

complaint

Mr O complains that Lowell Financial Limited, (LFL”), is unfairly pursuing him for a debt he said was statute barred.

background

Mr O is unhappy that LFL has sent him debt collection correspondence for a debt that he says is statute barred. He said that LFL claimed that his last payment on the account was in March 2013, but that this wasn't correct as he was then out of the country.

The adjudicator didn't recommend that the complaint should be upheld. He concluded that LFL hadn't acted unreasonably in pursuing Mr O for the debt as he felt that Mr O was the correct debtor. He said that LFL had explained that the original debt related to a current account with a third party bank, (“B”). B had sold the debt in June 2016 to a company who had appointed LFL to manage the account. He had seen a copy of the bank statements for the account between 25 August 2009 and 10 June 2013. These showed transactions on the account between September 2009 and September 2011. The adjudicator also explained that this service couldn't comment on the enforceability of a debt as this was for a court to decide.

Mr O responded to say, in summary, that he'd been contacted by other debt collectors previously about the debt and had explained that it arose due to a dispute with B about bank charges which he believed B had imposed unfairly, and he refused to pay them. He said that B had told him the charges shouldn't have been imposed.

The adjudicator responded to say that a new complaint would need to be set up about the bank charges dispute.

my findings

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

Mr O's main complaint is that the debt is statute barred and that LFL shouldn't be pursuing him for the debt. He referred to the Limitation Act 1980 and the Financial Conduct Authority's Consumer Credit Sourcebook. Mr O said that under these, the debt is statute barred and cannot be enforced against him, as he's not made a payment to the debt or acknowledged it for over six years. LFL said that the account was defaulted in June 2013, and that a payment was last made into the account in March 2013.

Whilst Mr O disputes the payment in March 2013 and that the account was defaulted, I note from B's bank statements that the last payments into Mr O's account were made on 30 June 2011, which is less than six years ago. But, as the adjudicator has said, it's not for this service to say whether or not a debt is legally enforceable – only the courts can do that. So I can't say whether LFL is legally entitled to recover payment of the debt from Mr O, or whether it's now statute barred.

I appreciate Mr O will be very disappointed with the decision I have come to here but for the reasons explained I don't think I can uphold the complaint. Mr O may wish to continue his dispute with LFL but if he does, he will need to do so through other means as this decision represents the last stage in our process.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 20 July 2017.

Roslyn Rawson
ombudsman