



complaint

Mr N complains that Micro Lend UK Limited took funds from his account without his authority.

background

Mr N took out a loan with Micro Lend which he did not repay. Micro Lend obtained judgment against him in the county court in November 2011. Mr N was ordered to pay the judgment debt in monthly instalments.

Mr N says Micro Lend agreed over the phone that he could pay a lower amount to settle the debt and avoid registration of the county court judgment. He says Micro Lend agreed to accept payment in two equal instalments. He paid the first instalment by card in November 2011 and it was agreed that the second and final payment would be taken on his next pay day. However, he says Micro Lend not only took the amount agreed in one transaction, but then also took the balance of the judgment debt in a separate transaction on the same day. The total debited exceeded £1,000. He says this left him without funds to pay rent or bills. He has provided a copy of his bank statement for December 2011 which shows two payments to Micro Lend on the same day leaving him with under 50 pence in his account.

Micro Lend denies there was any agreement to accept a lower amount. It says Mr N paid early to avoid registration of the county court judgment. It puts Mr N to proof that there was an agreement to accept a lower sum.

our initial findings

The adjudicator upheld the complaint because Micro Lend had provided no evidence that Mr N had agreed to pay the full amount of the judgment debt and that the onus was on Micro Lend to do so. She also considered Micro Lend did not handle Mr N's complaint satisfactorily. She recommended that Micro Lend pay Mr N £200 in recognition of the distress and inconvenience it had caused him, by debiting more than agreed and leaving him in financial difficulty and for failing to deal with his complaint fairly.

Mr N accepted the adjudicator's conclusions. Micro Lend does not, though the arguments it makes are not entirely clear.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Micro Lend says that it does not record calls. Therefore there is no contemporaneous evidence of any conversation between Micro Lend and Mr N. However, I have taken account of the email exchanges between them in December 2011, shortly after the money was withdrawn from Mr N's account.

I note that Mr N provided the first name of the person he says he spoke to in his emails to Micro Lend, but I can see no evidence that Micro Lend acknowledged or investigated this. Micro Lend's stance throughout the exchange is that Mr N must prove that an oral

agreement was concluded, knowing that Mr N cannot provide any direct evidence of this, apart from his own testimony.

In my view, it is clear from this exchange that a conversation took place post judgment between Micro Lend and Mr N. I am satisfied that some sort of agreement about payment was reached during this conversation, which, in my view, explains why payments were taken on separate dates. I am also satisfied that Mr N was keen to avoid registration of the county court judgment, if he could, otherwise he would simply have paid the debt in lower monthly instalments, as ordered by the court.

A debtor can ask for a judgment to be removed from the register by paying it in full within one month of the day of the judgment. It is difficult to establish now whether Mr N was told that registration could be avoided by partial settlement. Nevertheless, Mr N has confirmed that he does not want to be indebted to Micro Lend and does not want any of the money refunded. This indicates that Mr N is likely to have agreed to pay the judgment debt in full had he been told or understood this was necessary to avoid registration of the judgment for 6 years.

Nevertheless, I accept that Mr N is unlikely to have agreed to the balance being taken on the same day. If Mr N had agreed to this then I do not understand why Micro Lend took the balance in two separate transactions, as there would have been no need to do so. I accept that Mr N is likely to have wanted to make sure he had sufficient funds before the balance was taken. Also, he still had a further two weeks within which he could settle the balance.

In the circumstances, I consider an award for distress and inconvenience to be appropriate. In making this award, I have also taken into account that Micro Lend showed no interest in investigating Mr N's complaint about what he says he was told by one of its employees.

I consider the award of £200 recommended by the adjudicator to be fair in all the circumstances.

my final decision

My final decision is that I uphold Mr N's complaint against Micro Lend UK Limited and make an award of £200 for the distress and inconvenience cause to Mr N by its actions.

Athena Pavlou
ombudsman