

The complaint

- Failed to send him appropriate evidence to say they'd taken over the debts, and have used his data illegally
- Are contacting him, as he's got disputes over the two accounts they've purchased, and says they're bullying and victimising him by affecting his health when he has a protected characteristic
- Have refused to remove the defaults for the two accounts
- Sent him a link to a marketing survey which he considers spam and has asked them not to do so previously
- Ended a call with him saying he was swearing at them when he wasn't – making him feel discriminated against

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements below, and they form part of this final decision.

I've seen from letters sent the debts were bought by a member of the Lowell group who are the debt purchaser, who then asked Lowell Financial Ltd to act as the debt collector. The first account was bought on 5 August 2021 from a company I'll call L for £261.08, and Lowell wrote to Mr W with a Notice of Assignment (NoA) on 16 August 2021. The second account was bought on 27 September 2021 from a company I'll call O for £1,912.89, and Lowell wrote to Mr W with a NoA on 14 October 2021.

Mr W raised a number of concerns, which I've listed out above.

In his contact with us Mr W has set out his health conditions. I thank Mr W for sharing those with our service. I've not listed them here out of respect for his privacy, but I want Mr W to know I have taken them into account when deciding the outcome of his case.

Lowell said they did send Mr W the NoA's, and that's all they needed to send to prove they're now the owner of the accounts. But, as Mr W has queried this, they've asked L and O for the original credit agreements and statements which they'll forward on once received. So, they didn't think they'd done anything wrong on this point or had used his data incorrectly as they owned these accounts now. In relation to the contact they felt this was all appropriate and had now passed Mr W's accounts over to their specialist team to support him. They said although they'd not found any evidence they'd acted incorrectly, they said sorry Mr W considered this to be the case, as it was never their intention. As for the defaults they said these were applied by L and O respectively, and as new owners of the debts they were required to continue reporting them. They were though aware Mr W had raised disputes over them with L and O. As a result of all of this, they said since Mr W told them he'd contacted the Ombudsman they'd not contacted him for repayment of the debts and had placed a hold on his account.

In a separate later response Lowell said the email survey Mr W received didn't amount to marketing, as no product or service is advertised for sale. They said the email was sent to an

address Mr W had previously used to confirm the account was his and opting out previously wouldn't prevent this kind of contact. They noted Mr W had been told again how to stop these emails, and he'd followed the relevant instructions. This means he shouldn't receive any more contact like this. In relation to the phone call Lowell accepted their agent had made an error, and Mr W hadn't sworn at them as their agent suggested. Lowell offered to pay Mr W £75 compensation for this error.

Unhappy with this Mr W asked us to look into things. One of our Investigators did so, but ultimately felt Lowell weren't required to do anything further.

Mr W didn't accept this, so the complaint's been passed to me to decide.

What I've provisionally 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 firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr W's complaint in considerably less detail than he has. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

I can see Mr W knows this, but just for clarity I'm only able to look into the actions of Lowell in relation to this complaint – I can't decide if L or O have or haven't acted fairly.

I think though Mr W does need to understand the actions of L, and O, are separate from Lowell. When Lowell purchased Mr W's debts, they didn't automatically take on responsibility for L or O's actions. I say this because I can see at times Mr W has referred to L and O as Lowell's clients and is seemingly holding Lowell responsible for their actions which won't usually be correct.

I can see our service has considered a complaint against L – and our outcome here was that L should take the debt back from Lowell, but the default should remain as a fair reflection of how the account has been run. Mr W and L accepted this outcome. We also have a complaint against O, but that hasn't been assessed yet.

Failed to send him appropriate evidence to say they'd taken over the debts, and have used his data illegally

It's not uncommon for lenders to sell debts on to debt purchasers, who then ask debt collectors to contact consumers for repayment of the debt. Generally, debts are purchased in good faith, and I'd usually expect any lender to make any debt purchaser aware if there is a dispute – as the debt purchaser simply wouldn't know if there was an issue.

As I've mentioned above, I've seen the NoA's from when Lowell bought Mr W's two different accounts. The letters from Lowell about the accounts with L and O both say they are now the owners of the accounts – and provide a link to Lowell's website about how they'll use Mr W's data.

My understanding of Mr W saying they're using his data illegally is because they're not the owners of the accounts – but, as far as I can see they are. So I can't say they've done

anything wrong in holding and using his data to fulfil their obligations for contacting him regarding the debts.

If Mr W has further, specific, concerns about how Lowell have used his data he can take them to the Information Commissioner's Office, but I don't intend to uphold this element of Mr W's complaint.

Are contacting him, as he's got disputes over the two accounts he's purchased, and says they're bullying and victimising him by affecting his health when he has a protected characteristic

I can see Mr W has reported his concerns about Lowell's behaviour to the Police. As they're the appropriate body to decide if a crime has been committed, I won't comment further on whether he's been cyberbullied or victimised as he's said.

My remit is to consider whether Lowell have treated Mr W fairly in their contacts with him – taking into account what they know about his circumstances at the time.

Mr W's first concern is that L and O weren't allowed to sell his accounts with them to Lowell while there was an active complaint with our service. As I've set out above, because this complaint is about Lowell I can't consider what L and O have or haven't done – albeit one of our Investigators did decide L shouldn't have sold on the debt. But, I can't hold Lowell responsible for another company's actions.

After Lowell began contacting Mr W for repayment of the debts, I can see he began disputing them. From the records I have it seems Lowell took the actions I'd expect. They stopped asking Mr W for repayment of the debts, spoke to L and O to determine if Mr W was the right person to contact and to ask for evidence of the accounts.

The usual evidence that's provided in these circumstances is a copy of the Consumer Credit Act (CCA) agreement taken out, plus something to evidence how the balance has accrued. I can see Lowell received the CCA's for both accounts, along with account statements which do show how the balances were accrued. I understand these were shared with Mr W so he should have a copy of them. But, in any event, I've arranged for them to be sent to him along with this decision.

The CCA's and statements both show Mr W's details. I know he's disputing if the debts are legitimate, but those are concerns better raised with L and O – because that's who the debts were accrued with. A debt collector such as Lowell only need to have a reasonable belief that the person they're contacting is the correct party. Here, given the CCA's and statements both show Mr W's details – plus they've followed what I'd expect them to do in disputing the accounts – I can't reasonably say Lowell would be acting unfairly in asking Mr W to repay the debts. I've also seen that Mr W raised a dispute about the account with O with another Ombudsman scheme – and in that he seemed to accept that account was his with some of his comments.

Lowell have said since Mr W raised his dispute, aside from replying to his complaint contacts through email and their live chat, and one letter from Lowell's specialist support team because he told them about his health conditions, they've not contacted him. They've explicitly said they've not asked him for repayment of these accounts until we've resolved the matter.

I've been through Lowell's contact with Mr W in a significant amount of detail. There are a large amount of contacts where Mr W has contacted Lowell in the live chat – so I won't go

through all of them. But having reviewed all of them I'm satisfied Lowell have, at all times, tried to support Mr W with his concerns.

During these contacts Mr W variously asked for his phone numbers, email addresses and postal addresses to be removed – all of which Lowell looked to deal with for Mr W. I can see they also dealt sensitively with Mr W's concerns and regularly reassured him, when he contacted them regarding the same issue that he'd already complained about, it would be dealt with as part of the complaint.

On occasion there were some misunderstandings. But, given the amounts of contacts that were made I don't find this particularly unusual. Anytime Lowell's agent did make an error – such as not seeing Mr W had already provided some information they then asked for – they said sorry. I'm satisfied that's a fair remedy for those issues.

Importantly though, what I've not seen in any of the contacts with Lowell is that they've asked him to repay the debts he's disputing after he's told them about the dispute. So, I don't think Lowell have done anything wrong on this point.

If Mr W has evidence of Lowell contacting him for repayment of the debts after he's told them he's disputing the accounts, he should provide this in response to this provisional decision for me to consider it.

Have refused to remove the defaults for the two accounts

My understanding of the reasons Mr W wants the defaults for L and O removed is because he disputes the balances on them.

But, those are an issue for L and O separately to consider – and I can see Mr W has raised complaints about those issues.

Lowell are collecting on a regulated debt for L – and for O it's partially made up of a regulated debt – so I can look at whether they've acted fairly in how they're reporting the debts. As L and O recorded the defaults, and Lowell were simply just continuing to report them, I can't say they were doing anything wrong.

As the debt with L has now been returned to them, and it's expected for the default to remain, I'd expect L to take over the reporting of this now – instead of Lowell.

Sent him a link to a marketing survey which he considers spam and has asked them not to do so previously

The email Mr W received says:

"Here at Lowell we're continuously looking at how we can help our customers manage their debt with us. We've noticed you've logged into your Lowell account or registered a Lowell online account in the last 6 months. We'd like to ask you some questions about this. The survey will only take a couple of minutes to complete, and the information you give us will be used to help us understand and support our customers better."

He says he's specifically asked them not to send marketing emails to him before and that him receiving this email made him feel very uncomfortable and caused him sleepless nights. Lowell said this contact didn't amount to marketing as they weren't advertising or selling anything – but Mr W had been told how to stop these from coming through again.

Given Mr W had already told Lowell he didn't want to receive these kinds of emails, I can understand his frustration at receiving further emails. Particularly because, in the previous complaint he raised about this, he was told by Lowell "With your comments in mind I have approached our Customer Experience team in order to prevent any of our customer feedback emails being sent to you in future." I also think, by this time, Lowell were aware, or should reasonably have been aware, Mr W was vulnerable given his contacts with them. So, it would seem Lowell's systems weren't able to pick up that Mr W had previously had a marker placed against him that he didn't want customer feedback emails. As that's had an impact on Mr W in a negative way, I'll consider that at the end of my decision.

Going forward though, Lowell have explained the only time Mr W should receive contact from their "Customer Panel" is if Mr W manually asks for a password reset. In those circumstances, they can't stop an email being sent to him. I've mentioned this because Mr W has raised a further concern about receiving a "Customer Panel" email – but this appears to be a password reset. So, it's important for Mr W to understand that if he asks for a password email reset to be done, it'll come from the "Customer Panel" area of Lowell.

Ended a call with him saying he was swearing at them when he wasn't making him feel discriminated against

Similar to what I've said above about Mr W's concerns about a crime being committed I can't decide if he has been discriminated against as explained by our Investigator. If Mr W wants a judgment regarding that, he'll need to ask a court to rule on this.

Lowell have accepted their agent made an error in terminating the call and offered to pay £75 in compensation to Mr W for this. So, again bearing in mind my fair and reasonable remit, I'll consider whether I'm satisfied this is enough to put matters right.

The relevant call took place on 23 February 2022 – and is nine seconds long.

The agent asks to take Mr W's name. He replies with his name, but the agent misinterprets what's said. The agent replies "if you're going to swear like that, I'm going to end the call then". The agent does then end the call.

Lowell have confirmed the agent didn't follow their usual approach in a situation where it's thought a customer is swearing at an agent by giving a warning first. It's clear the agent thought Mr W had sworn, and rather than making any effort to understand what was happening, follow Lowell's own processes to clarify what had been said, and give a warning where appropriate – the agent just ended the call.

I think it's fair to say agents handling calls from customers may sometimes, sadly, be subjected to swearing. I can see why the agent thought Mr W had sworn because of the way Mr W's name sounded on the call when it came through. I don't think Mr W did anything wrong, it was just unfortunate. So, I have a bit of sympathy for the agent when first taking the call.

But the reason Lowell have processes in place is to prevent this kind of issue. What should have happened is the agent should have asked Mr W to clarify what he said, and then likely would have said sorry for thinking Mr W had sworn when he hadn't. I do though think this was an extremely unfortunate misunderstanding by Lowell's agent rather than a deliberate action designed to offend Mr W.

Regardless though, it's the agent at fault for what happened here and Mr W was offended – and I can see why. Because the agent didn't follow Lowell's processes, Mr W has

unfortunately been left feeling as though he was discriminated against. Again, I'll consider at the end whether the £75 compensation is fair.

Summary

From everything I've seen Mr W's concerns are that Lowell were asking him to repay a debt he says he was disputing so they shouldn't have done that. I've noted Mr W has quoted rules from the Consumer Credit sourcebook (CONC).

I've seen nothing to suggest Lowell were aware Mr W was in dispute over the two accounts when they purchased them – so I think Lowell bought the debts in good faith. And I've seen no evidence to suggest they've asked him to repay the debt after he told them the accounts were in dispute. Once he did dispute them, Lowell have acted correctly and fairly by asking the two companies about the debt – and have kept the matter on hold while our service has investigated. This is everything I'd expect Lowell to do, and is in line with CONC, so I can't say they acted unfairly or incorrectly on these points as I've seen nothing to say they have.

As things stand, the debt with L has been returned to that company – so Lowell won't contact Mr W regarding that debt again. But the debt with O remains outstanding and with Lowell who are now the legitimate legal owners of it. I'd encourage Mr W to work with Lowell regarding any repayment of this debt. I'll also remind Lowell of their responsibility to treat Mr W positively and sympathetically – particularly given his vulnerabilities. I'm pleased to see Lowell have referred Mr W to their specialist support team who deal with vulnerable consumers.

I do though think on two occasions Mr W has been caused distress which could have been avoided. Those are the sending of the email, and the agent saying Mr W had sworn when he hadn't. So far Lowell have offered £75, but I don't think that goes far enough to recognise the distress caused to Mr W. To put things right I think a fairer amount would be £150. I'm aware Lowell said they'd send Mr W a cheque for £75, so if this has been cashed then they only need to send Mr W another £75 – as I'm only intending to require them to pay £150 in total.

Responses to my provisional decision

Lowell's position was they didn't agree – but this was based on an unfortunate misunderstanding. After clarifying this, they didn't add anything further before the deadline.

Mr W provided a number of comments. I've summarised them using my own words below:

- When he brought his complaint to our service about L, Lowell passed the case over to their solicitors.
- Regarding O he said he was entitled to go to court if he didn't agree with my decision. And that he wouldn't engage with Lowell regarding O until his complaint about O with our service has been resolved.
- He didn't agree Lowell had tried to help him – saying Lowell's solicitor had said illegal things, and Lowell had bullied him.
- Lowell had broken the law on human rights and tried to be selfish and rude to him. All the letters from Lowell had been forwarded to a friend and their manager who is an account manager for an investment bank. He added Lowell had broken the FCA policy on vulnerable people – saying the FCA had evidence Lowell have broken the rules but he's not allowed to discuss what's been said as it's confidential information.

- On Lowell's website he's provided a screenshot which says, "*You can make a one-off payment or quickly set up an affordable repayment plan*" and says this shows Lowell is harassing him by asking him to repay the debt.

Finally – he said he had an eyewitness, who is his friend, that has seen what Lowell have done to him, and the eyewitness said Mr W hadn't done anything wrong.

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.

As Lowell ultimately haven't added anything further, I'll simply focus on Mr W's comments.

The complaint against L, and the letter from Lowell's solicitors

Mr W has referred to this complaint and said Lowell's solicitors had said there was no case to answer.

As I've set out above, the case against L is separate, so I won't get involved in anything L have or haven't done. And, in reviewing that case, I've found one letter from Lowell's solicitors dated 15 February 2022. The letter appears to be responding to a threat from Mr W about suing Lowell. So, it seems the only reason Mr W received this letter, is because he'd written to Lowell saying he was planning to take legal action against them. Because of that, I can't say Lowell have done anything wrong here.

The complaint against O, and my suggestion Mr W co-operate with Lowell regarding repayment of that debt

I've seen the case against O hasn't been fully considered by our service at this point. And, ultimately, it is Mr W's choice about whether he co-operates with Lowell regarding the debt or not. I have no power to make him do so. But, in making the finding Lowell are acting fairly in asking him to repay the debt, this means Lowell may choose to take further action following the outcome of this decision.

Mr W's comments that Lowell haven't treated him fairly

I think the remainder of Mr W's comments in response to my provisional decision can be categorised under this heading.

I do understand Mr W's strength of feeling that they've bullied him, but I simply can't agree. There is no evidence they've done anything other than asking him to repay the debt before he told them about his concerns – which, as I've set out in detail above, I'm satisfied they were the legal owners at the time. In relation to Lowell's solicitor's letter if Mr W thinks they've broken the law he'd need to take that to the Police, as that isn't something I can consider.

Similarly, I can't consider if Lowell have broken the law on human rights. But I've seen nothing to suggest they have been selfish or rude to him – at all. As I've said before, Mr W has made contact with Lowell on a lot of occasions, and each time they really have tried to help him. I've also noted Mr W's comments about the FCA having evidence of Lowell having broken the vulnerability rules – but without that evidence I can't take it into account.

Regarding the website, what I think Mr W has provided a screenshot of is simply Lowell's standard website showing the account. This is entirely different to Lowell contacting Mr W

directly and asking him to repay a debt when they shouldn't have. I've seen no evidence of this – and in response to my provisional decision Mr W hasn't provided any.

Finally, I've noted Mr W's eyewitness says he hasn't done anything wrong, and they've seen what Lowell have done to him. But based on everything I've seen, Lowell have treated Mr W fairly and reasonably in virtually all of the many contacts he's had with them.

There are those two occasions where they didn't – sending him a further email, and not following their processes when they thought Mr W had sworn. None of the information provided by either party has changed my thoughts on this, so I remain of the opinion £150 is a fair way of putting matters right.

My final decision

I partially uphold this complaint and require Lowell Financial Ltd to pay Mr W a total of £150 compensation. Lowell can deduct any monies already paid from this figure.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 March 2023.

Jon Pearce
Ombudsman