

The complaint

Mr J complains that Town & Country Legal Services LLP (T&C) has unfairly started legal action to secured a debt to their property by way of a charging order.

What happened

In August 2021 T&C was instructed by a lender I'll call M to collect an outstanding balance of £17,981.30 plus costs of £5,394.39 in relation to a loan from Mr J. The contractual monthly payments were around £500 a month.

Mr J has explained that around the same time, he arranged a Debt Management Plan (DMP) via a business I'll call P. But the debt to M wasn't included in the DMP so payments weren't being made. In September 2021 Mr J and his wife discussed the account with T&C and it agreed to accept payments of £100 for six months. T&C said it wanted to revisit the payment plan after six months was over.

Mr J made payments in line with the arrangement he'd agreed with T&C. From March 2022 T&C sent Mr J requests to make contact to review the £100 payment arrangement as six months had passed. No contact was received from Mr J but payments of £100 continued.

In August 2022 T&C was notified Mr J had appointed a new debt advice service. At the end of September 2022 a payment of £61.33 was made to T&C. From October 2022 payments of £59.85 were made. Mr J's new debt advisors, G, confirmed an offer of £59.85 for payments towards M's debt.

T&C says that in November 2022 it contacted M for instructions on how to proceed. T&C says M confirmed it wished to pursue a charging order to secured the debt against Mr J's property.

On 2 December 2022 T&C sent Mr J a letter before claim asking him to make contact to discuss options for repayment to avoid legal action. Mr J contacted T&C and offered to make repayments of £110 a month to avoid the legal action to secure the debt to his property. T&C says it emailed M the same day and received confirmation that it still wished to proceed with the charging order.

On 8 December 2022 a debt advisory service contacted T&C on Mr J's behalf and made an offer to make monthly payments of £59.85 a month.

T&C says that it proceeded with the legal action in line with its instructions from M. In January 2023 a claim was made via solicitors appointed by T&C explaining it intended to take action to seek a charging order via the courts. The claim form included an outstanding balance of £16,535.47 plus costs of £5,394.39.

Mr J raised a complaint about the decision to pursue a charging order and T&C issued a final response on 25 January 2023. T&C said the collections costs had been added to the outstanding balance by M when it was instructed to collect the debt. T&C also said it had agreed a £100 six month payment plan but it ended in March 2022. T&C said it was acting

on M's instruction when pursuing the charging order. T&C added that it had received a DMP proposal of £59.85 on Mr J's behalf but that, at that rate, it would take until 2053 to repay the outstanding balance.

Mr J referred his complaint to this service and it was passed to an investigator. They didn't think T&C had acted unfairly by starting court action on M's behalf. The investigator added that even though Mr J had offered payments of £110 a month, his DMP administrator had gone on to offer payments of £59.85 which was too low to repay the balance in a reasonable timeframe. The investigator said that the costs included in the claim form were already applied by M when T&C was instructed to collect the balance.

Mr J asked to appeal and forwarded evidence to show he'd corresponded directly with M and been referred to T&C. Mr J said that T&C hadn't acted in line with the relevant regulations. As Mr J asked to appeal, his complaint has been passed to me to make a decision.

What I've decided – and why

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

Mr J's explained that he was party to a DMP, originally arranged by a business known as P. But the DMP wasn't correctly set up and didn't include M's debt. As a result, payments were missed and the loan with M was closed at default. I can see that Mr J was able to arrange a six month payment plan in September 2021. But that plan was the first that had been offered to T&C and wasn't made on the basis of a DMP. And when the payment plan of £100 a month was agreed, it was only for a six month period.

I can see T&C attempted to contact Mr J to arrange a new payment plan and discuss the status of the account in March 2022, when the six month arrangement ended. And whilst Mr J continued to make payments of £100 a month to T&C, that was a temporary six month agreement that had already ended. Any new payment arrangement would've been subject to discussion and an assessment of Mr J's circumstances. T&C wasn't obliged to continue accepting payments of £100 a month indefinitely.

Mr J's payment for September 2022 was lower at £61.33. And payments of £59.85 were made from October 2022. At this point, the six month payment arrangement agreed in September 2021 had been expired for around six months and payments from September 2022 onwards were reduced. I've reviewed T&C's contact records and can see it contacted M in November 2022 and received an instruction to proceed with legal action to obtain a charging order. And the contact records show T&C contacted M again on 2 December 2022 and received confirmation that the legal action should continue.

I understand Mr J told T&C he was willing to make higher payments of £110 a month, but I note that Mr J's debt advisors made a substantially lower offer of £59.85 on his behalf as well. I'm satisfied that T&C's contact notes show both offers were put to M to consider but it was ultimately told to proceed with efforts to obtain a charging order.

Whilst I understand Mr J was willing to make payments towards the outstanding balance, the contractual monthly payment was £503. Given that both the offer made by Mr J and his DMP administer fell significantly below that level I'm not persuaded it was unreasonable for T&C to consider other options, like obtaining a charging order, to secure the debt. And, as I've said above, the contact records show T&C checked with M concerning how to proceed before legal action was instructed.

Mr J has explained that he thinks T&C failed to follow the pre action protocol for legal action. But the Financial Ombudsman Service is an informal dispute resolution service and decides complaints on a fair and reasonable basis. And, for the reasons I've given above, I'm satisfied it was fair for T&C to take instruction from M concerning whether it should take legal action to obtain a charging order.

I'm very sorry to disappoint Mr J but having considered all the available evidence I haven't been persuaded that T&C acted unfairly or made a mistake. As a result, I'm not telling T&C to take any further action.

My final decision

My decision is that I don't uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 October 2023.

Marco Manente
Ombudsman