

complaint

Mr and Mrs H are unhappy that Ulster Bank Ltd has recovered money owing to it through court enforcement action after saying it wouldn't pursue the debt.

background

Mr and Mrs H say that in 2016 Ulster Bank confirmed in letter that although they remained liable for money owed it wouldn't pursue the debt. But when Mr H got damages in a case in an action in the small claims court the bank recovered that money by using the court's Enforcement of Judgment Office ("EJO"). They want this money returned.

Ulster Bank says it had a judgement against Mr and Mrs H for a debt. And it had a charging order over their land. It confirmed in 2016 that it wouldn't pursue the debt and didn't actively do so. But the EJO recovered the sum due under the judgement under its passive remit. To now release the money back to the customer would be against the spirit of the Court's judgment.

Our investigator felt this complaint shouldn't be upheld. He said:

- Here the payment to Ulster Bank was made by the EJO. And we can't challenge its decision.
- Ulster Bank obtained a judgement in 2009 for the money owed. Although it confirmed in 2016 that it had decided not to pursue the Mr and Mrs H for the outstanding debt it said they remained liable for the full amount outstanding. It was legally entitled to the money owed.
- But on the available evidence it was hard to say the bank had agreed then to contact the EJO and not pursue the debt. Here it was the EJO that decided the bank was entitled to this money. The bank's 2016 letter could've been presented to the EJO to allow it to make a decision on whether the bank was entitled to the money.
- A court has decided that Ulster Bank is entitled to the money and he can't ask Ulster Bank to release the money when it may not ultimately recover it all.

Mr H remains unhappy and has asked for an ombudsman review. He says he isn't asking us to challenge the findings of a court. But here the judgement was enforced ten months after the bank confirmed it wouldn't pursue the debt. He accepts Ulster Bank didn't give up the right to the money owed. But the bank's letter gave up the right to collect the money in the manner it did. It made a false and wholly misleading statement that has caused unwarranted hardship and distress. The bank has lied to him and been deceptive. He wants sanctions imposed on the bank and compensation.

my findings

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

Mr H has provided detailed submissions to support this complaint. I've read and considered them all. But my findings are expressed in considerably less detail. And they focus on what I think are the main issues.

In this case Ulster Bank obtained a 2009 judgement for the money owed by Mr and Mrs H. It appears that the bank sought to enforce the judgement through the EJO and also obtained a charging order over land.

There's no dispute that money remained outstanding under the judgment or that the bank had a right to this money.

Ulster Bank said in a letter to Mr and Mrs H dated 6 January 2016 "*We have decided not to pursue you for the debts outstanding on your accounts with us*" and "*you will still remain liable for the full amount owed*".

On 1 April 2016 Mr and Mrs H's solicitor wrote to Ulster Bank asking "*please confirm you will no longer be pursuing this debt through the EJO*". The bank says it can't trace a response to this request but a handwritten note on the letter confirms one was made. It says the wording indicates it continued to hold a charging order over land and it's reasonable to suppose that it would not have agreed to dis-instruct the EJO as that would compromise its security under the charging order.

Taking everything into account I don't think its been shown on balance that Ulster Bank agreed to give up on the enforcement steps it'd already instituted before it sent the letter of 6 January 2016.

Mr and Mrs H clearly had concerns about what was said and what would happen which prompted their solicitor's letter albeit some months later. And it was and remained for them or their solicitor to ensure the position was made entirely clear to their satisfaction. They could also have submitted that letter to the EJO to check on its effect on possible enforcement action and if they remained unhappy they could've made a formal application to the court. But neither they nor their solicitors did so.

In the absence of Ulster Bank specifically confirming it wouldn't pursue the debt through the EJO I don't think it was unreasonable for it to continue to rely on the enforcement action it had already taken and had in place before the 1 January 2016. That was both through the EJO and by having a charging order over the property. And in the spirit of what it said in its letter it certainly doesn't seem to have taken any further active steps after 6 January 2016 to advance or encourage enforcement action by the EJO. It left matters in the hands of the EJO.

So, when in December 2016 Ulster Bank received money from the EJO I think it was reasonable for it to accept it and use it to pay off the money that was outstanding from Mr and Mrs H as it did. Not least, as the bank had made it clear throughout, and Mrs and Mr H accept, that they remained liable for the full amount owed.

Mr H has also said we should impose sanctions on Ulster Bank and he reflects on how other customers will be treated. But this service isn't a regulator. We can't fine or punish a business or require it to change its practices and procedures. General issues about how the banking industry works are a matter for the Financial Conduct Authority.

Overall, although I recognise Mr and Mrs H's strength of feeling and frustration I don't think I can fairly or reasonably require Ulster Bank to do anything differently including repaying any money to them or paying compensation as they'd like. And I don't see any compelling reason to change the proposed outcome in this case.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 15 November 2018.

Stephen Cooper
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