

The complaint

Mrs S complains that Shoosmiths LLP unfairly issued court proceedings in order to recover a debt she owed. She wants the proceedings to be withdrawn and any additional costs waived.

What happened

Mrs S tells us that she owes a debt to a business I'll refer to as "C" in relation to a credit card. She says she fell into arrears because of ill health. Mrs S states that the issuing of the court claim has now increased her debt still further by over £500. She wants the additional costs to be removed. And to be permitted to enter an affordable repayment plan.

Shoosmiths told us that it had been instructed by C to recover the debt. It said that following a reply from Mrs S it had granted a holding period as Mrs S had indicated her mortgage repayment arrangements may alter. And that she would be able to make a revised offer for a payment arrangement. It said it didn't hear back from Mrs S and made one phone call attempt to contact her. It said no voice mail facility was available for a message to be left. A few days later, after the holding period had elapsed, it said County Court proceedings had been commenced. It accepted that more could have been done to contact Mrs S after the holding period had ended. Shoosmiths said that the offer which Mrs S eventually made would take around ten years to repay. It said the issue of additional costs would be a matter for the court to determine.

Our investigator recommended that the complaint should be upheld but in part only. He thought that it was reasonable for Shoosmiths to issue court proceedings to enforce the debt. But he said it could have made greater effort to contact Mrs S before doing so. He recommended it pay £150 to her for distress and inconvenience.

Shoosmiths accepted this. but Mrs S didn't agree. She felt the court costs should not be added to her debt. As it's not been possible to resolve this complaint an ombudsman's been asked to make the final 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'm sorry to hear that Mrs S had experienced ill health. And that this has impacted upon her financial situation. I understand it would be disappointing to be made the subject of court proceedings having been paying off the debt but then having further health related setbacks which meant that payments couldn't be maintained.

The issue of the debt itself isn't in dispute. And where a creditor business is aware that a customer is in financial difficulty, we'd expect it to treat that customer fairly. And show forbearance and due consideration.

What each business does in meeting its obligations is dependent upon the individual facts

and circumstances of each case. Payment arrangements are just one of many potential debt solutions.

Having said that, a creditor is also entitled to take reasonable steps to secure its debts.

Our investigator's view set out a very detailed timeline of events which I won't repeat as the parties have seen it. But in summary it showed that Mrs S owed C over £6,000 which had accumulated on a credit card. C passed this over to Shoosmiths who in turn made contact with Mrs S.

Mrs S replied and sent some details which resulted in a period of grace being applied. When Mrs S didn't get back within the holding period Shoosmiths issued court proceedings after a phone call had failed to re-establish contact.

As Shoosmiths has accepted it should have done more to try to contact Mrs S before issuing the proceedings, I think the fairest way of looking at this situation is to consider the most likely result which would have occurred if it had done so. I've reached the conclusion that it probably wouldn't have led to a different outcome. I'll explain why.

It's clear from the financial information that Mrs S supplied to Shoosmiths that the household outgoings exceeded the income. From what I could see there was no imminent likelihood of that situation getting any better. In those circumstances it's not unreasonable for a business to seek to protect its situation.

I understand that Mrs S has admitted the debt in her acknowledgement to the court. But that Shoosmiths hasn't yet formally applied for judgment be entered. And I'm aware there have been some ongoing discussions about whether a formal legal agreement which falls short of a County Court Judgment (CCJ) might yet be reached. That won't affect my decision.

If an agreement is reached then the terms of that agreement will be for the parties to determine and would presumably address the issue of costs. If no agreement is reached and a CCJ is issued, then the terms of that order (including the issue of costs) are at the discretion of the court. This service has no power to interfere with court decisions.

In summary, whilst I express my empathy for the situation in which Mrs S finds herself, I don't find it was unreasonable for Shoosmiths to have issued court proceedings. The error it did make was in not making greater efforts to resume contact with Mrs S before doing so. To that extent I uphold the complaint.

But this did not, in my opinion, alter the course it would have taken. I think the offer of £150 compensation is a fair and reasonable resolution of this complaint.

Putting things right

Shoosmiths LLP has accepted that it should pay £150 compensation to Mrs S. I find that is a fair and reasonable resolution of this complaint. If it hasn't already done so Shoosmiths should now pay this amount to Mrs S.

My final decision

For the reasons given above my final decision is that I'm upholding this complaint in part.

Shoosmiths LLP should take the action (if it's not already done so) that I've stipulated in the

preceding paragraph.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 18 March 2021.

Stephen Ross
Ombudsman