

complaint

Mr B complains about Link Financial Limited pursuing him for a debt that is not his. He is unhappy that Link has asked him to repay the debt and that it attempted to put a charging order on his property.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 7 April 2014; a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr B's complaint should be upheld and the redress I felt was appropriate. In summary, I felt that given the circumstances of this complaint it was reasonable for Mr B to seek legal advice and Link should reimburse the costs he incurred. An additional payment should also be paid for the distress and inconvenience caused.

I invited further comments from both parties before I reconsider the complaint again. Mr B accepted the provisional decision, but emphasised again that the other party in this dispute is not his son, as Link continue to state.

Link did not accept my provisional conclusions and made a number of further points that it asked me to consider. I will not list those in detail here but will respond to them below. Although it did not accept my findings, Link says it is keen to bring Mr B's complaint to a conclusion and is willing to offer £525 to settle the complaint. This offer consists of £250 towards Mr B's costs, £250 for distress and inconvenience and £25 interest.

Our adjudicator put this offer to Mr B but he did not accept it. The complaint has therefore been referred to me for further consideration.

my findings

I have reconsidered all the available evidence and arguments, along with Link's further submissions, to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same overall conclusions as my provisional decision, for what are broadly the same reasons.

My provisional decision refers to the Office of Fair Trading's (OFT) debt collection guidance and the section entitled *deceptive and/or unfair methods* (page 30). Link believes my reference to *deceptive* in the guidance could suggest to someone unfamiliar with the guidance that deception has played a part in my findings. The *deceptive and/or unfair methods* is the heading used in the OFT guidance and it was part of this section of the guidance that I went on to refer to. This was not intended to, nor do I think it actually does, suggest Link's actions have actually been deceptive.

Link is concerned that I am questioning whether or not it is fit to hold a consumer credit licence, based upon its actions in this complaint. My role is to consider the circumstances of this complaint and it is not for me to consider whether or not Link is fit to hold a consumer credit licence, or any other form of authorisation as set out by the regulator. This would be a matter for the regulator to consider.

In my provisional decision I referred to a footnote in the OFT guidance that states a reasonable time period would be within five working days. This was in relation to when a

consumer disputes a debt with a creditor or debt collector and how long is considered to be a reasonable period to respond. After further consideration, I accept that the footnote does not specifically refer to the section which I had actually referred to.

However, I have again considered the actions of Link and Mr B to see whether or not Mr B took reasonable steps when contacting and employing his solicitor. Mr B says he was initially contacted by Link about the debt in May 2012 and at that time he informed Link that the debt was not his. Link should have therefore been on notice at that time that Mr B disputed the debt and believed it was not his.

Having heard from Link again in November 2012 and being told that an interim charging order had been obtained, I still believe this would have been very concerning for Mr B. This is a complicated legal matter and the threat of a charging order on someone's property, for a debt that we know was not his, left Mr B with very few options. Mr B did contact Link again at this time, but this was not the first time he had explained that this is not his debt and I can understand why he may have thought that he would still not be able to convince Link that the debt was not his.

Link has stated that there were no time pressures but I do not think that this was reassuring to Mr B. It would have been a serious concern that he would have wanted resolving as quickly as possible. Although I have noted Link's further comments, I still think that faced with the threat of a 'full' charging order on his property it is not unreasonable for Mr B to have sought legal advice from his solicitor. Nor do I think it was unreasonable, given the timings involved in this specific case.

I have considered what Link has said about the work the solicitor has charged Mr B for but still believe the cost overall was not unreasonable. I find that it was reasonable for Mr B to seek advice when he did and the costs invoiced relate to the work involved in that advice.

Link argues that where a court makes no order, or mention, of costs it is a general rule that the party is not entitled to costs. It believes that by awarding costs, where the court has not, I would be appealing the judge's determination and this is not something that is within our jurisdiction.

Our rules do state that I have the power to dismiss a complaint without consideration of its merits and DISP 3.3.4R states:

The Ombudsman may dismiss a complaint without considering its merits if he considers that:

(8) the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits

Our jurisdiction sets out what complaints we can, or cannot, consider but the issue here is not a jurisdiction matter. It is a dismissal reason. Consequently, I have the power to consider the complaint but can choose to dismiss [part of] the complaint, for one of the reasons set out in the rules. I am satisfied that I have the power to consider this part of Mr B's complaint and I do not think this part of the complaint should be dismissed.

It is Link's view that as the judge was silent on the issue of costs, he [the judge] did not think that costs should be awarded. I have noted what Link has said about the general approach to costs when not referred to in a judgement. However, I should remind Link that when

considering complaints I have to *have regard to* the law in making decisions but I do not have to *follow* that law. As I explain above I must make a decision which is, in my view, fair and reasonable in all the circumstances of the complaint.

Link accepts that it incorrectly sought to apply the charging order to Mr B's property. Mr B has incurred costs through his solicitor as a result of Link's mistake and attempts to apply the charging order. In the circumstances here, I do not think it is reasonable for Mr B to incur those costs. The costs would not have been incurred had Link not sought to wrongly apply the charging order to Mr B's property. Having considered the specific circumstances of this complaint I still believe that it would be fair and reasonable for Link to reimburse Mr B for the costs he has incurred.

I also still believe that Mr B has been caused some distress and inconvenience as a result of Link's actions and an additional payment should be made for this.

my final decision

My final decision is that I uphold this complaint and I direct Link Financial Limited to:

- pay Mr B £1,000 for the costs he has incurred; and
- pay Mr B £250 for his distress and inconvenience.

Interest at 8% simple per year should be added to the £1,000 from 8 January 2013 until the date of settlement.

If Link considers that tax should be deducted from the interest element of my award it should provide Mr B with a tax deduction certificate so he can reclaim the tax if he is eligible to do so.

Mark Hollands
ombudsman

COPY - PROVISIONAL DECISION

complaint

Mr B complains about Link Financial Limited pursuing him for a debt that is not his. He is unhappy that Link has asked him to repay the debt and that it attempted to put a charging order on his property.

background

Link obtained a county court judgment against an individual (the debtor) who has the same first name, initial and surname as Mr B. The debtor did not make the agreed repayments to Link and contact was lost with him. Link attempted to trace the debtor to his new address but incorrectly wrote to Mr B and asked him to make payment to the debt.

Mr B informed Link that it was not his debt but Link proceeded with an application for a charging order to be placed on Mr B's property. Mr B sent Link a copy of his driving licence and birth certificate to demonstrate the debt was not his and concerned about the threat of the charging order he contacted his solicitor.

Mr B's solicitor did contact Link and Link then accepted that Mr B was not liable for the debt and that the charging order should not be applied. Link also offered Mr B £150 for any inconvenience he had been caused. At the court hearing the court dismissed the application for the charging order.

Mr B remained unhappy as he had asked Link to refund the £1,000 solicitor's fees he had paid. As Link did not refund the fees Mr B referred his complaint to our service, where it was considered by an adjudicator. The adjudicator initially upheld the complaint and recommended Link reimburse the £1,000 costs Mr B had incurred, and pay him an additional amount for his distress and inconvenience. Link did not accept the adjudicator's recommendation and after further consideration the adjudicator decided the complaint should not be upheld. He then explained why he did not now think Link should be required to refund the £1,000 costs.

Mr B did not accept the adjudicator's findings and the complaint has now been referred to me for consideration.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am minded to uphold this complaint.

Link now accepts that Mr B is not the original debtor and that he should not have been asked to make repayments to the debt. As the debt is not Mr B's it's also clear that a charging order should not have been applied for against his property. While I accept that is clear now, this has not always been the case and even after Mr B had told Link that the debt was not his it still went ahead with the application for a charging order and a date was set for a hearing.

Mr B initially received correspondence from Link about the debt and this was returned to Link with a note indicating the debt was not his. Link wrote to Mr B on 22 November 2012 explaining that an interim charging order had been obtained and that a hearing was to take place in early January 2013. Mr B spoke with Link on 26 November 2012 to explain the debt was not his and the notes from the call state that Link said it needs proof the debt is not his and it *cannot just go on his word over the phone*.

Mr B then sent a copy of his driving licence and birth certificate to Link and asked Link to *confirm its receipt by return*. Link received these documents two days later on 28 November 2012 but there is nothing to show it told Mr B this. Mr B says that as he had not heard from Link and was concerned about the possibility of a charging order being obtained he contacted his solicitor to seek further guidance and advice. Mr B called his solicitor on 28 November 2012 and booked an appointment for 3 December 2012.

Link argues that it responded swiftly to Mr B when he provided the documentary evidence to show the debt was not his. However, Mr B had still not heard from Link when he had his appointment with his solicitor a week later. The Office of Fair Trading's debt collection guidance refers to, amongst other things, deceptive and/or unfair methods. Section 3.9 refers to examples of what could be unfair or deceptive methods and states:

i. when a debt is reasonably queried or disputed, failing to investigate and/or provide details (possibly including, for example, details of account history, payment schedules and relevant correspondence) to the debtor, as appropriate, in a timely manner or at all.

We would normally expect 'in a timely manner' in this context to be within five working days.

Link had not responded to Mr B within five working days and it only actually responded to him after his solicitor had written to Link about the debt. Mr B is seeking reimbursement of his solicitor's costs and the question I must consider here is whether or not Mr B acted reasonably in instructing his solicitor to act on his behalf.

Mr B had been notified of the interim charging order that had been applied to his property and that a court date had been arranged for the full hearing. He had provided information to Link to demonstrate the debt was not his and he only met with his solicitor after a reasonable time had passed and he had still not heard from Link about any action ceasing.

I can fully understand Mr B's concerns and in the absence of a response from Link, and with the threat of a court hearing, I think it is entirely reasonable for Mr B to have sought legal advice. As Mr B has, in my view, acted reasonably I am minded to conclude that it would be fair for Link to reimburse the costs he has incurred through employing his solicitor. The solicitor costs were £1,000 and having considered the circumstances here I think that these costs are reasonable and Link should reimburse Mr B for this cost. Link should also add interest to the £1,000 from 8 January 2013, which is the date of the solicitor's invoice.

I have considered what Link has said about Mr B having had the opportunity to apply to the court for reimbursement of his costs but he was told that the hearing would not be proceeding and he therefore did not attend the hearing. I have not seen anything that demonstrates the court actually considered whether or not Mr B should be reimbursed for his costs and there is no reason why this point cannot therefore be considered here.

For the reasons explained, Link should now refund the solicitor costs – with interest. I also think that Mr B would have been caused a considerable amount of distress and inconvenience with the threat of a court order being incorrectly placed on his property and requests for payment of a debt that was not his. In addition to the refund of costs referred to above, Link should make an additional payment to Mr B for his distress and inconvenience. I think £250 is reasonable here.

my provisional decision

Subject to any further evidence or representations received from Mr B or Link Financial Limited, I propose to uphold Mr B's complaint. I am minded to direct Link Financial Limited to:

- pay Mr B £1,000 for the costs he has incurred; and,
- pay Mr B £250 for his distress and inconvenience.

Interest at 8% simple per year should be added to the £1,000 from 8 January 2013 until the date of settlement.

If Link considers that tax should be deducted from the interest element of my award it should provide Mr B with a tax deduction certificate so he can reclaim the tax if he is eligible to do so.

Mark Hollands
ombudsman