

## **The complaint**

Mr A and Mrs A complain that Christians Against Poverty (CAP) made errors in administering a debt management plan (DMP). It says this resulted in damage to their credit files. They want Christians Against Poverty to write to their creditors and accept it made mistakes. And they seek compensation.

## **What happened**

Although this complaint is brought jointly, for ease of reading I'll mostly refer to Mr A.

Mr A tells us that in 2017 he and his wife approached CAP regarding their financial situation. He says that debt had been accumulated although there were no arrears or County Court Judgments. And that repayments were being made on time. Also in respect of credit card debts the minimum payments were being maintained.

Mr A states that due to the way CAP administered the account, payments weren't made on the due dates which resulted in late payment markers. And he says that minimum payments weren't always met as CAP made equal payments to each creditor. He says this resulted in account defaults although there had been sufficient money being paid into the DMP to have avoided this.

CAP told us that it had explained the services it offered to Mr A and Mrs A. And that they had signed the client agreement. CAP stated that it had administered the DMP in accordance with instructions given by Mr A and Mrs A. It didn't accept that it had done anything wrong.

I issued a provisional decision on this complaint on 1 February 2021. I said that I didn't intend to uphold the complaint. I found that CAP had administered the DMP in accordance with the agreement it had made with Mr A and Mrs A.

Since then both parties have replied. CAP said that it agreed with my provisional decision. And stated that it had clearly set out the way in which payments would be applied if the DMP was activated. And that Mr and Mrs A had agreed with this.

Mr A has provided a comprehensive and detailed response in which he sets out how the monthly amount he was paying into the plan could've been apportioned so as to avoid arrears and defaults.

I thank both parties for their responses. I've considered carefully what Mr A has stated. But for reasons I'll fully explain, I'm not minded to change my provisional view. This is largely repeated in my final decision which is set out below.

## **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.

I understand that Mr A and Mrs A are disappointed in the way things have worked out after they entered a DMP. And I accept that it was their intention to meet their obligations in a responsible way.

Mr A's complaint is that CAP didn't exercise sufficient care in handling the DMP. And that as a result of this alleged mis-management he and his wife are worse off financially and have had their credit files damaged.

I'm aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not responding to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In the original complaint letter to CAP, Mr A highlighted specific areas of concern. And his submission following my provisional decision expands upon this. He's emphasised what he describes as the duty of care and how he feels that CAP hasn't treated him fairly.

Whilst I respect Mr A's view on the matter, the duty of care involves CAP providing Mr A with sufficient information to allow him to make an informed decision as to whether its services are suitable for his objectives. It's not for CAP to make that decision for him.

The nature of DMP's is that they offer a structured approach to paying off non-priority debts. These include unsecured loans and credit cards. Broadly speaking they seek to offer the respective creditors a fair distribution of the funds available to repay the debt.

Individuals look to DMP's for a variety of different reasons. Typically, there isn't sufficient money available to cover all the debt repayments in full. But there are other entirely legitimate reasons why an individual seeks assistance. In Mr A and Mrs A's case they set out to reduce the overall level of the debt that had accumulated.

CAP offered an assessment process which sought to identify the various debts, how they could be repaid and the priorities which Mr A and Mrs A attached to the repayments. The process involved several stages over a period of a couple of weeks. That appears to be ample time for any queries about the nature of the service being offered to be resolved.

To this end CAP issued various documents. These included Interim and Full client agreements; a monitoring form; and a "*Journey out of Debt*" leaflet. There was also an explanatory video.

The "*Journey Out of Debt*" leaflet contained the warnings:

*"When we contact your creditors sometimes we can ask them to stop adding interest and charges to your debt. Although we can't guarantee that they will agree to this, we have seen good success in the past because of our great relationships with most of major banks and debt companies. They respect our work and trust us. However, interest and charges can't always be stopped and you may find that the balance of your debt increases in the short term."*

*Your credit rating may be affected.*

*This is because CAP may have to pay less than you have contractually agreed to pay back to your creditors. Your debt could be passed on to different departments within a company or sold to a debt collection company. This can mean it's easier for CAP to get interest and charges stopped but could also mean that your credit rating is negatively affected, which will make it harder for you to take out credit in the future. If you've missed any payments on a debt in the past, this may have already happened.*

*For payments made through the CAP Plan, creditors are likely to be paid on a different or later date than they had previously agreed to and/or they will be paid later than if you had made the payment directly to them yourself”.*

I note that the Interim Client Agreement dated 14 March at item 22 contained the following:

*“Our priority is to help you become debt free, not to improve or preserve your credit rating. Your credit rating is likely to be negatively impacted by any payments you have already defaulted on, as well as during the time you work with CAP. In particular, it is likely that you will not be making contractual payments and default notices may be issued by your creditors...”*

This is also repeated in item 52 in the full agreement of 28 March, to which I'll refer later. From an early stage I think CAP made it clear of the likely effects the DMP would have.

I'm also satisfied that CAP explained that it was providing options – but that it was for Mr A and Mrs A to decide how to proceed. And that they needn't choose any of the services offered by CAP and /or they could terminate the agreement at any time. They both chose the Debt Repayment option as listed on the final client agreement.

I understand what Mr A has explained about the monthly payments he made and how these *might* have been distributed “*creatively*”. But that is not the service which CAP offered. That's why I said in my provisional findings that I felt that underlying this complaint is a misunderstanding by Mr A and Mrs A of CAP's role. That remains my opinion. I'll explain why.

As individuals we have a choice in determining what we feel is of most importance to us. Mr A and Mrs A knew that CAP would – as part of the DMP – be asking creditors to freeze interest and not apply other charges. This would potentially assist their aim to reduce their overall level of debt. Clearly if interest and charges are suspended then any repayments will reduce the capital debt quicker than would otherwise be the case.

Subsequently some creditors did agree to these steps. The result was that Mr A and Mrs A obtained the benefit of saving on interest and charges. There also appear to have been goodwill payments applied by at least two creditors.

By entering into a DMP - and having regard to all the warnings that were given - Mr A and Mrs A apparently decided that the benefit of a single monthly payment together with the prospect of interest being frozen was more important than maintaining numerous separate contractual payments. If maintaining a credit score was more important than the single monthly payment and interest freeze then they could have carried on keeping up with contractual payments without any help from CAP.

It's unlikely that their creditors would've agreed to stop interest and charges if payments hadn't been part of a DMP. One of the principal features is that a DMP is usually supported – as it was in Mr A's case - by a Common Financial Statement. This latter document is an industry recognised tool which enables creditors to see that each is being treated fairly and proportionately in terms of the distribution of available money.

Mr A has acknowledged in his response to my provisional view that pro rata payments were explained in terms that his creditors would be given *"equal parts of the pie"*. Pro rata – which is the method widely applied across DMP's throughout the industry - means that each creditor receives the same percentage of the available funds in proportion to the overall debt. But in purely monetary terms the sums being repaid are not the same. This also means that contractual or minimum payments aren't necessarily being met.

Following the initial assessment of the available income a schedule of payments set out the different amounts which it was intended to pay to various creditors along with the total amounts owed. During the course of the DMP these would vary as disposable income changed. As an example, the first schedule had disposable income at over £900 which later in the DMP reduced to around £695. But the principle of pro rata payment remained.

By setting out the proposed repayments, the schedules also allowed Mr A to make comparison with the minimum or contractual payments on the various accounts. And this would've enabled him to see if minimum / contractual payments would be met. And to decide if this was acceptable. CAP may not have explicitly stated that a particular account might default. But it had warned of the likely general effect and had provided Mr A with sufficient information about proposed payments to enable him to judge which were the accounts most likely to be affected.

Item 10 of the Final Client Agreement reads:

*"Provided that you make the agreed payments to your CAP Plan (as set out in the CAP Plan Schedule), we shall pay the amounts shown in the CAP Plan Schedule. This is on the basis that we hold sufficient cleared funds in your CAP Plan".*

The basic point being that CAP isn't exercising a discretion regarding which creditors are paid and how much. It is following the instructions provided by Mr A and Mrs A as part of the agreement. Mr A has suggested that a different method of distributing the available sums would have avoided late payment markers and defaults. This may be true, but it wasn't the method that had been set out in the agreement.

The terms and conditions of the Full Client Agreement includes:

*Item 52: credit rating / score (my underlining):*

*Our priority is to help you become debt free, not to improve or preserve your credit rating. Your credit rating is likely to be negatively impacted by any payments you have already defaulted on, as well as during the time you work with CAP. In particular it is likely that you will not be making contractual payments and default notices may be issued by your creditors and registered with credit reference agencies. You may find it more difficult to obtain credit in future".*

Mr A told me in his reply to my provisional view that he assumed that as the monthly payment was sufficient to cover contractual and minimum payments, defaults wouldn't occur and item 52 would not be applicable. And I think it's likely that such an assumption is what led to the misunderstanding to which I referred.

I understand the point being made but I can't see there is a reasonable basis for his belief that item 52 didn't apply. CAP was offering a specific service which included pro rata payments as opposed to a pro-actively managed or discretionary service.

The warnings that priority was not being given to the preservation of credit ratings and that contractual payments may not be met were plainly stated. It would not be fair and reasonable to hold CAP responsible for assumptions made which did not accord with the agreement. If Mr A didn't wish certain conditions to apply then he was free to decline to accept the terms of the DMP.

I'm aware that CAP has recently altered some of its policies with reference to how and when payments are made. I've seen nothing that persuades me that this was due directly to any aspect of this complaint. Businesses frequently update and improve systems so I don't draw any inference that this change amounts to an acceptance that Mr A and Mrs A's DMP was administered incorrectly.

In summary, I empathise with Mr A and Mrs A in that the DMP didn't work out in the way they had hoped. But I find that CAP has acted fairly and properly in the way it administered the DMP. In particular, it made clear that entering into a DMP was likely to have an adverse effect on their credit files; that payment dates of debts might alter; that pro rata payments meant that minimum and / or contractual payments might not be made; and that defaults might occur.

I accept that when these consequences arose, Mr A and Mrs A may, with hindsight, have wished they had taken a different course of action. But I can't fairly attribute responsibility for that to CAP. It's also fair to say that despite the issues which Mr A has raised the DMP provided benefits in terms of reduced interest and charges which went towards their aim of reducing their level of debt.

I understand that Mr A and Mrs A will be disappointed by my final decision. It remains open to them to approach the credit reference agencies and issue a Notice of Correction. This allows them to explain how any adverse entry on their credit files came about. And it is there for prospective future lenders to consider when assessing any applications.

### **My final decision**

For the reasons given above my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 13 April 2021.

Stephen Ross  
**Ombudsman**