DRN-5553816

The complaint

Miss M complains that Lowell Portfolio I Ltd (Lowell) are pursuing her for a debt they haven't proven is valid and owing.

What happened

Miss M's complaint centres around a loan account in Miss M's name that was taken with a bank – I'll refer to as N.

The loan account was opened in August 2017 and had monthly payments of around £409. The last payment successfully applied to the account was in March 2022. N defaulted the account in August 2022 and in June 2024 sold the account to Lowell. Lowell and N issued a joint Notice of Assignment (NOA) letter to Miss M on 3 July 2024.

Following this Miss M sent Lowell various communications, requesting they prove the validity of the debt and their right to collect it. She specifically asked for a copy of the Deed of Assignment (DOA) and a true copy of the executed credit agreement. She made her request under section 77/78 of the Consumer Credit Act 1974 (CCA), she included a postal order for £2 with her request.

Across time Lowell was in communication with Miss M they:

- processed the postal order as a payment and reduced the balance on the account by £2. They later said this was done in error and refunded the £2 to Miss M along with £50 compensation to recognise the error.

- refused to provide Miss M with a copy of the DOA, as they said they had no obligation to do so.

- Provided Miss M statements for the account

- Continued with the reporting of the default

- asked N to provide them with copies of Miss M's credit agreement. N provided a reconstituted copy to Lowell which they passed on to her, along with a copy of the terms and conditions of the account. They placed her account on hold while they waited for these documents.

Lowell's position is that they have provided Miss M with the documents they needed to prove the debt is valid and owing.

Miss M remained unhappy and so referred her complaint to our service, she said Lowell had breached both the CCA and data protection (GDPR). They had fraudulently misapplied the funds she had sent them, and they had caused her distress and inconvenience, she laid out the redress she believed was appropriate in the circumstances.

Miss M also raised that when she had made a Data Subject Access Request (DSAR) to Lowell they hadn't responding in the 30-day period set out by the ICO.

Our investigator didn't think Lowell had treated Miss M unfairly when dealing with her account. She said the £50 Lowell had paid to Miss M for the error they made in crediting the £2 fee to the account was sufficient in the circumstances. She also explained to Miss M that if she now wanted to complaint about the time Lowell took to process her DSAR she would need to raise it with them in the first instance and allow them to address the matter.

Miss M disagreed and so the matter has been passed 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.

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. 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.

I think it will be helpful to set out that I won't be considering Miss M's complaint about the time Lowell took to complete her DSAR as Lowell, themselves have not had the opportunity to address this concern. If Miss M wants this looked into, she will need to take this up with Lowell directly.

Deed of Assignment

Miss M quotes a court judgement where it was ruled the debtor is entitled to inspect the DOA to verify the right of the new creditor, in this case Lowell, to collect the debt.

My role here isn't to determine if Lowell has broken the law, it is to see if Lowell have acted fairly and reasonably, but I have still taken it into account.

I'm aware there are some court cases that consumers have pointed towards that have said a consumer is entitled to see the DOA – and there are other court cases which businesses point to that say a consumer isn't entitled to see the DOA.

Miss M believes she is legally entitled to the DOA - if this were the case I would have expected all cases to have reached the same conclusions – which doesn't seem to have happened.

I'd also have expected debt purchasers such as Lowell to have sought legal advice on this matter as it's something that comes up regularly, and it seems to me debt purchasers wouldn't continue to deny their customers access to this document if the law said they were required to provide it in every case.

In addition, the Financial Conduct Authority (FCA) sets out what's expected of financial businesses in the Consumer Credit Sourcebook (CONC) rules. CONC 6.5.2 says:

> *(1) Where rights of a lender under a regulated credit agreement are assigned to a firm, that firm must arrange for notice of the assignment to be given to the customer:*
> *(a) as soon as reasonably possible; or*
> *(b) if, after the assignment, the arrangements for servicing the credit under the agreement do not change as far as the customer is concerned, on or before the first occasion they do.*

[Note: section 82A of CCA]

(2) Paragraph (1) does not apply to an agreement secured on land.
(3) A firm may assign the rights of a lender under a regulated credit agreement to a third party only if:
(a) the third party is a firm; or
(b) where the third party does not require authorisation, the firm has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

Given all of the above information, I'm satisfied Miss M's request for the DOA isn't one Lowell are required to fulfil. So, I don't require them to provide the DOA to Miss M.

Lowell provided Miss M with the NOA. This is a standard document when a debt is sold from one owner to another. There isn't anything obviously wrong with the NOA, and it contains all of the usual information I'd expect. So, in the circumstances, I don't think there's any reason not to rely on it. As such, I'm satisfied the NOA is sufficient to show Lowell are entitled to collect the debt.

Section 77/78

Miss M made a request to Lowell for them to prove the debt was hers, initially she wasn't explicit in what she asked, and Lowell sent her copies of the statements for the account. She later sent in her request under section 77/78 of the CCA including the postal order for £2.

Lowell have explained the postal order became separated from the request and processed incorrectly as a payment towards the account. They apologised for this and refunded it to Miss M along with £50 compensation for the upset caused by the error. It's unfortunate this happened, but my role isn't to punish a business for their mistakes it is to make sure a person is put back in the position they would have been in but for the error. I think Lowell did this here, so I won't be asking it to do more regarding this error.

Aside from the error made with the fee, I can see that Lowell processed the S77/78 claim as I would expect, they placed Miss M's account on hold for 40 days and asked N to provide copies of Miss M's agreement and the terms and conditions of the account (T&Cs). N provided them with a reconstituted copy of the credit agreement and a full set of T&Cs, which in turn Lowell passed on to Miss M.

CONC 13.1.4 says:

(1)The copy of the executed agreement should be a 'true copy' of the original. However, as confirmed in the case of Carey v HSBC Bank plc [2009] EWHC 3417 (QB), in this context the term 'true copy' does not necessarily mean a carbon, photocopy, microfiche copy or other exact copy of the signed agreement. There is no obligation to provide a copy which includes a copy of the signature.

(2) The firm can reconstitute a copy. It can do this by re-populating a template of the relevant agreement form with the details of the specific agreement taken from its records. If the firm does provide a reconstituted copy, it should explain that that is what it has done, to avoid misleading the customer that this is a contemporaneous copy.

Based on this I'm satisfied that the reconstituted copy Lowell have provided to Miss M is sufficient to prove the debt is hers and is valid. I do note however that Lowell didn't explain the agreement was a reconstituted copy and they should have done. And I've thought about

the impact here , having done so I don't believe there has been any detriment, I say this because even if Lowell had explained it, I don't believe Miss M would have accepted it, in the same way she didn't accept it when our investigator explained this to her. So, I won't be asking Lowell to do anything about this.

Data breach

Lowell took over the reporting of the default to Miss M's credit file when they bought the account. Miss M has said they are reporting incorrect information on her credit file as they haven't proven the debt. But as I have explained above, I'm satisfied they have proven the debt and so it follows I don't agree they are reporting incorrect information to her credit file.

Bringing all of this together I'm satisfied Lowell have treated Miss M fairly when dealing with her account and I won't be asking them to do anything differently. I understand Miss M's strength of feeling about this matter and realise she will be disappointed with this outcome but my decision ends what we – in trying to resolve her dispute with Lowell – can do for her.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 23 September 2025.

Amber Mortimer
Ombudsman