

The complaint

Mrs W is unhappy Lowell Financial Ltd are pursuing her for a debt she says is not enforceable and which is statute-barred. Mrs W says she has no knowledge of making the payments Lowell Financial Ltd are claiming she's made, and therefore she doesn't believe she should have to settle the debt.

What happened

A copy of an e-signed Fixed Sum Loan Agreement, dated 25 June 2014, shows that Mrs W took out a loan for £10,000 with Company H which started on 26 June 2014. The loan was to be repaid over 36 months with a monthly repayment of £328.78. The total cost for credit was £1,836.08, therefore making the total amount repayable £11,836.08.

On 6 May 2015 Mrs W was issued with a default notice by Company H, as she had failed to pay in full the instalments due since March 2015. The arrears at this point were £750.23.

On 31 August 2015 the debt was sold to Company L, and they appointed Lowell Financial Ltd to manage recovery of the outstanding debt on their behalf. Mrs W was informed of the change in ownership of the debt by letter on 17 September 2015. The balance outstanding at this time was £9,353.70.

On 3 January 2016 Mrs W sent Company H and Lowell Financial Ltd a debt management company (Company C) templated letter to explain she was working with Company C regarding her debts and asked for 'breathing space' while she did this. Lowell Financial Ltd responded, and put Mrs W's account on hold for 30 days.

Lowell Financial Ltd noted that Mrs W informed them on 16 February 2016 that she was working with a debt charity (Company S), and Mrs W's account was again put on hold.

Company S have recently been able to confirm that a proposal was put to Lowell Financial Ltd on 29 February 2016 for payment of £90.48 per month. And Lowell Financial Ltd's internal screenshots show that this monthly payment was made for several months from March 2016 until July 2017 to the debt in question, with the payment recorded as being received from Company S.

Referring to their notes, Lowell Financial Ltd say that they also had contact with Mrs W on 27 October 2016 when she told them she had changed her surname.

From August 2017 the monthly payments towards the account reduced to £1.00 and then to £0.85. Company S's recent submissions confirmed that they had made a proposal to Lowell Financial Ltd on 29 August 2017 for a token payment plan (TPP) for the account. And they confirmed, according to their records, the plan was closed on 21 December 2018.

When payments stopped being received, Lowell Financial Ltd contacted both Company S and Mrs W. On 1 April 2019 Lowell Financial Ltd's notes record that Mrs W informed them she was still dealing with Company S and that she had a Debt Relief Order (DRO) with them – although recently, Mrs W has confirmed to our service that she never entered into a DRO.

Due to no further contact from Mrs W, Lowell Financial Ltd conducted a trace in July 2020 and located Mrs W at a different address where they wrote to her. Mrs W contacted Lowell Financial Ltd via their website on 30 April 2021 challenging the reporting of defaults. Lowell Financial Ltd responded to this, but as they then received no further response from Mrs W they continued to contact her. And when they were approached about a different account Mrs W had, they also included information about the account in question when they responded to Mrs W on 18 February 2022.

Lowell Financial Ltd have said they had email contact with Mrs W throughout March 2022 about both accounts. However, Mrs W said that she didn't accept liability for the account in question saying it was statute-barred. Lowell Financial Ltd didn't agree, and so Mrs W brought the matter to our service.

Our Investigator didn't uphold Mrs W's complaint. They said it wasn't possible for this service to determine if a debt was statute-barred as that would be for a court to decide. And overall, they felt that Lowell Financial Ltd had fairly pursued Mrs W for the debt given they had evidence that payments had been made towards the debt by Company S towards the account in question.

Mrs W didn't accept this as she had contacted Company S who told her they were unable to find any record of a payment plan for her. Mrs W said while she had sought Company S's advice, she had not had a payment plan with them, and she denied having made payments to the account; therefore, given the time passed, she maintained that the debt was now statute-barred.

Our Investigator made further enquiries and Company S was able to confirm the dates and basic details of proposals that were made to Lowell Financial Ltd (as described above). The Investigator therefore maintained that Mrs W's complaint should not be upheld.

As Mrs W felt she had not acknowledged the debt within relevant timeframes or made any payment to it, she still felt the debt was statute-barred and so requested an Ombudsman look at the case. So the complaint 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 outcome as our Investigator for broadly the same reasons.

Before I set out the reasons for my decision, I think it would help to explain the scope of what I can consider. Mrs W has maintained throughout that this debt is statute-barred; however, as our Investigator already explained, it is not for this service to decide if a debt is statute-barred – that is something for the courts to decide. Similarly it is not for this service to decide whether a debt is enforceable, as that would be the court's decision. So in this decision I make no comment on whether the debt is statute-barred or enforceable.

What I am able to consider is whether Lowell Financial Ltd have acted fairly and reasonably in their actions of collecting the debt on behalf of Company L who own the debt. And overall, based on the submissions and evidence available to me, I think they have.

I think it was reasonable of Lowell Financial Ltd to conclude that the debt originally with Company H is a debt that belongs to Mrs W. The available Fixed Sum Loan Agreement

supports this, and it is the same debt that was sold by Company H to Company L - Mrs W was notified of this. Furthermore, Mrs W has not said that she did not initially take out this loan or that it did not belong to her. So I think it's fair to say this debt belonged to Mrs W and it is something she was legally responsible for repaying.

In view of this, I've next considered whether Lowell Financial Ltd can now fairly seek payment from Mrs W.

Mrs W has maintained throughout that the statute of limitations applies to her case as she has not made a payment or acknowledged the debt in any way over the last six years – the time period considered under the statute of limitations for the creditor to act.

Mrs W has accepted that she did have dealings with Company S about her finances, but has said she did not recall a payment plan being arranged for her. And she has submitted that when she made an enquiry to Company S herself, they were unable to find any record of dealings with her based on the information she had given them.

Lowell Financial Ltd approached Company S as well with the details of the debt in question. While Company S were unable to locate a complete file, they were able to confirm to Lowell Financial Ltd the basic details of the proposals that Company S put to Lowell Financial Ltd, as described above.

The record of payments that Lowell Financial Ltd hold in relation to the account in question do reflect the proposals Company S described. The last payment showing to the account was made, by Company S, for £0.85 in December 2018.

It may help Mrs W to understand that where evidence is incomplete, inconclusive, or contradictory, I've made my decision on the balance of probabilities – in other words, this means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

I understand Mrs W feels strongly that she has not engaged with this debt for several years, and I am mindful of the impact Mrs W says such an outstanding debt will have for her and her family. And so while I realise this will be disappointing for Mrs W, it is after careful consideration that I think it's more likely than not Mrs W made payment - through Company S – towards the debt within the last six years.

I say this as the last payment was made in December 2018 through Company S and Mrs W accepts she did engage with Company S. In addition, Lowell Financial Ltd's notes show Mrs W mentioned Company S to them in 2016 and 2019 which hint at discussions relating to the account, and suggest Mrs W was dealing with Company S as she did not wish to deal with Lowell Financial Ltd directly. And, finally, Company S were able to say they made the above proposals for the account to Lowell Financial Ltd.

In the absence of the calls between Lowell Financial Ltd and Mrs W, it's difficult for me to know what may have been said. However, on balance, I think Mrs W more likely than not engaged Company S to help her with her finances, which included proposing and then making payments to the account being considered under this complaint.

So from what I've seen, I think it's fair to say this debt belongs to Mrs W – and she's made payments towards it within the last six years. Because of this, I believe it's reasonable for Lowell Financial Ltd to engage with Mrs W to arrange repayment of this debt. Going forward I would remind Lowell Financial Ltd of their obligations to treat customers fairly.

My final decision

For the reasons above, my final decision is that Mrs W's complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 16 March 2023.

Kristina Mathews
Ombudsman