

complaint

Mr A and Miss A complain that they repaid a loan in full in 2008, a long time before it was taken over by Lowell Financial Ltd. Miss A made monthly repayments between 2012 and 2018. They complain the payment arrangement was set up under duress at a time when Miss A was vulnerable due to her personal circumstances at the time.

To settle matters they'd like the payments Miss A has made refunded together with interest on the monies paid to Lowell.

background

In January 2002, Mr A and Miss A jointly took out a loan for £7,000 with a business I'll call Business One. In December 2011 Business One sold the balance of the loan – which then stood at £6,344 - to Lowell. In February 2012 Lowell wrote to explain it had acquired the balance of the loan from Business One.

The account fell into arrears and Lowell sent a number of letters asking for payment. In October 2012, Miss A entered into a payment arrangement Lowell. She paid £20 initially and thereafter £40 monthly by Direct Debit. These payments continued until March 2018 and came to a total of £2,660. This brought the balance of the debt down to £3,684.

In April 2018 Mr A contacted Lowell and asked it to refund the payments Miss A had made since October 2012 totalling £2,660. Mr A says Lowell agreed to make the refund by cheque. Mr A asked for a faster refund so Lowell explained that it would be quicker to make a direct debit indemnity claim with Miss A's bank.

The indemnity claim was made but Miss A's bank only refunded 13 monthly payments totalling £520. Mr A and Miss A are unhappy that Lowell hasn't refunded the payments as it agreed. They complain that the loan was fully repaid in 2008 long before the loan was transferred to Lowell and that Miss A only agreed to make the payments under duress because she was in a vulnerable position at the time and Lowell took advantage of this.

In June 2018 Lowell issued its final response letter. It said it didn't believe a refund was due. Dissatisfied with this response, Mr A and Miss A referred their complaint to this service.

Our investigator looked into their complaint. He recommended that the complaint should be upheld in part. He didn't think Lowell should refund any of payments Miss A had made towards the loan. But he thought Lowell should pay £100 compensation to reflect the distress and loss of expectation it'd caused by incorrectly telling them they were entitled to a refund when this wasn't the case and not correcting this misunderstanding until it issued its final response letter.

Lowell agreed with the investigator's view but Mr A and Miss A don't. So they've asked for an ombudsman's decision.

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 A and Miss A say they fully repaid their loan to Business One in 2008 – before the loan was assigned to Lowell. I must explain that I can't look at this part of their complaint. This is because I can only look at the way they were treated by Lowell. And neither can I make a

finding about whether or not the debt is properly due and enforceable – as that would be a matter for a court to decide. But I am able to consider whether or not Lowell treated Mr A and Miss A fairly.

I've looked at copy statements provided by Business One to Lowell. The statements record that the last payment received by Business One was in May 2008. At this point the outstanding balance was £5,362. There's no record of any further payments being made after this date. The outstanding balance increased to £6,344 by December 2008 - due to Business One adding interest and charges. And in December 2011 the debt was sold to Lowell.

did Lowell apply undue pressure to Miss A?

I've seen a copy of the signed loan agreement made between Miss A, Mr A and Business One in December 2001. The loan agreement allows Business One to transfer the debt. It also says that Miss A and Mr A are jointly and severally liable for payment of the debt. This means that in the event of non-payment the lender can proceed against either or both of them for repayment of the full amount of the debt.

I can see from Lowell's records that it spoke with Miss A and Mr A on the phone a number of times in 2012. Lowell hasn't been able to provide these call recordings, due to the passage of time. But I've looked at the notes of the conversations that took place and I haven't seen anything in them to suggest Lowell placed any undue pressure on Miss A to make any payments.

I've seen that Lowell sent letters to Miss A in 2012 asking her to repay £6,344.52. It also sent reminders when it didn't receive any replies. I don't consider that in sending these letters Lowell placed under pressure on Miss A or that the letters were threatening. Instead I think Lowell set out in its letters the information lenders are required to give in these situations and the consequences of non-payment.

Lowell's notes show it spoke with Mr A a number of times in 2012. He explained again that he'd repaid the debt owed to Business One by cheque in 2008. Based on the information Lowell had been given by Business One I can't say Lowell acted unreasonably or unfairly in asking for repayment of the loan because its understanding was that the loan was due and payable as there was no record that it had been repaid in 2008. And, as I've explained above, because Mr A and Miss A were jointly and severally liable for the debt I can't say Lowell acted unfairly in contacting Miss A about repayment of the debt.

I don't have any reason to doubt Miss A was going through a difficult time in 2012 when she set up the payment arrangement with Lowell. But I've seen nothing to suggest Lowell took advantage of this situation or put pressure on her. I can see she continued to make payments to Lowell for six years without raising any concerns during this time so I think it's unlikely that she made the payments under duress. And I think she fully intended to make the payments.

refund of amounts paid by Miss A

I've listened to the calls Mr A made to Lowell in April 2018. Lowell agreed to make a refund of £2,660 by cheque. It's not clear why it agreed to do this – given the length of time it'd been trying to recover the debt. But later Lowell explained that what Mr A had been told was

a mistake and that it'd made clear to Mr A that he and Miss A weren't entitled to a refund after all.

Mr A wasn't happy with the length of time he'd have to wait for a cheque to be processed so Lowell instead suggested it would be quicker to make an indemnity claim to recover the money. This was done and Miss A's bank refunded £520. However, indemnity claims are generally used in situations where the payment hasn't been authorised. But here, I'm satisfied that Miss A had authorised the payments to Lowell. And this meant that after Miss A's bank refunded her £520, it then asked Lowell for reimbursement of the refund it had made and, in turn, Lowell then added this to the amount owed by Mr A and Miss A.

I can understand that Mr A and Miss A will have been very disappointed when they thought they'd receive a full refund when that turned out not to be the case. So I think it's fair that Lowell should pay compensation to recognise the impact this has had. I think the compensatory payment of £100 suggested by the investigator is reasonable in these circumstances. I say this for a number of reasons.

Firstly I don't think Mr A or Miss A suffered any financial loss as a result of Lowell's mistake. I've mentioned above that after Lowell said it would refund £2,660, another call took place later that day in which Lowell explained that it wouldn't be making a refund after all. It's unfortunate that a copy of this call recording isn't available but I don't have any reason to doubt the conversation took place as I've seen Lowell's notes of the conversation. So I think Mr A will have been aware that Lowell wouldn't be making a refund. I think Lowell could nevertheless have handled matters better because a third call took place on the same day – about making an indemnity claim – and Mr A was again led to believe he could make a claim for the full amount with no reference being made to the second call. Lowell didn't make that it wouldn't be making a refund until it issued its final response letter in June 2018.

Secondly, I've already explained that I can't make a finding about whether or not the debt it valid and enforceable. But as I've seen nothing to suggest the debt was ever repaid in 2008 I can't say Lowell treated Mr A and Miss A unfairly by asking them to repay it and not making a refund of the monies Miss A had paid.

Miss A continued to make payments towards the debt from 2012 to 2018 which she never disputed during this time. This suggests to me that it's likely that she made the payments because she thought the debt was due. So I'm not persuaded these payments were made under duress.

I realise Mr A and Miss A will be disappointed by my decision but it brings to an end what we, as an informal dispute resolution service, can do to resolve their complaint.

my final decision

My final decision is that I am upholding this complaint in part and I require Lowell Financial Ltd to pay £100 compensation for the distress and loss of expectation caused by incorrectly telling Mr A and Miss A they were entitled to refund. The £100 compensation is to be offset against the outstanding debt, rather than paid to Mr A and Miss A directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss A to accept or reject my decision before 12 July 2019.

Michelle Hayward
ombudsman