

The complaint

Miss B complains that Lowell Portfolio I LTD (Lowell) are pursuing her for a debt she says she is not responsible for.

What happened

Miss B had a current account including an overdraft facility with a bank I'll refer to as Firm A for the purposes of this decision.

In March 2011 the account was defaulted with an outstanding balance of £1,154. In 2014 the account was sold by Firm A to a debt purchaser who I'll call Firm B. And in 2022 sold on a second time to Lowell.

When Lowell acquired the account in October 2022 the outstanding balance was £814.98. Lowell sent Miss B a Notice of Assignment (NoA) letter in June 2023, and following this a further letter trying to make contact with her regarding the outstanding debt.

Miss B then complained to Lowell saying that she wasn't liable for the debt, and wanted evidence that it belonged to her, she also said she believed it to be statute barred. She asked Lowell to stop contacting her about the debt. Lowell continued to email Miss B about the debt.

Lowell issued a final response letter to Miss B in October 2023, they said they are obliged to notify their customers about their accounts and so cannot stop postal correspondence but admitted they should have removed Miss B's email address from their records so that she wasn't emailed in relation to the account. They awarded £25 for their error. They didn't address the concerns she raised about not being liable for the debt.

Miss B made a second complaint again saying she wasn't liable for the debt, and wanted evidence that it belonged to her, she also said she believed it to be statute barred. She again asked Lowell to stop contacting her about the debt unless they could prove it was hers.

Lowell agreed to place the account on hold with no contact while they investigated her complaint.

Lowell did contact Miss B while their investigations were ongoing.

Lowell responded to the second complaint saying they hadn't been able to obtain the account opening details from Firm A, as due to the passage of time these were no longer available. But they were able to show that Miss B had been making payments towards the debt up until 2021, so they believed it to be valid and still owing. They apologised for contacting her when the account should have been on hold and awarded her £30 in compensation.

Miss B wasn't satisfied with their response and so brought her complaint to our service, when doing so she told us that she had cleared the outstanding balance with Firm A years ago before she closed the account.

Our investigator considered Miss B's complaint but didn't uphold it, in summary she said:

- Only a court can decide if a debt is statute barred but taking into account the criteria a court looks at and the payment history on the account, she didn't think it was likely they would in this case.
- There had been no evidence that the account had been settled with Firm A by Miss B, but that if Miss B had evidence to support this it could be considered.
- Lowell hadn't acted unreasonably in contacting Miss B about the debt.
- The compensation Lowell had paid to Miss B in relation to contacting her when the account should have been on hold was fair in the circumstances.

Miss B disagreed with the investigator and so the matter has been passed to me to decide.

Miss B has provided some further comments for me to consider:

- She reiterated that she paid the balance to Firm A some years ago, she has contacted them for proof, but they no longer have information regarding the account.
- She shouldn't have to prove this it should be on Lowell to prove she does owe it.
- She was unaware she had been making payments towards this account until 2021 and had cancelled it as soon as she realised and the money she has paid should now be refunded to her.

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 realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. But this doesn't mean that I've not considered everything that both parties have given to me. Having done so, I have to tell Miss B that I have reached the same outcome as the investigator and for broadly the same reasons.

I appreciate that Miss B believes that she settled this debt with Firm A, and I accept that she hasn't been able to provide any evidence to support this, given the passage of time. And while I don't doubt, she believes this to be the case, where there is a lack of evidence I have to base my findings on the balance of probabilities. In other words, I have to think about what

is more likely to be the case. Here I think it is more likely that the debt is still outstanding, I'll explain why.

Lowell have provided evidence showing that Firm A sold the account to Firm B in 2014 with a balance of £1,154 owing. Firm B arranged a payment plan with Miss B in 2015 for £15 per month, so I'm satisfied to do this Miss B must have acknowledged the debt was owing and engaged with paying towards it. So, I think it's clear she hadn't settled it with Firm A at this point. This payment plan was cancelled by Miss B in May 2016.

Miss B agreed to a new plan July 2018, again for £15 per month, so it follows I think at this time she accepted the debt was owing and was engaging in paying towards it, so again I think it's unlikely that she had settled it with Firm A at this point. This plan was cancelled in

October 2019.

Miss B agreed to a further payment plan in January 2021 for £10 per month. So again, I think in agreeing to this she was accepting the debt was still owing and she was engaging in paying towards it. The direct debit she agreed to was returned unpaid in March 2021 and cancelled.

Miss B made a card payment directly to Firm B in April 2021 for £10. This was the last payment that was made towards the account.

Miss B has said that she wasn't aware that she had been paying towards the account until 2021 when she cancelled the direct debit. And while I accept that may be her memory of what happened the evidence doesn't support that. I say this because she engaged in setting up three separate payment plans between 2015 and 2021 and also made a direct payment by debit card towards the account. So, I'm satisfied she was aware she was making payments towards the account as she had to actively engage with Firm B to set the plans up. And I don't think she would have done this if the account had been settled with Firm A already.

Post 2021 Miss B hasn't engaged with the debt. But if she had settled the account after April 2021, when the last payment was made, I think it is more likely than not she would have reached out to Firm B to do this rather than Firm A, as she had been engaging with Firm B about the account since 2015. So, on balance I think the debt is still outstanding and owed by Miss B.

I understand that Miss B thinks the account should be statute barred. It's not for me to make that determination, only the courts can decide if a debt is statute barred. But I can tell Miss B what I think a court would probably decide. In this case, I think it is unlikely a court would say the account is statute barred, based on the engagement and payment history noted above.

Lowell accepted in both of their responses to Miss B that they contacted her at times when they shouldn't have. They paid a total of £55 for this and I think that's fair in relation to the amount and type of contact that was made, so I won't be asking it to pay any more for this.

Given all that I have said above, I can't fairly say that Lowell has acted unreasonably in contacting Miss B (outside of the times the account should have been on hold) to try to arrange payment of the debt.

I realise that my decision will come as a disappointment to Miss B and I appreciate that contact from Lowell has caused her a lot of distress. To mitigate this going forward I'd encourage her to engage with Lowell to come to an affordable agreement and minimise the contact she will have from them.

My final decision

For the reasons set out above I do not uphold this complaint

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

Amber Mortimer
Ombudsman