

complaint

Mr T complains that 123 Debt Solutions Ltd reduced his payments to one of his creditors, which he believes led the creditor to obtain a charging order against his property.

background

Mr T entered into a debt management plan with 123 Debt Solutions in around December 2011. In September 2012 he was notified by one of his creditors that it intended to take him to court to obtain a charging order against his home. He was told by the creditor that 123 Debt Solutions had reduced the payments it was making on his behalf. He believes this prompted the legal proceedings by the creditor.

123 Debt Solutions argues that the legal action was unrelated to the payments it was making on Mr T's behalf. It says the creditor wanted Mr T to increase his payments to over £90 per month so that the loan could be repaid within eight years. As Mr T could not afford to increase his repayments to this level, 123 Debt Solutions says legal action was unavoidable.

Our initial conclusions

The adjudicator recommended that the complaint should be upheld. She concluded that the creditor's actions in issuing proceedings against Mr T were triggered by the business' actions in offering reduced payments. The creditor had not previously demonstrated any intention to issue proceedings whilst Mr T was making higher payments towards his debt.

Mr T had also made reduced payments under earlier debt management plans without threat of litigation.

She also noted that the creditor's system notes indicated that it had not received an updated income and expenditure form for Mr T to account for the drop. Therefore, the creditor rejected the business' reduced payment offer. The adjudicator also spoke to the creditor which confirmed that the reduced offer had influenced its decision to issue proceedings.

The adjudicator also considered that the annual reset charge was not transparent.

In light of these conclusions, she recommended that the business should reimburse Mr T the cost of the legal proceedings which had been added to his debt, in the sum of £573, plus interest. She also recommended an award of £100 to compensate Mr T for the distress and inconvenience the business' actions had caused.

The business did not agree with the adjudicator's assessment for largely the same reasons as it had set out in its response to Mr T's complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I uphold Mr T's complaint for reasons which I set out below.

When Mr T entered into the debt management plan with 123 Debt Solutions, the business offered a monthly payment of over £63 to Mr T's creditor, which was accepted. Payments continued at this level till September 2012. Then, in September and November, it made

reduced payments of approximately £26 and £47 before returning to the initial level at the end of November.

In its March 2013 response to Mr T's complaint, 123 Debt Solutions says the reduced amounts were due to a £50 'annual reset charge'. However, it does not believe that the reduced payments influenced the creditor's decision to take action against Mr T.

123 Debt Solutions says it spoke to the creditor which asked for payments to be increased to over £90 a month in order to clear the debt within eight years. Whilst Mr T increased his payments by a small amount he could not meet the creditor's requirements. Therefore, 123 Debt Solutions says legal action was inevitable, as the creditor wanted to secure the outstanding balance.

123 Debt Solutions has provided a recording of this call. It says the recording proves that the creditor intended to issue proceedings to obtain a charging order even if Mr T had continued with payments at the original amount.

123 Debt Solutions also relies on clause 1.5.4 of its agreement with Mr T, which it says entitles it to charge an annual reset charge. This clause says as follows:

"If a whole plan reset is required a £50 fee will be charged. This will cover the time spent preparing offers and corresponding with each creditor to ensure the offers are accepted."

123 Debt Solutions argues that the plan reset was necessary after Mr T agreed to increase his payments to the plan. It says new financial statements were sent to all of Mr T's creditors, with new offers. The fee was charged to cover the cost of the work undertaken.

I have listened to the recordings of two telephone conversations. The first is between 123 Debt Solutions and the creditor. The second is between the adjudicator and the creditor.

I accept that 123 Debt Solutions was told during its call that the creditor would have applied for a charging order even if Mr T's payments had continued at the original rate. However, it is also clear that the creditor's representative had not been responsible for that decision and her opinion was based on her understanding of her employer's processes.

The content of the call between the adjudicator and the creditor suggests that the view expressed to 123 Debt Solutions is not necessarily correct. This was a longer call during which a different representative was referring to detailed system notes.

First, it is clear that there were some delays with setting up the debt management plan. This was because 123 Debt Solutions did not act sufficiently promptly to notify the creditor when it was appointed by Mr T. However, once the initial offer was accepted payments continued at just over £63 until September 2012.

In September 2012, the creditor says it received a substantially reduced offer from 123 Debt Solutions of approximately £38. However, there was no accompanying explanation for the reduced offer. The creditor says it advised 123 Debt Solutions that it could not consider its offer unless it provided reasons for the reduction. Despite its request for further information and an explanation for the change, the creditor says it simply received the same offer three times. Therefore, it rejected it.

When 123 Debt Solutions later contacted the creditor, the latter said that it would only accept payments of £90 per month from then on, otherwise it would seek to protect its position by obtaining a charging order. When 123 Debt Solutions advised that Mr T could not afford to increase his payments to this level, the creditor confirmed that it would continue with the legal process.

The creditor told the adjudicator that its decision was likely to have been influenced by the lack of information from 123 Debt Solutions because it was not sure what was happening with the account. As a result, the creditor decided it was necessary to secure the balance because of the amount and age of the debt.

In the period from September to November 2012, the creditor received reduced payments of £59, £26, and £47, with no payment in October. This coincides with the creditor's decision to commence legal proceedings. When asked, the creditor could not categorically say that legal action would not have been taken if Mr T had continued to make payments at £63. However, she did confirm that 123 Debt Solutions' actions had not assisted Mr T's case because the creditor did not know what was going on during this period. Indeed, Mr T himself says he did not become aware of the reduced payments until he was informed by the creditor.

I have taken into account that the creditor had been happy to accept monthly payments of £63 from January 2012. I have also taken into account that Mr T had previously made reduced payments under a different debt management plan before appointing 123 Debt Solutions. During this time, the creditor had not demonstrated any intention to take Mr T to court to secure the balance.

In all the circumstances, I think it unlikely that the creditor would have commenced proceedings against Mr T if payments had continued at the originally agreed rate. I do not think it would have acted unilaterally to secure the outstanding balance without a trigger event. Therefore, I think it is right that 123 Debt Solutions should cover the legal costs applied by the creditor to Mr T's outstanding balance.

I also consider that 123 Debt Solutions has given inconsistent reasons for making lower offers in September 2012. During the call with the creditor, its employee said the reduced payments were caused by the reset fee. However, it subsequently told this service that the reduced offers were the result of resetting the plan because Mr T had overstated the outstanding balance he owed to the creditor. 123 Debt Solutions says it became necessary to adjust the payments proportionately as the true balance was substantially lower.

I am not satisfied that the chronology of events supports the latter explanation. The creditor's records indicate the reduced payment offer was received in early September 2012. This is before Mr T received correspondence from the creditor threatening legal action. 123 Debt Solutions' notes indicate that Mr T faxed this correspondence to the business about two weeks later. Therefore the reset would not have been necessary until after this date, when the correct balance became apparent.

In light of the above, I am satisfied that 123 Debt Solutions' actions in making reduced payments to Mr T's creditor, and, in particular, in doing so without explanation, prompted the creditor to take legal action against him. The reason for the reduced payments is not entirely clear given the business' conflicting explanations. However, I consider Mr T's account was not well handled. A responsible debt management company should have verified the balances at the outset, before making offers and setting up payments. 123 Debt Solutions clearly did not do so and appears to have relied entirely on Mr T's estimate of what he owed.

I consider the reset was caused by its own omission to verify the balance. Therefore, I think it should refund the fee, plus interest.

Finally, I am satisfied that Mr T was caused distress and inconvenience by 123 Debt Solutions. I consider the amount recommended by the adjudicator to be fair.

my final decision

For the reasons given, my final decision is that I uphold Mr T's complaint.

I direct 123 Debt Solutions to pay any charges that have been added to the outstanding balance Mr T owes his creditor which are connected with the legal action taken against him. This includes any interest that has been applied by the creditor to that sum.

I also consider that 123 Debt Solutions should refund the plan reset fee to Mr T. It must also add interest at the gross rate of 8% simple to the refund, calculated from the date the payment was taken until the date the refund is paid.

Finally, I award £100 compensation for the distress and inconvenience Mr T has been caused.

Athena Pavlou
ombudsman