

## **complaint**

Mr K complains that Lowell Portfolio I Ltd is recording a default on his credit file when he wasn't aware of it. He's unhappy that Lowell contacted him at an address he says he didn't live at and wants Lowell to remove the default from his credit file.

## **background**

Mr K took out a loan with a company but wasn't able to keep up with his repayments. So in late 2017, this lender sent Mr K a default notice.

In May 2018, Lowell bought the outstanding debt from this company. Lowell wrote to Mr K at an address that it found as part of its tracing process. By September 2018, Lowell had received a series of balance adjustments from the original lender which brought the outstanding balance to zero. Lowell says that it closed Mr K's account as a partial settlement.

Mr K complained, saying that he didn't receive the default notice. Mr K also says that he didn't know that Lowell had bought the debt as he wasn't on the electoral roll at the address that it used. Mr K says he had never lived at the address and hadn't visited it in over ten years. But Lowell didn't think it had done anything wrong. So Mr K brought his complaint to this service.

Our investigator didn't recommend that Mr K's complaint be upheld. He explained that as the original lender had defaulted Mr K's account, he'd only looked at whether Lowell's actions, since it bought the debt, had been fair.

The investigator thought it was reasonable of Lowell to write to Mr K at the address that it found through the tracing service.

Mr K wasn't happy with the investigator's recommendation. He says that Lowell applied a default before it had bought the debt. Mr K is confident that a default from the original lender never appeared on his credit file.

Mr K questioned why Lowell didn't write to him at the address which the original lender gave. And that he'd had no involvement with the address that Lowell used for many years. He asked for his complaint to be considered by one of my ombudsman colleagues.

The ombudsman explained that she intended to uphold Mr K's complaint in part. She didn't think Lowell should remove the default, where she felt it had been correctly reported based on the information Lowell was provided by the original lender.

But she did note that by the time the original lender sold the debt to Lowell, it had in fact been partially settled. So she didn't think that the debt should've been sold to Lowell. She appreciated that Lowell said this wasn't due to any fault on its part. But she felt that as a part of its due diligence, had it asked for more evidence of the debt before purchasing it – then it would've discovered that Mr K had settled this.

She added that there were opportunities after this where Lowell received balance adjustments that she felt were opportunities for Lowell to have double checked things here. She felt it was fair for Lowell to pay Mr K £200 for the worry he would've had in finding an entry on his credit file he didn't recognise and for having to get to the bottom of finding out why a settled debt was appearing on his credit record.

Mr K didn't agree this was fair and said (in summary) that Lowell had breached the relevant rules here and that the default should be removed. Lowell didn't respond before the complaint was passed to me.

When this complaint was passed to me, I got in touch with Lowell and provided some observations I had about this complaint. I asked whether in light of these, Lowell would be willing to remove the default.

Lowell says that when it purchased this debt, it did so in line with its usual process for doing so. It purchased it in good faith from the original lender, which provided information showing that it was a valid debt that was still owed. So it sought repayment from Mr K on that basis and reported the status of the account to credit reference agencies.

Lowell has explained that it was only in September 2018 that it received the final balance adjustment that settled the outstanding balance. It amended the information it was reporting to reflect this and continued to report the default where it viewed it to be correctly recorded.

I issued a Provisional Decision on 26 February 2021 where I said the following:

*I'll start by saying that I've carefully considered what Lowell has said around the fact that it has followed its processes here. Lowell has explained that what it's done is in line with its business model, in terms of taking proportionately diligent steps when purchasing debts. I don't intend to criticise Lowell's processes and business model in a general sense in this decision.*

*Instead my role is to consider what's fair and reasonable in the individual circumstances of a complaint. In doing so, there may be times when strictly applying processes or sticking to an established business model leads to an unfair outcome for a customer in their individual circumstances. In my view, this is what's happened here.*

*Ultimately, the main issue is that Lowell purchased a debt that had already been settled. Both sides accept this. It's unfortunate that Lowell wasn't told this prior to the purchase, but as of September 2018, it was aware that the debt had been settled. I realise that Lowell says that it had no way of knowing this when it purchased the debt and I accept that. But it knows this now and so I've considered whether it's fair that Lowell has chosen to still report this information on Mr K's credit file.*

*I can't say it is though. The debt may not have shown as being settled when Lowell purchased it and it may have thought it was entitled to seek repayment of this while it didn't know otherwise. But, now Lowell knows that there wasn't a debt owed at all. While Lowell may have purchased the debt in good faith and initially chased it on this basis, it received a series of balance adjustments. Lowell says it didn't check with the original lender and it wouldn't usually do that. Again, I accept this is its business policy not to do so. But this has again led to an unfair outcome for Mr K here. Because had Lowell have done so, it would've discovered that the debt had been settled much sooner than it actually did.*

*So in effect, Lowell is reporting information about a debt that should have never been pursued. Lowell says that the default should be reported because it was accurately registered by the original lender. I've taken that on board here. But in thinking about what should have happened, I think Lowell now knows that this debt should never have been pursued in the first place.*

*Ultimately Mr K never had any dealings with, or obligations to, Lowell beyond making a complaint to it. He never owed it any of the payments it may have asked him to make. So I don't think it's fair that Lowell now reports information that shows its involvement with this debt, where it doesn't give a fair or fully representative picture to other creditors.*

*For clarity, I realise that Lowell shouldn't be held responsible for any acts or omissions made by the original creditor. But this decision is focused on Lowell's decision to continue reporting what it is on Mr K's credit file, rather than what was reported by the original lender.*

*With that in mind, my suggestion here isn't that Lowell should just remove the default. Instead, I think Lowell should remove any reference of the debt from Mr K's credit file. I realise Lowell think that this doesn't give an accurate picture of what actually happened here. But I think that by doing this, it would reflect what should have happened here. To be clear, I accept that Lowell are technically entitled to record that it pursued Mr K for a short time here, but for all the reasons I've already given here, I simply don't think that leads to a fair outcome for Mr K in the individual circumstances of his complaint.*

*That's especially true given that Mr K's credit file shows that this entry on his file is the only clearly adverse piece of information on there. Unusually, the original creditor didn't report the default. But that was its choice as a business. I'm focusing on Lowell's involvement here and in continuing to report this as it is, I think it's likely to have a real impact on Mr K where this is the only record of this particular debt on his credit file. So I can see that this will certainly be causing him a great deal of concern, where he's shown he's maintained his payments to other creditors.*

*I know Lowell has concerns that by removing the default, Mr K would be, in effect, benefitting from the fact that the original creditor chose not to report information to a credit reference agency. But I'm not making any sort of finding on what the original creditor did – only on Lowell's choice to continue reporting this. And while I realise that the default may have been correctly registered by the original lender, that doesn't mean that it's fair for Lowell to keep recording this here, where I don't think it's fair that it records information about this at all.*

*In saying all of this, I'm mindful that Mr K has raised a number of concerns about the validity of the default in terms of the address it was sent to and some confusion surrounding this. But the effect of what I've said above is that I think it's fair that Lowell removes the default and the other information from his file, so I won't cover those points in any detail here, other than to say that I agree with many of colleagues points here, but have obviously reached a different decision here around what's fair.*

*I've also thought about whether what my colleague said about Lowell having to pay Mr K compensation for his trouble and upset should stand. I agree that finding out that there was an unexpected entry on Mr K's credit file and having to take steps to understand why this was there would've been confusing and frustrating for him. And Lowell could have thought about the fairness of continuing to report this information more when he contacted it too. So I think that Lowell should pay £200 to compensate him for the impact this will have had on him.*

Mr K responded and accepted my findings, but Lowell said that it was concerned at my suggested outcome. It said (in summary) that my colleague had confirmed the validity of the default in her provisional decision. Lowell added that the original lender confirmed the status of the debt and that it started reporting this to reflect the change in the legal ownership of the debt. The original lender has not exercised its right to purchase the debt back and that the continued reporting of the default is an accurate representation of the account history. Lowell also said that it was concerned that any proposal to remove the default would, in effect, mean that the debt was 'hidden' from other potential lenders.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've carefully considered what Lowell has said in response to my provisional decision. As I've said previously, I do understand that Lowell has followed its processes and that it views the default as valid. And I've taken into account what my colleague has said in her provisional decision too – but have reached a different outcome and given Lowell and Mr K the opportunity to respond. In doing so, I appreciate that there may be an argument to say that it would be technically 'correct' to report the default here.

But my remit is to look at what's fair and reasonable in all the circumstances of a complaint. Having done so – I still remain of the opinion that it's fair to remove any record of the debt from Mr K's credit file and pay him the compensation I suggested.

I realise that the original lender hasn't exercised its right to purchase the debt back and that it chose not to report the default itself. The debt was settled before it was purchased by Lowell and so while the lender could've bought it back and made the adjustments, it didn't do this. But that doesn't change my view that it remains unfair that Lowell is now choosing to continue reporting this. As I said in my provisional decision, I'm only considering Lowell's involvement in this complaint and in the individual circumstances here – I don't think that continuing to report the default is fair.

That's not to say that it would always be unfair to report the status of an account in similar circumstances. But my decision has to be based on the very particular set of circumstances of this complaint. And, as I've mentioned in my provisional decision, there are a number of reasons that I don't think that reporting the default is fair here. I can see where Lowell is coming from in terms of this having the effect of 'hiding' the debt. That's something I referenced in my provisional decision. But again, I don't think that this would mean that the debt was being wrongly hidden from potential creditors.

This is a historic debt and, in the circumstances, I think that by not reporting this it would give a fairer and more balanced picture of Lowell's involvement with Mr K's debt than by continuing to report it. I see that the issue here is that because the original lender chose not to report this, it will 'disappear' from the credit file by virtue of what I'm suggesting. But I don't think that's unfair, or disproportionate here. And I can't comment on the actions of the original lender, only Lowell. I don't think that the way the lender chose to report this should mean that Lowell shouldn't now take steps to reach a fair outcome.

So, while I realise that Lowell will likely continue to still disagree with my findings – I remain of the opinion I set out in my provisional decision of what's fair to put things right here. And it's this I'll be telling Lowell to do to resolve this matter.

**my final decision**

My final decision is that Lowell Portfolio I Ltd should remove any record of this debt from Mr K's credit file and pay him £200 to compensate him for the confusion and frustration caused here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 May 2021.

James Staples  
**ombudsman**