

## **complaint**

Mr W complains that Link Financial Outsourcing Limited is pursuing him for three debts which he says it cannot prove are his, and about related issues.

## **background**

Three debts were assigned to Link Financial by third parties in 2008 and 2009. Mr W made token payments of £5 a month towards each account. But in 2019 he asked Link Financial for proof that these debts were indeed his. He said he would not make any more payments unless he was shown the original credit agreements with his signature on them. When Link Financial failed to provide these, he brought this complaint to our Service. He also said that as he had been married before the debts were assigned, he wanted to know if his former wife was jointly liable for any of the debts, since in that event he thought he should only be liable for half of that debt.

Link Financial said that the debts were originally an overdraft on a current account and a credit card with the same third party, and another credit card with another third party. It provided the names of the third parties, the original account numbers associated with each debt, and the dates they were assigned. It also provided a copy of Mr W's signature on one of the credit card agreements, dated 2005. It was unable to provide signed agreements for the other debts, but our investigator thought that Link Financial was under no obligation to do that, under the relevant regulations. She said that as all of the original credit agreements were more than six years old, she would not expect Link Financial or the original creditors to have kept them. She said one of the debts had been a joint account, but as Mr W had been jointly and severally liable Link Financial was entitled to pursue him for the whole debt if it wanted to. So she did not uphold this complaint.

Mr W asked for an ombudsman's decision. He insisted he was entitled to see his signature as proof that he owed the debts. He said he had not questioned the debts when Link Financial had first begun to pursue them due to the stress caused by his divorce around that time.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I accept Mr W's explanation for why he did not challenge the debts in 2008 and 2009. Divorce is one of the most stressful experiences one can endure, and so in those circumstances it may well seem easier to agree to make small token payments for a while, rather than start a battle on another front.

However, I can see that in November 2015 Link Financial wrote to Mr W to tell him the names of the original lenders and the original account numbers for each debt. And in August 2016 one of the original lenders wrote to him to confirm that it had assigned a credit card debt to Link Financial in January 2009, and gave him the credit card number, which matched the number given to him by Link Financial. It is not their fault that by then too much time had passed for them to provide Mr W with all of the original credit agreements, or even with the notices of assignment. Generally, business don't have to retain records for more than six years.

Given the evidence already provided by both of the original lenders and by Link Financial, I think it is more likely than not that all three of these debts are indeed Mr W's debts. That is because both lenders have verified that they sold his debts with them to Link Financial, by providing his signature or a matching account number. I understand why Mr W would feel more certain about this if he could be shown a full complement of three signatures, but after so much time having passed I don't think certainty can always be achieved. In any case, I think it is fair and reasonable for me to decide this issue on the balance of probabilities (as this is the civil burden of proof in the courts), rather than beyond reasonable doubt.

The law does not require a lender to keep the original credit agreement indefinitely. The regulations which were cited by our investigator are the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983. Regulation 3(2)(b) specifically states that when a lender sends a customer a copy of a credit agreement pursuant to the Consumer Credit Act 1974, it may send a copy which does not include the signature.<sup>1</sup> So there is no obligation to serve the original signed document. I have taken this into account in deciding how much evidence is enough to satisfy me that these debts are Mr W's and are being properly pursued.

The Limitations Act does not apply here, because Mr W has made payments towards the debts within the last six years.

Finally, a joint account holder's liability for the account is not capped at half of the balance. Each account holder is jointly and severally liable for all of it (provided that the total amount collected from both account holders does not exceed the total debt – *i.e.* the creditor can't collect his money twice). The original bank was not obliged to collect equal amounts from both account holders, and neither is Link Financial.

### **my final decision**

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 October 2020.

Richard Wood  
**ombudsman**

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/1983/1557/regulation/3/made>