

BETWEEN:

XXXXX XXXXX

Claimant

and

LOWELL FINANCIAL LIMITED t/a
RED DEBT COLLECTION SERVICES

Defendant

PARTICULARS OF CLAIM

1. The Claimant is a company director with an untarnished personal credit history who has no connection of any kind with the Defendant (which carries on business as a debt collector) save that the Claimant was apparently targeted by the Defendant in an unjustified and sustained six month campaign of harassment to extract money from him that was neither due nor payable, which caused the Claimant alarm and distress, contrary to s.3(1) Protection from Harassment Act [1997].
2. On 30th April, 2009 the Claimant received a letter from the Defendant dated 27th April, 2009 under its reference 91144569 informing him of his indebtedness to the Defendant as a result of allegedly defaulting on a transaction for £124.36, which the Defendant claims the Claimant entered into with HSBC Bank plc under their reference 6312400101407999.
3. The Claimant also received seven further letters from the Defendant dated:
 - 28.08.09; and
 - 01.09.09; and
 - 08.09.09; and
 - 17.09.09; and
 - 27.09.09; and
 - 09.10.09; and

- 15.10.09

4. Throughout these letters the Defendant issued a series of serious, persistent and unwarranted threats concerning:

- the indebtedness the Claimant has to the Defendant; and
- the Claimant's failure to settle his outstanding balance; and
- the Claimant's failure to enter into a repayment plan; and
- the monies the Claimant has previously had the benefit of; and
- the Claimant not having taken responsibility to clear his outstanding debt; and
- the Claimant's account being passed to the Defendant's specialist recoveries unit; and
- the Defendant's specialist recoveries unit ultimately deciding the best form of action to recover the outstanding amount from the Claimant; and
- the Claimant continuing to persist with non-repayment of his outstanding account; and
- the Claimant's account being fast tracked to one of the Defendant's approved debt collection specialists; and
- the Claimant being subjected to the Defendant's Special Recoveries Unit.

5. The Defendant further threatened the Claimant that:

- this debt is not going to go away; and
- the Claimant must call the Defendant and arrange payment; and
- ignoring the problem could potentially make the Claimant's situation worse; and
- the Defendant shall proceed to further action; and
- further action will be taken against the Claimant; and
- this is the Claimant's final opportunity ... to bring this situation to a close.

6. All these letters caused the Claimant considerable distress and anxiety and put him in fear that the “further action” referred to would involve him being taken to court, and the Defendant’s threat that “ignoring the problem could make [the Claimant’s] situation worse” meant that his untarnished credit history would be ruined, resulting in damage both to the Claimant’s creditworthiness as a consumer and to his reputation as a businessman.

7. The Claimant has never had any dealings of any kind whatsoever with HSBC Bank plc and from the end of April and during May, 2009 he made several unsuccessful attempts to speak to the Defendant by telephone to inform it of its erroneous claim. The Claimant therefore corresponded with the Defendant via his appointed representative “e-law” by e-mail to the Defendant dated 30th April, 2009, which also posted a hard copy of this correspondence to the Defendant at their Leeds office, stating that the Claimant:

“... has no knowledge of any account with HSBC, either currently or in the past, and has no knowledge either of the existence of any outstanding claim of any kind.”

The Claimant’s appointed representative therefore requested that the Defendant post full details of how this alleged debt is substantiated, and it also provided the Defendant with the Claimant’s full postal address for this purpose. The Claimant’s appointed representative further expressly required the Defendant to provide proof evidenced by signature that the Claimant entered into a transaction with HSBC Bank plc in connection with the Defendant’s claim.

8. On 30th April, 2009 the Defendant duly acknowledged receipt of these requests and provided the following assurances:

“We are currently looking into your enquiry and will respond to you as soon as possible. Please be assured we will try to answer and resolve your query at our earliest convenience.”;
and

“What I can guarantee is that your enquiry is being dealt with and you have no need to e-mail again.”

However the Defendant never responded further to any of these requests, either for information or for evidence of the Claimant’s alleged indebtedness, but instead thereafter continued to engage in a vigorous, persistent and harassing course of conduct in pursuance of the alleged debt directly with the Claimant. This is notwithstanding firstly that the Claimant’s appointed representative repeatedly wrote to the Claimant; secondly that the Claimant expressly denies the existence of any debt; and thirdly that the Claimant persistently demanded proof evidencing the existence of any debt, which request was persistently ignored. Judged against the civil standard of proof, the Defendant knew or ought to have known that such a course of conduct amounts to harassment.

9. Such failure also constitutes a fundamental breach of The Office of Fair Trading’s “Debt collection guidance - Final guidance on unfair business practices” - July 2003 (updated December 2006)” (‘the OFT Guidelines’) which state as follows:

Unfair practice is established by the debt collector:

“2.2 e. failing to provide debtors or creditors with information on status of debts, for example, not providing requested balance statements when reasonably requested”; and

“2.3 Those contacting debtors must not be deceitful by misrepresenting their authority and/or the correct legal position.”; and

“2.4 f. pursuing third parties for payment when they are not liable”.

Harassment is established by the debt collector:

"2.6 d. not ensuring that an adequate history of the debt is passed on as appropriate..."; and

"2.6 h. ignoring and/or disregarding claims that debts ... are disputed and continuing to make unjustified demands for payment"; and

"2.8 b. disclosing debt details to an individual when it is uncertain that they are the debtor in question"; and

"2.8 c. refusing to deal with appointed ... parties"; and

"2.8 d. contacting debtors directly and bypassing their appointed representatives"; and

"2.8 i. failing to investigate and/or provide details as appropriate, when a debt is queried or disputed, possibly resulting in debtors being wrongly pursued"; and

"2.8 k. not ceasing collection activity whilst investigating a reasonably queried or disputed debt.

10. The Claimant states that such breaches further breach the requirements of the Defendant's own Consumer Credit Licence No: 528607 issued by the Office of Fair Trading, and that the Defendant acted ultra vires its authority.
11. On 4th September, 2009 the Claimant received a further threatening letter from the Defendant dated 1st September, 2009, and the Claimant's appointed representative therefore responded to the Defendants, once again, by e-mail and letter that same day with an identical list of requirements to those previously requested. Once again, the Defendant duly acknowledged receipt of these requests on 4th September, 2009 and provided the same assurances as before, none of which have ever been complied with.

12. On 11th September, 2009 the Claimant received a further threatening letter from the Defendant dated 5th September, 2009, and the Claimant's appointed representative therefore responded to the Defendants, once again, by letter that same day with an identical list of requirements to those previously requested, none of which has ever been provided.

13. On 15th September, 2009 the Claimant wrote directly to HSBC Bank plc to complain about the Defendant's unlawful harassment whilst using their name, stating:

"In fact I have never held an account with HSBC Bank plc and I have no knowledge of this alleged debt."

but no substantive or useful response was received.

14. On 21st September, 2009 the Claimant received a further threatening letter from the Defendant dated 17th September, 2009, and the Claimant's appointed representative therefore responded to the Defendants, once again, by letter that same day with an identical list of requirements to those previously requested, none of which has ever been provided.

15. On 30th September, 2009 the Claimant received a further threatening letter from the Defendant dated 27th September, 2009, and the Claimant's appointed representative therefore responded to the Defendants, once again, by letter that same day with an identical list of requirements to those previously requested, none of which has ever been provided.

16. On 5th October, 2009 the Claimant wrote to the Defendant putting it on notice once again that no debt exists, and further making it clear that the Defendant has caused the Claimant considerable distress and anxiety and has put the Claimant in fear that the Defendant shall take the Claimant to court, and that the Defendant shall report this matter to credit reference agencies and that the Defendant shall damage the Claimant's credit rating. The Claimant also warned the Defendant that he would issue an injunction if the Defendant's unlawful harassment continues.

17. The Defendant responded on 13th October, 2009 with a further demand dated 9th October, 2009 for £124.36, again warning the Claimant firstly "not to ignore the problem" and secondly that "doing nothing could make things worse".
18. On 2nd November, 2009 the Claimant received a letter from the Defendant dated 28th October, 2009 informing him that the alleged debt that the Defendant had been so vigorously pursuing for the previous six months would no longer be pursued because it is statute barred.

Despite this, the OFT Guidelines, which the Defendant is bound by and under which it operates under licence, state:

"2.14 b. it is unfair to pursue the debt if the debtor has heard nothing from the creditor during the relevant limitation period ..."; and

"it is unfair to mislead debtors as to their rights and obligations, for example, falsely stating or implying that the debt is still legally recoverable and relying on consumers not knowing the relevant legal provisions..."

19. On 2nd November, 2009 the Claimant replied to the Defendant by letter and e-mail reiterating the fact that, notwithstanding the alleged debt being statute barred, it was never his in any event because he had never entered into any kind of transaction with HSBC Bank plc. In this letter the Claimant therefore requires the Defendant to produce copies of the details of the alleged debt evidencing the Claimant as a party to the alleged transaction, since the Claimant also wishes to take this matter up separately with HSBC Bank plc. The Claimant goes on to inform the Defendant that if it fails to provide the documentation required within 14 days, the Claimant shall issue proceedings against the Defendant for harassment contrary to s.3(1) Protection from Harassment Act [1997]. The Defendant acknowledged receipt of this letter on 2nd November, 2009 but made no reply to it.

20. On 10th November, 2009 the Claimant sent a copy Statement of Claim in these proceedings to the Defendant enquiring as to whether the Defendant takes issue or disagrees with any of its content and, if so, to provide reasons. The Claimant stated that, if he hears nothing from the Defendant, he shall assume that none of the issues are contentious and shall issue the claim as it stands. The Defendant acknowledged receipt of this letter on 10th November, 2009 but made no reply to it.
21. As a result of pursuing its unwarranted, oppressive and unacceptable course of conduct, the Defendant has abused its position as a licensed debt collector to unlawfully harass and annoy the Claimant over a six month period, ignoring each and every request for information and either negligently or fraudulently sending threatening letter after threatening letter in pursuance of an alleged debt that has absolutely no connection whatsoever with the Claimant and which, in any event, could not be legitimately recovered from any party even if a genuine debtor were to exist.
22. Nothing the Claimant could do would stop the constant oppressive and unacceptable stream of threatening letters, or could remove the threat of damaging the Claimant's status as a consumer and businessman with an untarnished credit history.
23. The Claimant wasted many hours and was brought to a state of considerable anxiety not knowing whether he would have legal proceedings served on him or whether he had already been reported to credit reference agencies. As a result, on 13th October, 2009 the Claimant felt compelled to order a full credit report on himself from the Experian credit reference agency.
24. By reason of the Defendant aggressively and persistently pursuing wholly unwarranted claims against the Claimant, the Defendant knew, or ought to have known, that it was pursuing an oppressive and unacceptable course of

conduct which amounts to harassment of the Claimant, contrary to s.3(1) Protection from Harassment Act [1997].

25. The Defendant's threats had been serious and the Claimant's knowledge that the threats were unjustified could not and did not make them less so.
26. By reason of the Defendant harassing the Claimant as aforesaid, the Claimant has suffered loss and damage.
27. The Claimant also claims interest on the damages awarded at a rate of 8% pursuant to section 69 of the County Courts Act 1984.
28. The value of this action exceeds £1,500.00 but does not exceed £3,000.00.

AND the Claimant claims:

1. Damages for harassment contrary to s.3(1) Protection from Harassment Act [1997] in accordance with the legal principles established in Ferguson -v- British Gas Trading Ltd. [2009] EWCA Civ 46 at a rate to be determined by the court.
2. £11.99 being the cost of the Claimant's Experian credit reference.
3. Interest as aforesaid.

Statement of Truth

I believe that the facts stated in these particulars of claim are true.

Dated 16th November, 2009

XXXXX XXXXX who shall accept
service of proceedings at:
XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX
XXXXX XXXXX

CASE NO:

IN THE WEST LONDON COUNTY COURT

BETWEEN:

XXXXX XXXXX

Claimant

and

LOWELL FINANCIAL LIMITED t/a
RED DEBT COLLECTION SERVICES

Defendant

STATEMENT OF CLAIM

XXXXX XXXXX
XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX
XXXXX XXXXX
XXXXX@XXXX.com