

complaint

Mr H complains that MKDP LLP wrongly applied for a county court judgement (CCJ), without telling him, after he agreed to pay a debt.

background

Mr H explains that he got paperwork from the court explaining that MKDP had applied for judgement for a debt. He says that he wasn't sure about the debt but he didn't want a judgement against him. He completed the court paperwork and admitted the debt but asked for time to pay what he owed and put forward an instalment plan. He sent this paperwork by recorded delivery to MKDP and not the court as advised in the form. Mr H called MKDP to check it had received his form and he was told that his payment plan had been accepted. MKDP applied for judgement for the full amount of the debt and told Mr H that if he didn't make the agreed payments then the judgement could be enforced against him. Mr H said that he didn't expect there to be any more court action after he agreed the payment plan and it is having an impact on his credit rating.

Our adjudicator recommended that the complaint should be upheld. She thought that MKDP hadn't made it clear to Mr H that it would still enforce the judgement after it accepted the repayment offer. MKDP didn't agree and said in summary that it had followed normal procedure where an admission is made.

On the 30 October 2015 I made a provisional decision that I was not minded to uphold the complaint because MKDP hadn't done anything wrong. MKDP agreed with my provisional findings and Mr H didn't reply.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

MKDP had been trying to contact Mr H about the debt before it applied to the court. Mr H hadn't got in touch to discuss the debt and hadn't made any proposals to pay it back. MKDP had properly applied to the court for a judgement in these circumstances.

After Mr H got the paperwork from the court the process had already started. If Mr H wanted to stop the judgement being entered then he would have needed to pay the full amount of the debt. The information on Mr H's admission form suggests that he wasn't able to do that because of the other financial commitments he had at that time.

Mr H admitted in the court form that he owed the money and I haven't seen anything that would suggest that Mr H disputed the debt or raised any concerns about it with MKDP. The proper process in these circumstances is for judgement to be entered for the full amount but not enforced unless the agreed repayments aren't made. If MKDP hadn't agreed the repayment plan, or Mr H hadn't responded, then judgement would have been entered and the whole amount would have become payable immediately.

From the information I have seen it looks like Mr H admitted he owed the money and wanted time to pay. If the debt was disputed or Mr H wanted to pay it all to avoid the judgement then I would have expected him to have told MKDP or the court about this.

Because Mr H had ignored the debt for so long I think it is unlikely that MKDP would have agreed to withdraw the claim on the basis of the repayment plan that had been offered. If he hadn't kept to the repayments MKDP would have had to start again. I can't see that MKDP told Mr H that it would withdraw the claim.

I think there has been a misunderstanding about the process for a CCJ and I can understand why Mr H might have thought that all legal action was stopped. It doesn't look like Mr H had the benefit of any legal advice before he sent the paperwork back to MKDP and so he may not have understood the implications of admitting the debt. MKDP has confirmed that the judgement won't be enforced if Mr H keeps to the agreed repayment plan. So I don't think that MKDP has done anything wrong by applying for a judgement in these circumstances.

my final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 February 2016.

Emma Boothroyd
ombudsman