

complaint

Mr E complains about a loan he has with Greenwood Personal Credit Limited. He is unhappy about the way he has been treated during a period of financial difficulties and believes Greenwood Personal Credit lost or delayed some of the payments he had made.

background

The adjudicator who considered the complaint recommended it be upheld. He couldn't be certain that Greenwood Personal Credit delayed allocating the cheque payments Mr E sent.

He thought that even if there were delays allocating the payments Mr E sent they were still applied and Mr E had not actually lost out financially. The adjudicator thought that Greenwood Personal Credit had not correctly allocated the payments that Mr E had sent as he included payments for his wife and daughter's accounts. The adjudicator felt that Greenwood Personal Credit should have realised Mr E was making payments for all three accounts and should have distributed the payment between the three accounts.

The adjudicator noted that one of Greenwood Personal Credit's letters to Mr E stated that court action may be taken against Mr E if he does not pay his outstanding balance.

However, Greenwood Personal Credit has also said that provided payments were being made that no further action would be taken against Mr E. The adjudicator thought this was contrary to the Office of Fair Trading's (OFT) debt collection guidance as it states it is unreasonable to threaten further action when there is no actual intention to do so.

To resolve the complaint the adjudicator thought it would be reasonable for Greenwood Personal Credit to move £63 from Mr E's account to his daughter's account as these were the wrongly applied payments. He also thought that Greenwood Personal Credit should pay £100 to Mr E for the distress and inconvenience he had been caused.

Both parties broadly agreed with the adjudicator's findings and recommendations. However, Greenwood Personal Credit said it would prefer to pay £150 to Mr E's account to reduce the balance, rather than paying £100 directly to Mr E. It notes that Mr E's account is heavily in arrears and this is why it feels the payment should be made to the account.

Mr E feels he will have no benefit of the money if it is paid to the outstanding balance and says he would prefer the payment is made directly to him.

my 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 have come to the same overall conclusions as the adjudicator for broadly the same reasons.

As both parties have accepted all but one of the adjudicator's findings I see little benefit in repeating those points in great detail here. I will simply say that I agree with the adjudicator and think that Greenwood Personal Credit should have been aware that Mr E was making

payments for himself, his wife and his daughter. It should have been clear therefore that the payments had to be allocated to the three accounts.

Greenwood Personal Credit has now agreed to move £63 from Mr E's account to his daughter's account. Because of the number and frequency of cheques being sent by Mr E it is difficult to conclude that the cheques were actually applied late. They were nonetheless applied and once the adjustment has been made to the account the account should accurately reflect the correct payments made.

Mr E may still have information recorded on his credit file but there are no grounds for me to instruct Greenwood Personal Credit to remove this as it should reflect the actual payments that have been made to the account.

The OFT debt collection guidance clearly states that it is unreasonable for a creditor to threaten to refer a debt to a third party when the creditor has no actual intention of doing so.

Greenwood Personal Credit accepts that it had no intention of referring Mr E's account provided he continued to make payments to his account. It was unreasonable of Greenwood Personal Credit to threaten to refer Mr E's account as it clearly had no intention of doing so and this is in breach of the OFT's guidance.

The outstanding issue in this complaint surrounds the proposed payment for any distress and inconvenience that Greenwood Personal Credit has caused Mr E. I think that by incorrectly allocating the payments that Mr E sent and threatening to refer his debt when it had no intention of doing so would have been somewhat distressing and inconvenient for Mr E. I do not however think that any distress or inconvenience would have been significant and any award should therefore reflect that.

Having carefully considered the circumstances of this complaint I think a payment of £100 is reasonable. I also think it would be fair for the payment to be sent to Mr E rather than being applied to his outstanding debt. I appreciate the account is overdue and a considerable sum is still outstanding. Greenwood Personal Credit will still expect Mr E to continue to repay the amount that is owed and this is not unreasonable. If Mr E is still experiencing financial difficulties I would remind Greenwood Personal Credit to treat Mr E in a positive and sympathetic manner.

I would also suggest to Mr E that if he continues to send payments for all three of his family's accounts that the payment is clearly marked to show what amounts are to be paid to each account.

my final decision

My final decision is that I uphold this complaint and direct Greenwood Personal Credit Limited to send Mr E a payment of £100, rather than deducting the sum from his account.

If it has not already done so, Greenwood Personal Credit Limited should also move £63 from Mr E's account to his daughter's account. I make no further award or instruction.

Mark Hollands
ombudsman