

complaint

Mr B complains that Lowell Portfolio I Limited ("LPL") is unfairly asking him to pay a debt that he does not owe it. The complaint is brought on behalf of Mr B by an adviser, but for ease I shall refer below to all actions being taken by Mr B.

background

Mr B had a current account with a bank ("Q"). He said that he asked Q to close the account, but it did not do so. Instead, it kept the account open allowing direct debits to be called. Then it returned the direct debits as unpaid and applied unpaid direct debit charges to the account. Mr B said that this caused the account to go overdrawn and further charges were then applied. Q sold the debt to LPL in June 2013 with a balance due of £456.50. Mr B believes that he does not legitimately owe anything because the debt was made up of charges incurred after he closed the account. Mr B also complains that LPL has failed to provide proof of the debt despite repeated requests.

The adjudicator did not recommend that the complaint should be upheld. She contacted Q, and it confirmed that the debt of £456.50 was legitimately owed and that it had subsequently sold it to LPL. Q also said that it did not receive a request to close the account, but even if it had, it would not have done so because there was an outstanding balance. She did not consider this to be unreasonable. She noted that Mr B had not provided evidence as to when he asked Q to close the account, or what the balance on the account was at the time he asked the bank to close it. She also noted that Mr B did not dispute that he had a current account with Q. She considered that Q had provided statements for the account which sufficiently proved the debt, and she noted that the account overdraft was agreed on 7 February 2006. She also said that the balance which Q sold to LPL was the same amount that LPL was asking Mr B to pay. The adjudicator concluded that LPL had not acted incorrectly in asking Mr B to pay the debt, which it bought in good faith from Q.

Mr B disagreed, and responded to say, in summary, that he had asked Q to close the account and Q did not action his request. He disputes that the debt is due to LPL or Q. He also said that as LPL had not provided a true copy of his credit agreement, the debt was unenforceable.

my findings

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

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I note that Mr B said that he had asked Q to close the account. But he has not told this service when he did this. And I note that Q has no record of any closure request on its contact records. I also note that Q said that it would not have been able to close the account as there was a balance outstanding. I have seen Q's account statements from November 2008. I can see that Mr B last used the account in March 2009, and his last transaction was a loan repayment made on 19 March 2009. But, the account was already overdrawn before this payment was made. So, I can see that if Mr B had asked Q to close the account after his last transaction, then it would not have been able to do so as the

account was overdrawn. It is also clear to me that Mr B does not dispute that he had the account, and he does not dispute that the transactions before 19 March 2009 were made by him.

As Mr B's account was overdrawn, overdraft charges and interest were applied to it. I also note that Mr B's account was overdrawn in December 2008 and overdraft charges were applied to it as a result. So I am satisfied that Mr B would have known about such charges then, and there is no evidence that he queried such charges at that time.

I can also see that two direct debit payments were made from Mr B's account in May and June 2009, at a time when the account was already overdrawn. So, it was not the direct debit payments which made the account go overdrawn. Charges were then applied to the account as the payments were returned. Whilst I have not seen the terms and conditions which applied to this account, Q has sent this service a copy of a 1999 current account brochure which referred to interest and charges being applied to overdrawn accounts. I am also aware that these and charges for unpaid direct debits were commonly applied by current account providers, and enabled by current account terms and conditions. So, I am not persuaded that such charges were unlawfully applied.

I also note that Mr B said that as a true copy of the credit agreement had not been supplied, the debt was unenforceable. But, only a court can determine whether a debt is unenforceable.

So, after taking into account the underlying causes of the complaint and all available submissions, on balance, I agree with the adjudicator that LPL has not acted inappropriately in seeking repayment of the debt from Mr B.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 20 April 2015.

Roslyn Rawson
ombudsman