

complaint

Mr and Mrs J complain about a debt management programme sold and administered by Countywide Debt Collections Limited, trading as Restart Financial.

background

There is a dispute about how contact between Mr and Mrs J and Restart Financial was initially made. Mr J says that he was initially and unexpectedly contacted by the business. Restart Financial says that its first contact was with Mrs J, from whom it took details of Mr and Mrs J's joint income and expenditure and that it subsequently contacted Mr J.

In September 2011, Mr and Mrs J entered into a debt management programme with Restart Financial. That meant that Mr and Mrs J paid a monthly amount to Restart Financial who in return, arranged and paid reduced payments to unsecured creditors.

Restart Financial's internal records show that Mrs J contacted it in mid-2012 to query the balance in relation to one of the creditors and that later in 2012, Mr J contacted the business about payments to creditors. In early 2013 Mr J contacted Restart Financial about default letters he received from one creditor. He went on to complain to Restart Financial that the debt management programme was mis-sold as they were never in financial difficulty. Restart Financial terminated the debt management programme and Mr and Mrs J pursued their complaint with this service.

Mr and Mrs J say that this matter has had a negative impact on their credit files and Mr J's ability to obtain finance for his business. They also say that Restart Financial stopped making payments to their credit card company and gave false information about their ability to make payments. They want the defaults on their credit files removed.

The adjudicator did not recommend that the complaint should be upheld. She said, in summary:

- There was sufficient information to enable Mr and Mrs J to become aware of the nature of the agreement they entered into.
- The statement of joint income and expenditure indicates that Mr and Mrs J were in financial difficulty at the time they entered into the debt management programme.
- Mr and Mrs J gave Restart Financial authority to act on their behalf and it was not at fault in negotiating with and providing information to creditors.
- Regular payments were sent to Mr and Mrs J's creditors.
- Restart Financial was not at fault in relation to defaults recorded on Mr and Mrs J's credit files by creditors.

Mr and Mrs J did not accept the adjudicator's view and Mr J responded to say, in summary:

- The recording of the initial telephone call between him and Restart Financial would support his complaint but was now, conveniently, not available.

- He did not read the small print in the contract but the bulk of the adjudicator's view refers to the small print.
- He would not waste time pursuing this matter if he had approached Restart Financial and informed it that he was in financial difficulties.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

It is clear that Mr J has very strong feelings about this matter and the consequences for his business. However, I trust that he will not take as a discourtesy the fact that my findings focus on what I consider to be the central issues.

The recordings of the initial phone calls between Mr and Mrs J and Restart Financial are not available. On the basis of the available evidence, on balance, I find that it is more likely than not that Restart Financial had a phone call or phone calls with Mrs J in which it gave information about the debt management programme and took details of Mr and Mrs J's joint income and expenditure. It subsequently made contact with Mr J.

On the basis of the information Restart Financial recorded about Mr and Mrs J's incomes and outgoings, they did not have sufficient disposable income to repay their unsecured debts. I find that Restart Financial was not at fault in setting up a debt management programme.

I agree with the adjudicator that the information sent to Mr and Mrs J made clear the nature of the arrangement they were entering into. I note that Mr J says that he did not read the information but I am afraid that he is still bound by it. Mr J says, and I accept, that he initially indicated to Restart Financial that he may not be eligible for the programme because of his income. However, I do not consider that Restart Financial was at fault in relying on the details of income and expenditure which it recorded, or in corresponding with Mr and Mrs J's creditors under the terms of the debt management programme.

Restart Financial made regular payments to creditors in accordance with the arrangements it agreed on Mr and Mrs J's behalf. In the circumstances which arise here, it is not responsible for the information recorded on Mr and Mrs J's credit files by third parties.

my final decision

I am sorry to disappoint Mr and Mrs J but, for the reasons explained above, my final decision is that I do not uphold this complaint.

Louise Povey
ombudsman