

The complaint

Mr S complains that Link Financial Outsourcing Limited is attempting to collect a debt that is statute barred.

What happened

In the 1990s Mr S took out student loans. Mr S has explained that in 2004 he didn't defer the loan repayments and the account was ultimately referred to a firm of debt collectors. Mr S made payments between November 2004 and January 2005.

Mr S says that no further contact was made with the debt collectors.

In January 2016 the original firm of debt collectors was replaced by Link which went on to contact Mr S on the lender's behalf. Mr S made payments between March and August 2016. Since 2018, Mr S has been in correspondence with Link providing information about his circumstances and health.

Last year, Mr S complained that Link was attempting to collect a statute barred debt. Mr S explained that as no payments had been made between January 2005 and March 2016 and there was no written acknowledgement of his debt, he believes the debt is statute barred and unenforceable in court.

Link issued a final response but didn't agree the debt was statute barred and didn't uphold Mr S' complaint. Link highlighted a section of the contact notes from August 2010 which recorded an offer of £1 a month from Mr S. Link added that Mr S then made payments to the debt from March 2016. Link said Mr S has corresponded with it about the debt since 2018. Link said that as Mr S acknowledged the debt within the last six years, it doesn't believe it is statute barred under the Limitation Act 1980 and remains payable.

Mr S referred his complaint to this service and it was passed to an investigator. The investigator explained that the Financial Ombudsman Service is an informal dispute resolution service and has no powers to decide whether a debt is statute barred or not. The investigator also noted Link had supplied evidence from contact notes that showed Mr S made an offer towards the loan in August 2010 and thought it had fairly contacted him for repayment.

Mr S asked to appeal and said he was concerned about inconsistencies in the loan documents he'd obtained. Mr S also said Link was unaware of his address at the time it claims to have spoken with Mr S in August 2010. Mr S repeated that he hadn't made an offer to make payments in August 2010 either in writing or over the phone and that the debt should be statute barred. As Mr S asked to appeal, his complaint has been passed to me to make a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I've been reasonably brief in setting out the background above as all parties broadly agree concerning the timeline for Mr S' complaint. In short, Mr S says there was a gap in communication and written acknowledgement of the debt between January 2005, when payments stopped, and August 2016, when he agreed to start payments to Link. But Link, in turn, says that Mr S acknowledged the debt in August 2010 when he made an offer to make payments of £1 towards the outstanding balance. As a result, Link denies Mr S' claim that the debt is statute barred.

I think it's reasonable to start by saying the Financial Ombudsman Service is unable to make a decision on whether the debt is statute barred or not. That's not something the rules we operate under allow this service to do. Whether a debt is unenforceable or not is a matter that only the courts can decide by applying the relevant legislation.

I note that Link's final response to Mr S accepts that if a customer hasn't acknowledged their debt in writing or made a payment within a six year period, the account would be considered unenforceable or statute barred. Link has supplied copies of contact notes from 2010 that indicate Mr S made an offer of £1 a month towards the outstanding balance. It's not clear from the information Link sent whether it claims that offer was made in writing or over the phone. As I've said above, only a court would be able to decide whether the debt is enforceable or not based on the available evidence.

Whilst I can't decide whether the debt is enforceable in court, I can consider whether Link has treated Mr S fairly by contacting him for repayment. I note Mr S' responses to the investigator where inconsistencies with the loan documents have been highlighted. But I think it's fair to say Mr S' student loans were deferred with the lender and then subject to payments he made both in 2005 and 2016 to Link and its predecessor. Mr S hasn't told us that Link is pursuing the wrong borrower or that he didn't take out the student loans originally - he's raised concerns on the basis that the debt may be statute barred.

I'm sorry to disappoint Mr S but as I'm satisfied there is an outstanding debt in Mr S' name that Link has been instructed to collect, I'm unable to agree it's acted unfairly by contacting him to discuss repayment.

Mr S has told us about significant mental health issues and explained that this situation is having an unreasonable impact on him. I appreciate that contact from Link concerning the student loan debt is distressing. I'd expect Link to take Mr S' circumstances and any vulnerabilities he has into account when contacting him to discuss repayment. I'd also expect Link to ensure it treats Mr S positively and sympathetically in its dealings with him. I note that in Link's file submission to us, it said Mr S may qualify for a medical cancellation under the original loan terms if he's able to provide a letter from a qualified professional that confirms he's unable to work on a permanent basis. In my view, Link has shown it is willing to take Mr S' circumstances into account and accept medical evidence from him.

I'm very sorry to disappoint Mr S but as I can't make a decision concerning whether the debt is enforceable or not and I haven't been persuaded it's acted unfairly by contacting him to discuss repayment of the outstanding balance, I'm not upholding his complaint.

My final decision

My decision is that I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 April 2024.

Marco Manente
Ombudsman