

The complaint

Miss W complains that Lowell Portfolio I Ltd harassed her in relation to an unenforceable debt.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

Lowell says Miss W had a credit card with a business I'll call B that was closed at default. The account was subsequently sold to another business I'll refer to as H. In April 2023 the debt was acquired by Lowell which is now the owner of the account. Lowell says it reached out to Miss W and asked her to make contact to discuss repayment of the outstanding balance of £3,521.81. Miss W went on to request statements and a copy of the original credit agreement from Lowell.

On 19 June 2023 Lowell wrote to Miss W and gave details it had obtained about the debt it was seeking to collect. Lowell confirmed the account had been opened with B in 1996 and closed at default in December 2002 with a balance of £4,306.38. Lowell said there was an outstanding balance of £3,521.38. Lowell's letter confirmed no copy of the original credit agreement remained available.

On 31 July 2023 Lowell wrote to Miss W and said it was considering legal action by way of a County Court Judgement (CCJ) obtained by its solicitors in relation to the outstanding balance. Lowell's letter explained that, if successful, a CCJ could be approved which could lead to Miss W's wages being garnished or bailiffs visiting her home.

Miss W raised a complaint with Lowell and it issued a final response on 11 October 2023. Lowell said that in 2022 B and H had responded to requests Miss W made and confirmed no credit agreement was available. Lowell's final response advised that whilst the account is not enforceable, meaning it can't use legal action to recover the balance, it remained outstanding. Lowell said that, in the circumstances, it had a legitimate reason to request payment from Miss W. Lowell didn't uphold Miss W's complaint.

An investigator at this service looked at Miss W's complaint. The investigator wasn't persuaded Lowell had treated Miss W unfairly and didn't uphold her complaint. Miss W asked to appeal and said Lowell had failed to show the debt was hers and that there were errors with its response issued in June 2023. Miss W also said Lowell had threatened court

action despite knowing the debt is unenforceable. As Miss W asked to appeal, her complaint has been passed to me to make a decision.

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'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. My approach is in line with the rules we operate under.

I've reached a different view to the investigator concerning how to fairly resolve Miss W's complaint. I'm not persuaded Lowell has treated Miss W fairly. I'll explain why.

I understand Miss W sought to dispute the debt Lowell says she owes. But Lowell went back to the previous debt owner, H, and also obtained information from B about the original debt and how it came about. Lowell's response provides lots of information that links Miss W to the debt. And Lowell's advised Miss W made payments of £1 towards the balance whilst it was owned by H in 2022 and 2023. I've looked at the available information and I'm satisfied Lowell has reasonably demonstrated Miss W was most likely the borrower in this case. Lowell acquired the debt from H and I agree it can contact Miss W to discuss repayments. That means I haven't been persuaded it was unreasonable or unfair of Lowell to contact Miss W about the outstanding balance.

With that said, I am concerned about the nature of Lowell's correspondence with Miss W. I can understand why Miss W feels somewhat harassed and misled by both the tone and content of Lowell's letters. On 19 June 2023 Lowell wrote to Miss W and confirmed it was unable to provide a copy of her credit agreement. Lowell's final response dated 18 October 2023 confirms that means the debt is unenforceable. That means Lowell has no recourse to refer the debt to the courts to take legal action to recover the outstanding balance.

Despite the debt not being enforceable, Lowell's letter dated 31 July 2023 threatened Miss W with legal action. Lowell's letter advised it was considering legal action that would mean her account would be passed to solicitors with a view to obtaining a CCJ. The letter added that could lead to Miss W's income being garnered or bailiffs visiting her home. But Lowell was already aware no copy of the credit agreement was available and that the debt is unenforceable as a result.

CONC 13.1.6 says:

- 1- Failure to comply with the provisions means that the agreement becomes unenforceable while the failure to comply persists, and the courts have no discretion to allow enforcement.*
- 2- In such cases, a firm should in no way, either by act or omission, mislead a customer as to the enforceability of the agreement.*
- 3- In particular, a firm should not in such cases either threaten court action or other enforcement of the debt or imply that the debt is enforceable when it is not*

In my view, Lowell's letter dated 31 July 2023 goes against the above provisions in CONC which specifically says that a business should in no way mislead a customer as to the enforceability of a debt. CONC says no threats of court action should be made when a debt is not enforceable. Knowing that Miss W's credit agreement wasn't available, Lowell ought to have ensured its subsequent attempts to collect the outstanding balance were in line with CONC and not misleading.

Miss W's told us that she's found Lowell's actions to be threatening and feels harassed by its claim it would take her to court. I can understand why Miss W is upset and I agree Lowell shouldn't have threatened legal action unless it was able to realistically enforce the matter in

court. I'm satisfied the issue has caused Miss W an unreasonable level of distress and inconvenience, so I intend to uphold her complaint and direct Lowell to pay £250 to reflect that.

Whilst I agree the way Lowell has attempted to collect the outstanding balance is unreasonable, I'm satisfied the debt remains. That means Lowell will likely continue to contact Miss W in an attempt to secure repayment. But, as Lowell has confirmed, it can't enforce the matter in court so I'd expect its collections attempts going forward to be compliant with CONC. I leave it to Miss W to decide how she wishes to proceed with Lowell.

I invited both parties to respond with any additional information or comments they wanted me to consider before I made my final decision. Miss W responded and confirmed she didn't accept. Miss W said claims she'd made payments towards the outstanding balance in 2022 and 2023 were misleading. Miss W explained she'd made payments of £1 which was charged as a fee to obtain a copy of the credit agreement. Miss W says she wants Lowell to acknowledge it had misled the Financial Ombudsman Service. Miss W asked whether she should raise a separate complaint about that issue. Miss W added she was willing to accept the £250 settlement in respect of the other issues concerning her complaint.

We didn't hear back from Lowell.

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'd like to thank Miss W for her response to the provisional decision. Miss W won't need to raise the issue of the £1 payments as a separate issue with Lowell as I've considered them in this investigation and decision.

I understand Miss W feels Lowell has lied or misled us in its comments about the payments she made. But I've reviewed Lowell's file submission and can see it confirmed Miss W made a payment of £1 on 24 May 2022 and another payment of £1 on 20 March 2023. Lowell didn't specifically say the payments had been made in order to provide copies of the supporting documents, like the credit agreement. But I haven't seen anything that shows Lowell was seeking to deliberately misrepresent the nature of the payments it says Miss W made. The case handler appears to have simply stated Miss W made the payments in 2022 and 2023.

Miss W's also pointed out that the 24 May 2022 payment she made to H was subject to another complaint she referred to us that had been upheld. I've read the outcome of that case and I can see Miss W's complaint was upheld.

Whilst I can see there was some confusion concerning the payments Miss W has highlighted, I'm satisfied the outcome I reached in my provisional decision remains fair.

I've relooked at the case file and information available and, as I said in my provisional decision, I'm satisfied Lowell has provided evidence that links Miss W with the debt in question. So whilst Lowell's options for recovering the outstanding balance may not include the ability to enforce the debt in court due to the absence of a copy of the original credit agreement, I haven't been persuaded it was unreasonable for it to contact Miss W.

I've carefully considered Miss W's response to my provisional decision. Having done so, I remain of the view that Miss W's complaint should be upheld and that Lowell should pay her £250 for the distress and inconvenience caused.

My final decision

My decision is that I uphold Miss W's complaint and direct Lowell Portfolio I Ltd to pay her £250 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 13 February 2024.

Marco Manente
Ombudsman