DRN-4332764

The complaint

A limited company, which I'll call V, complains that IWOCA Ltd has acted in a threatening and intimidating manner in relation to a loan. V also complains that IWOCA had charged it an unfair fee of £990 and failed to explain what this fee was for.

V is represented by one of its directors, who I'll call Mr D.

What happened

V took out a flexi-loan from IWOCA in 2018. In 2022, V wanted to borrow again and IWOCA agreed to lend up to £15,000 on the same loan.

V got behind on its repayments. IWOCA put the loan into default.

V offered to repay by the end of April 2023, but IWOCA declined this offer.

In March 2023, IWOCA applied to take court action and debited V's account with £990.

V settled the loan balance before the courts considered the matter. IWOCA refunded the £990, which it said was the court's fee.

V made an earlier complaint about the interest rate on the loan and IWOCA's actions when V asked for a repayment holiday. This was referred to the Financial Ombudsman in October 2022. An ombudsman made a final decision on 16 February 2023, in which she didn't uphold the complaint.

V has now made a separate complaint that IWOCA's demands for repayment were intimidating and made use of scare tactics. V also complained about the £990 fee, which V's director initially thought was some kind of penalty. These two complaints have been combined for consideration here.

After the complaint was referred to the Financial Ombudsman, IWOCA offered to pay V compensation of £50 as an apology for not providing the clarification V had asked for. One of our investigators looked into what had happened and thought this offer was fair, especially as IWOCA had also written off the court fee of £990.

Mr D disagreed and asked for an ombudsman to look at the matter again. He made the following points, in summary:

- IWOCA had said that there were delays in the Scottish Courts, so no action had been taken. This contradicts their assertion that the fee was charged by the courts.
- £50 wasn't fair to recognise the sheer distress and time taken to get an apology out of IWOCA.
- IWOCA had behaved in a threatening and punitive manner.

- Our investigator had said that V couldn't feel distress because it was a limited company. But V couldn't exist without the people who operated it and it was those people and their families to whom IWOCA had caused distress.

- IWOCA had abused their position to kick someone when they were down. They had obfuscated and misled.

- Despite his offer to clear the debt, they took that as a reason to scale up their timescales and pursue action through the courts.

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.

Having done so, I'm sorry to disappoint Mr D, but I've reached the same conclusion as our investigator. So I'm not going to ask IWOCA to do anything beyond their current offer.

As our investigator explained, we can only consider a complaint from V, not from Mr D personally. V is a limited company and is therefore a separate entity from the people who run it. Our investigator was correct to say it cannot feel distress. This isn't to say that the issues around the loan repayment haven't been very distressing for Mr D and his family. But my role doesn't give me the power to award compensation for the impact on them.

IWOCA's response to V's request for a freeze of interest and six month repayment holiday has already been covered in the previous ombudsman's decision, so I won't address it again here.

IWOCA made a formal demand on 19 October 2022. The letter said that if V didn't pay by 27 October, it would be in breach of the agreement and IWOCA might terminate the agreement. It also warned that this would appear as a default on V's credit file and IWOCA might start legal proceedings. I don't consider this letter to be threatening. In my view, it set out the possible consequences of non-payment clearly.

Some correspondence followed, during which Mr D said that he would prefer the matter to go to court sooner rather than later. IWOCA explained that they were obliged to follow certain procedures, including a 30 day period after the facility was cancelled.

On 28 October 2022, IWOCA wrote again to say they were terminating the agreement. This letter also said that they might begin a County Court claim without further notice. I don't think setting out the next steps in this way was unreasonable or designed to intimidate. I think it was factual information which IWOCA needed to give to be fair to their customer.

I've looked at what happened after Mr D emailed IWOCA on 27 February 2023. In that email, he made an offer to clear the debt by the end of April. IWOCA replied the same day to say they couldn't wait that long. Instead, they offered a short extension until 3 March 2023. Their email said "Failure to receive payment by the aforementioned deadline will result in your account being escalated via our in-house litigation team".

V is a limited company and it took out an unregulated loan. This means that it doesn't get the same degree of protection as an individual taking out a loan under the Consumer Credit Act. Under the terms of the facility agreement, IWOCA were entitled to take reasonable action to recover the debt.

I can see why IWOCA's response was disappointing for Mr D, who was making a genuine

offer to resolve things. But IWOCA had terminated the agreement four months previously. So they had already waited some time.

The decision regarding how much forbearance to give was fundamentally up to IWOCA, particularly bearing in mind that Mr D had elected not to supply any income and expenditure information and had previously asked for court action to begin without delay. I therefore don't think IWOCA acted unfairly in saying no to an extension until the end of April.

I've looked at all the evidence I've been given of IWOCA's communications with Mr D. I think it could have used plainer and clearer language on occasion. But I haven't been able to find anything that I consider to be threatening or bullying. And it's clear that Mr D understood what they were saying.

The court action would of course have had very serious implications for Mr D. I'm sure he found this distressing. But that doesn't mean that IWOCA behaved improperly. At each stage, IWOCA set out what would happen in a matter-of-fact manner. I haven't seen anything designed to intimidate.

As far as the £990 court fee is concerned, it's my understanding that such fees are payable on submission of a claim, not when the hearing actually takes place. IWOCA have provided evidence of the submitted claim form, including the relevant fee. The loan was repaid before a hearing ever took place. But that doesn't mean it was unfair to charge it in the first place. I'm satisfied that this fee was fairly charged when incurred by IWOCA. IWOCA was also entitled to charge it under the lending agreement. In any case, as IWOCA refunded it, V hasn't incurred any loss as a result.

Putting things right

I can see why IWOCA's £50 offer may feel unfair given the amount of stress Mr D says he has suffered. Being unable to repay a loan when due is a stressful situation. But I don't think this was due to any unfair actions by IWOCA. The £50 is just to apologise for their failure to explain the decree and inhibition when requested. I think that is fair.

I haven't found that IWOCA did anything wrong besides this failure to answer a question. So I don't think it needs to do anything more.

My final decision

I uphold this complaint in part and direct IWOCA Ltd to pay the compensation of £50 they have already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 15 February 2024.

Louise Bardell
Ombudsman