

The complaint

Mr M complains about the way that Lowell Financial Ltd (Lowell) has managed the collection of a debt in his name.

What happened

Lowell Portfolio I Limited bought an outstanding debt in Mr M's name and appointed Lowell to manage it on its behalf.

Mr M complained that he only arranged to repay the outstanding debt after receiving a letter from Lowell threatening legal action. Mr M later became aware that Lowell could only take court action against him if it had a copy of the credit agreement.

Mr M contacted Lowell to establish whether the debt was enforceable and was told that it was. However, it then became clear that Lowell could not obtain a copy of the credit agreement.

Mr M was unhappy that after agreeing to refund the payments he'd made, Lowell backtracked.

Lowell offered Mr M £200 to apologise for the misinformation that it had given to him and it wrote the outstanding debt off. Lowell would not refund the payments Mr M had made. Lowell said it would reconsider its position if Mr M could provide a copy of the letter threatening legal action but Mr M no longer has the letter. Lowell says it has no record of the letter so can't provide it to Mr M as part of his data subject access request (DSAR).

Our investigator didn't recommend that Mr M's complaint be upheld. In summary he noted that Lowell accepted it gave Mr M the wrong advice about the enforceability of the debt. And that it incorrectly told Mr M it would refund the payments made. However, our investigator didn't have enough evidence to conclude that Mr M only made the payments to Lowell because it wrote to him threatening legal action.

Our investigator told Mr M that this service can't declare a debt to be unenforceable – only a court can do that. As Mr M had the benefit of the money lent by the original lender, our investigator didn't think it was unfair of Lowell to ask him to repay the debt or to refuse to refund the payments Mr M had already made.

Given that Lowell had paid Mr M £200 compensation and had written the remaining debt off, our investigator didn't ask Lowell to take further action.

Mr M didn't accept the investigator's view. He asked whether the investigator had listened to the call with Lowell when the repayment plan was first set up. Mr M said that Lowell definitely sent him the letter. Mr M thought it was very odd that the letter threatening legal action had gone missing.

Mr M asked why he would have contacted Lowell to set up a payment plan if it hadn't sent him the letter threatening legal action.

Our investigator went back to Mr M to say that when he brought his complaint to the Financial Ombudsman, Mr M said he had only set up a repayment plan due to the threatening letter from Lowell. Our investigator said that if Mr M was saying that Lowell threatened him during a call, he would first need to raise this with Lowell.

Our investigator said that Lowell's records didn't indicate that it had sent a letter threatening legal action. He thought it unlikely that Lowell had removed any reference to the letter from its records.

Mr M remained unhappy with the investigation outcome for much the same reasons he had already explained to the investigator.

Mr M thought that Lowell had breached rules by withholding data from him.

I issued a provisional decision on 3 November 2023 which said:

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 agree with the investigator that Lowell has done enough to put things right. I don't intend repeating all the details the investigator set out in his two views but I want to reassure Mr M that I've taken everything into account when reaching my decision.

Lowell has provided a screenshot showing which letters it sent to Mr M. There is no record of a letter sent by Lowell threatening legal action. Instead, most of the letters relate to various complaints made by Mr M and to his DSAR.

I understand Mr M's point that he would not have just contacted Lowell to set up the repayment plan if he'd not received the threatening letter. But Mr M does not have a copy of this letter and Lowell has no record of sending it.

I have also listened to the call that Mr M had with Lowell when he set up the repayment plan at the end of May 2023. In summary, Mr M calls Lowell to discuss its offer to pay him £50 compensation. Mr M confirms that he will accept the offer and goes on to say that he is thinking about taking legal action as he was in financial difficulties at the time he was offered the credit facility in 2007. The call handler asks Mr M what he would like to do about the outstanding balance. After some further explanation of his financial situation, Mr M says that with help from a relative, he can offer £800 to settle the debt, payable over 10 months. Lowell accepts his offer and Mr M makes the first payment over the phone. Lowell says that it will send Mr M confirmation of the settlement arrangements by post and confirms that once the settlement amount is repaid, the debt will be clear and won't be sold on again.

At no point does Mr M refer to receiving a letter threatening him with legal action and Lowell makes no reference to legal action in respect of the debt. The reason for Mr M's call to Lowell is to accept its' offer of £50 compensation.

The lack of any record of a letter threatening Mr M with legal action, together with the contents of the call setting up the repayment plan, make it difficult for me to find that the only reason why Mr M set up the repayment plan was because Lowell sent him a letter threatening legal action.

It's unfortunate that after acknowledging it couldn't provide a copy of the credit agreement, Lowell mistakenly told Mr M that it would look to refund the repayments he'd made. But I don't think this means Lowell must now agree to refund the money. At the end of the day, whether or not a debt is unenforceable, does not mean the debt no longer exists. It's just that Lowell wouldn't be able to take legal action to recover it. As I don't find that Lowell misled Mr M into setting up the repayment plan, I don't require it to refund the money he has paid towards the outstanding debt.

Lowell has paid Mr M £200 to apologise for any incorrect information it gave to him as well as not actioning his DSAR back in July 2023. I consider £200 adequately reflects the impact of Lowell's failings on Mr M – particularly as it has also written the debt off. £200 falls towards the top end of an award we might make where the business's mistake has taken a reasonable amount of effort to resolve and has impacted the consumer over weeks.

Finally, I want to make it clear that I have not considered Mr M's more recent complaint about Lowell's failure to provide every piece of data in response to his DSAR as Lowell is still investigating this complaint.

Further submissions

Lowell confirmed that it had nothing to add to my provisional decision. Mr M responded to say that some of the comments I had made were fair but that he would provide further evidence shortly. Mr M said that he would be lodging a complaint with the Information Commissioner's Office (ICO) as his complaint about the DSAR had gone missing.

Mr M followed up with some further information about the ICO and confirmed he had raised a complaint with the Financial Ombudsman about Lowell's response to his DSAR.

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'm grateful to Mr M for his comments about the DSAR. As I said in my provisional decision, I have not considered Mr M's complaint about Lowell's response to his DSAR which is being dealt with separately by the Financial Ombudsman Service.

As Mr M hasn't asked me to consider any additional information specific to his complaint about the collection of the debt, and as Lowell has not made any further comment, I consider it fair to make my final decision along the same lines as my provisional decision.

My final decision

My final decision is that I don't uphold this complaint in the sense that I consider Lowell has already done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 December 2023.

Gemma Bowen
Ombudsman