

The complaint

Mr H complains Lowell Portfolio I Ltd have failed to provide evidence of the debts they're asking him to repay. He's also unhappy with Lowell's actions in relation to a Subject Access Request (SAR) he submitted.

What happened

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

Lowell hold a number of accounts in Mr H's name and have asked him to make payments towards those debts. Mr H asked for evidence of the debts because he doesn't feel as though he's liable for them. Mr H is also unhappy Lowell took too long to provide a SAR and then didn't provide everything he thinks they should. Mr H was also unhappy they had recorded his date of birth wrong with the Credit Reference Agencies (CRAs).

Lowell listed out all of Mr H's accounts, and for all but one of the accounts our service can look at provided a copy of the credit agreement. For the one account they couldn't, they said it'd been too long so couldn't get a copy of it. In respect of the SAR Lowell said they're allowed to extend the timeframe for providing it so hadn't done anything wrong here. As for the date of birth they could see it had been changed but weren't able to find out why. For this Lowell said sorry and offered compensation of £50 but didn't uphold his remaining concerns.

Mr H replied to Lowell, saying he hadn't received any of the credit agreements. And the only reason he'd made any payments is because Lowell threatened to add defaults to his credit file when they called him on the phone. Mr H says any payments were made under duress. Mr H also remained concerned about the SAR, and he was unhappy there were multiple defaults on his credit file instead of just one under the name of Lowell.

Lowell replied and said most of the credit agreements they could send were sent on 12 February 2024. They didn't include the one they'd previously said they couldn't get, and said they'd asked another lender for a credit agreement. In respect of payments they couldn't find any reason to refund them, as they felt Mr H remained liable for the accounts. For the SAR Lowell said they'd received it 30 November 2023, wrote to Mr H on 2 January 2024 saying they'd deemed it complex which gave them 60 extra days – and then issued it 1 March 2024. Lowell didn't uphold any of these points.

Unhappy with this Mr H asked us to look into things.

One of our Investigators did so. He found some of the accounts weren't ones we could look into – which Mr H accepted. For the accounts we could look at, he didn't think Lowell had treated Mr H unfairly so didn't uphold the complaint.

Mr H didn't accept this, saying our Investigator hadn't understood him. Mr H said Lowell told him if he didn't set up repayment plans for the accounts then they'd apply defaults to his credit file – even for cases where a previous default had expired. As Mr H was unhappy, the complaint's been passed to me to decide.

Before deciding the case, I arranged for us to ask Mr H and Lowell for more information. I've reflected that additional information in my findings where relevant.

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 explain I've considered all of the information provided by both parties in reaching my decision. If I've not reflected or answered something that's been said 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's important for me to explain I'm not able to decide if these debts are legally unenforceable – nor can I decide if the credit agreements are legally compliant. My role is to consider if Lowell have treated Mr H fairly in asking him to repay the debts.

Provision of documents

Mr H complains Lowell haven't provided a true executed copy of the credit agreement for each of the accounts they're asking him to repay – so, they haven't evidenced he owes the debts. Mr H is also unhappy at not receiving the agreements when Lowell say they sent them.

Lowell say the credit agreements meet the relevant requirements, so there isn't anything else they're required to provide.

Our Investigator went through each agreement with both parties and also shared copies with Mr H directly – so I won't list them all out again.

It's not completely clear to me why Mr H says the agreements aren't a true executed copy of the credit agreement – though he has mentioned they're not all signed. From what I can see looking at the Financial Conduct Authority's (FCAs) guidance in the Consumer Credit Sourcebook (CONC) 13.1.4 they don't have to be. CONC 13.1.4 part (1) says:

*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.** (My emphasis).*

But I should also reiterate my role here isn't to decide if the credit agreements are legally compliant – only a court can do that.

My role is to consider if Lowell are reasonably entitled to ask Mr H to repay these debts based on the evidence provided to them by the original lenders.

Each of the credit agreements that have been provided have Mr H's name on them, along with an address. Some of the accounts are historic, but some of the more recent ones have Mr H's current address on them.

For the account Lowell couldn't provide the credit agreement for they pointed to a complaint made by Mr H on 12 April 2019. Lowell's notes from this time say Mr H is complaining about the lender not refunding interest and charges on his account when they said they would. Lowell say this is Mr H acknowledging the debt as his.

Overall, I think it's fair for Lowell to reasonably believe these debts belong to Mr H, and as such it's reasonable they'd ask him to repay them.

For the account where Lowell couldn't get a copy of the credit agreement, I think it was right for Lowell to place it on hold until they received an answer. Lowell have told us they heard back from that lender to say the credit agreement is no longer available. I can't ask Lowell to do anything more, as it's reasonable for them to rely on the answer they've been given by the lender.

SAR

Mr H says Lowell took too long to provide the SAR and then didn't provide the documents he'd expect as part of it.

Lowell say the SAR was one they deemed as complex, and as such they were allowed up to 90 days in which to reply to the SAR – and they provided everything they were required to.

I should explain I can't decide if Lowell were correct to treat Mr H's SAR as a complex one – only the Information Commissioner's Office (ICO) can do that. I can though award compensation if the customer service provided around the SAR wasn't sufficient.

I also can't decide if Lowell correctly withheld any documents – as Mr H is suggesting – because again that'd be for the ICO to decide.

Mr H did raise a complaint to the ICO, and he kindly provided a copy of the outcome. Although the ICO hasn't made specific findings on all the issues – instead suggesting Mr H can pursue matters through the court – they've not said Lowell did anything wrong.

Mr H is linking the impact of his concerns regarding the SAR to him feeling like he had to pay Lowell or they'd impact his credit file. I've considered that in the final section of this decision.

Date of birth

Mr H wasn't happy when he realised Lowell were recording his date of birth wrongly.

Lowell identified when it was changed, but as it was done over the phone and they couldn't access a copy of the call recording, they couldn't confirm why. They said sorry for this and awarded £50 compensation. Lowell have since confirmed this payment hasn't been cashed by Mr H.

I asked Mr H for the impact of Lowell getting his date of birth wrong. He said this was linked to his overall comments about Lowell telling him they'd apply information to his credit file to stop him getting credit. I've considered that in more detail in the next section.

Did Lowell coerce Mr H into making payments towards the debts

Mr H says the only reason he's made any payments towards the debts is because Lowell threatened to add defaults to the accounts – even if the account had previously been defaulted and it'd expired.

Lowell say they didn't think they'd done anything wrong so wouldn't be refunding any payments.

I arranged for us to ask Mr H when this event happened, so we could gather relevant evidence to decide.

Mr H said this was April-June 2023, and Lowell told him if he didn't set up payment plans then they'd be forced to put markers on his credit file which would effectively prevent him from obtaining credit in future.

In context, it would seem likely any coercion Mr H experienced would have happened in the lead up to the very first repayments being made. So, as well as asking Mr H for when this happened, I also arranged for us to ask Lowell for when payments started being made to each of the accounts we could consider – and for contact notes prior to this.

Lowell replied and said there are seven accounts with payment arrangements on them – of those seven:

- *Three had payment arrangements starting in 2019*
- *Two had payment arrangements started in 2022*
- *One payment arrangement started 28 April 2023*
- *One payment arrangement started 28 July 2023*

Lowell said in general terms they don't agree with Mr H's comments, as the accounts all came to them after a default had been applied. This meant they couldn't apply another default. Lowell thought it possible Mr H misunderstood a discussion about how the existing defaults could be updated to reflect payments / settlements towards his debts. Lowell also said they don't have call recordings going back as far as April to July 2023.

Given this was now over two years ago, I don't draw any adverse inferences from this, as it's quite common for financial businesses to not keep calls for this length of time.

So, where the information is incomplete, as it is here, I have to decide things based on what I think is more likely than not, based on the information I do have.

Mr H was clear in saying he thought the potential coercion happened in April-July 2023 – so I've focused on those two accounts initially.

For both accounts where the payment arrangement started in 2023 Lowell's evidence shows the payment arrangements were set up online. I can't see there were any recent conversations before the April payment was set up – for the July payment there was a conversation on 27 June 2023. Lowell's note regarding this is limited – it simply says "Customer aware debt advised of credit file status customer states will deal on (sic) hung up".

If I were to accept Mr H at face value, then it's possible this phone call is where he was told his credit file would be impacted if he didn't make any payments towards these debts.

But, in general terms where an account has already been defaulted then a second default can't be later applied if someone doesn't make a payment to it. Lowell know this, so I think it's more likely than not they wouldn't have said this.

In addition, I can't ignore Mr H has said the only reason he's made any payments, is because of the conversation he said he had in April to July 2023. The only possible conversation I can find is from June 2023 – but six of the seven accounts already had payment arrangements set up by this time – three of them from 2019.

Given this information, I do think it's more likely than not Mr H wasn't told Lowell would apply defaults to his credit file if he didn't set up payments arrangements with them – largely on the basis he had already done so by the timeframe he's indicated.

Responses to my provisional decision

Mr H strongly disagreed with my decision. He said for me to assume he's given false information and Lowell didn't tell him what he's said they did, means I'm not acting impartially. Mr H said I've basically said he lied, but Lowell haven't – and he asks if we think organisations like Lowell provide information which shows they are liable.

Mr H said we asked when Lowell told him they would default the account and based it on a conversation around one debt – not about the other accounts which were discussed on multiple occasions. Mr H also said he thought organisations had to keep phone records for a certain time and wasn't happy he could no longer get them.

Lowell said they had nothing further to add.

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 sorry Mr H believes I've basically called him a liar – as that absolutely wasn't my intention nor is that a conclusion I've reached. I completely accept Mr H is telling me what he understands happened to him. But, in asking me to decide his case, I have to do so impartially. That means taking into account what he's told us but also taking into account what Lowell tell us.

Focusing first on what Mr H has told us. To help me address this specific point I arranged for us to ask Mr H some questions. I've copied those questions along with his answers below.

- *You said Lowell essentially threatened to add new defaults to the accounts they hold in your name if you didn't set up payment arrangements with them – can you confirm a specific or rough date?* This was in 2023 - April to June time. I ended up paying them thousands of pounds due to these threats which I am still uncertain were even my debts.
- *Are you able to recall precisely what Lowell said to you in the call?* Yes, they told me that if I did not set up a payment plan they would be forced to put markers on my credit history that would effect me obtaining credit in the future. This was after I had advised them I wanted to get any debts they held for me sorted due to applying for a mortgage, but once I questioned certain debts and also asked for proof these debts were mine.
- *Did this happen once, or across multiple accounts?* I was discussing all the accounts they held for me at the time.

On review of the questions, and answers Mr H has given, I can't agree we only asked about one debt. The question we put to Mr H was about his key issue – which was Lowell told him to avoid further defaults then he'd have to set up payment arrangements for all his debts. In the questions above we didn't specify one debt only – and nor do I think Mr H's response was limited to this one debt he's referred to when responding to my provisional decision.

Mr H said this happened between April and June 2023 which is why my review initially focused on that period. But, I also reviewed all of the other periods of time.

As I said in my provisional decision, I couldn't find anything in 2023 to show Mr H had been told if he didn't set up payment plans then another default would be applied.

I did though also ask Lowell for all of their notes for the previous payment plans – to see what conversations took place in the lead up to those plans being put in place. I also couldn't see anything in those notes to show what Mr H was telling us.

In respect of the phone calls, I'm not aware of a specific period of time organisations are required to keep them – but typically it seems to be around one year in the financial services industry. Lowell have said they keep phone calls for 18 months – but given Mr H's complaint goes back over two years at this point Lowell have said they don't have them.

Given the general industry timeframes I don't find this unusual, and it's quite common for us to not have the phone calls. Despite that, I do agree with Mr H in that it would be helpful – as then I could clearly hear what Mr H was or wasn't told. But, in the absence of those calls, I have to rely on the information I do have.

In Mr H's case that includes notes, or a lack of any notes being recorded, in the lead up to the payment plans being put in place. I understand Mr H's concerns about me relying on Lowell's evidence over his own. But, as I said earlier, when asking me to look at his case I do have to reach a decision based on what I think overall. In doing so, I can also take account of how I know things work. All of Mr H's accounts were defaulted before Lowell purchased them. I know a default can't be applied a second time – something Lowell also know. In the circumstances, I have to decide if I think Lowell have done something wrong based on what I think is more likely than not to have happened. And while I understand Mr H will be disappointed, I remain of the opinion I think it's more likely than not Lowell haven't done anything wrong regarding the payment plans.

As Mr H and Lowell haven't provided any information about the remaining issues, the outcome and reasons for that remain as explained above in my provisional decision. I am still of the opinion the £50 Lowell offered for getting Mr H's date of birth wrong is fair.

My final decision

Lowell Portfolio I Ltd have already made an offer to pay £50 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Lowell Portfolio I Ltd should pay Mr H £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 November 2025.

Jon Pearce
Ombudsman