.

I hope I can reassure Mr F that if the original lender – or our service – find that the credit card was taken out fraudulently, then it will be taken out of his name and he will not be pursued for it further. Selling on accounts does not mean that fraudulent debts to go undealt with in the way he suggested. It is normal to sell and buy debts, and of course we'd expect Lowell not to pursue Mr F if it's found that this isn't his account.

I'll now turn to the short-term loan. I have read all of Mr F's arguments about enforceability, and I appreciate his point of view. However, only a court can decide whether a debt is legally enforceable or not – that's not something I have the power to determine. It falls outside of our remit. I also can't make findings on Lowell's handling of the court action itself, which is also out of our jurisdiction. So I can't tell Mr F whether this account is enforceable or not, nor make Lowell give him a document saying that it isn't.

Moreover, a debt being unenforceable usually just means that the debt owner can't take certain legal action against the customer. It doesn't mean that the debt ceases to exist or that the owner can no longer contact the customer about it ever again. The debt still exists, whether it's enforceable in court or not.

Here, Lowell have provided key documents for the short-term loan, such as the credit agreement, account statement, and the notice of assignment, showing that it's a valid debt. And there does not seem to be any dispute that it was, in fact, Mr F's account. So it seems reasonable for Lowell to contact Mr F about this genuine debt of his, and to ask him to repay the money he owes them.

I understand Mr F is unhappy that Lowell didn't fulfil a subject access request (SAR) in response to an email. However, that email came from an address that was not on file, under a name whose spelling did not match the name on the account.

So it was reasonable for Lowell to try to find out the identity of the person who sent this email, before agreeing to send this person all of Mr F's data. They were both allowed and expected to do this under the relevant Information Commissioner's Office (ICO) guidance. And the information they asked for was reasonable and straightforward to provide. If businesses didn't check identities like this, then anyone could just email in asking for anyone else's data – including sensitive personal and financial information. And that would not be right. So it was sensible of Lowell to check who had really emailed them this SAR request. Because the person who emailed them didn't provide the necessary identifying information, it was fair for them not to send all of Mr F's data to this previously-unknown, unverified email address. Mr F pointed out that Lowell had otherwise written to him – but that was to contact details they'd verified as actually being his. If Mr F feels that Lowell have breached data protection rules, he is able to take this to the ICO as well, who look after data protection issues. But I have not found that Lowell got things wrong here.

I also understand that Mr F is unhappy with how Lowell handled his complaint, and that he feels they obstructed him. But as our investigator explained, complaint handling is not a regulated activity that we cover. So those points are outside of our remit. However, it may be helpful if I note that Lowell did look into Mr F's complaint and provide a final response well within the appropriate timescales.

My final decision

For the reasons I've explained, I don't uphold Mr F's complaint in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 October 2022.

Adam Charles
Ombudsman

