

complaint

Mr and Mrs G complain about a debt management plan they entered into with Pentagon (UK) Limited. At the time of taking out the plan they'd received solicitor's letters threatening court action and say they were told by the Pentagon agent that the court action could be stopped.

They're also unhappy about payments not being passed on to their creditors and say they weren't aware that Pentagon wouldn't contact their creditors until they'd paid all the initial fees.

background

The background to this complaint was set out in my provisional decision of 20 April 2016. A copy of the provisional decision is attached here and forms part of this final decision.

In my provisional decision I set out the reasons why I was minded not to uphold this complaint. I invited further comments from both parties before I reconsidered the complaint again. I didn't receive any response from Pentagon.

Mrs G did respond by telephone and that recording was added to the file. In that call Mrs G explained that she was very unhappy with the outcome I had reached and reiterated some of her previous submissions. In summary, she says that she could have arranged a debt management plan herself without the costs and it was the assurances given around the court proceedings being stopped that led her to agree to the plan.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This includes the telephone call Mrs G had with our adjudicator, in response to my provisional decision. Having very carefully looked again at this complaint, I believe I will disappoint Mr and Mrs G once again as I have come to the same conclusions as set out in my provisional decision.

Mrs G says that if it was just a debt management plan that she wanted she would have easily arranged one of these herself without incurring the costs. During this complaint however we received submissions from a relative of Mrs G who was assisting her at the time in 2013. Those submissions refer to it being a very difficult time for Mrs G and the relative was opening post and trying to put it in some order. I again don't underestimate the difficult circumstances Mr and Mrs G were in and accept alternative debt solutions are available without cost. I'm not however persuaded it would have been as straight forward as Mrs G now suggests considering what was previously said about the situation in 2013.

Mrs G has questioned the work that Pentagon did to try and stop the court action proceeding but I have seen correspondence to and from Pentagon and the creditor, and the court. I am satisfied that it has done some work and did attempt to get the court action stopped. It is of course now clear however that that was unsuccessful.

I appreciate Mr and Mrs G will be very disappointed with the outcome that I have come to but for the same reasons as set out before, there are insufficient grounds for me to uphold this complaint. I can't therefore make any award against Pentagon.

my final decision

My final decision is that I do not uphold this complaint and I make no award or direction against Pentagon (UK) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 4 August 2016.

Mark Hollands
ombudsman

provisional decision

complaint

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background

In August 2013 Mr and Mrs G had a mortgage and substantial unsecured debts with around 21 creditors. One of the creditors has said it was looking to take legal action against them with a county court judgement and possible charging order against their property. Mr and Mrs G were referred to Pentagon's representative by a family member and a meeting took place between Pentagon's agent and Mr and Mrs G.

Mr and Mrs G say they were told that the court action could be stopped and it was on this basis that they agreed to enter into the debt management plan. Mr and Mrs G also say they weren't aware that payments to creditors wouldn't be made immediately and would only start once they'd paid all the initial fees.

Mr and Mrs G complained to Pentagon and as they remained unhappy with the response referred it to us. One of our adjudicators looked at the complaint and he felt it should be upheld. He found, in summary, that Mr and Mrs G were likely led to believe the court action would be stopped by Pentagon and this was why they agreed to the plan. He recommended Pentagon refund the fees Mr and Mrs G had paid, with interest, and an additional sum for the distress and inconvenience caused.

Pentagon didn't accept the adjudicator's findings and asked for the complaint to be passed to an ombudsman for review.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm minded not to uphold this complaint.

Pentagon has made a number of comments about whether we can consider this complaint and having considered these, I'm satisfied this is a complaint I'm able to review. Mr and Mrs G complained to Pentagon some time ago and then brought their complaint to us some time after. There is a six month time period for consumers to bring their complaints to us after they've had a response from the business.

However, as set out in the Financial Conduct Authority's DISP Rules, the six month time limit only starts once the business has issued a final response. A final response is defined in a certain way and must, amongst other things, tell consumers they have six months to refer their complaint to us from the date of the final response. Pentagon's letter of 28 July 2014 included no such time limit and is not therefore considered a final response. There is therefore no limit of six months for Mr and Mrs G to bring their complaint.

Pentagon has also made a number of arguments around the individual who met with Mr and Mrs G and provided the advice to enter into the plan. The contract that Mr and Mrs G signed clearly indicates that it's between Mr and Mrs G and Pentagon, referring to the company number and business

address. I appreciate the agent may have also been able to act in a different capacity but in his meeting with Mr and Mrs G, I'm satisfied he was acting for Pentagon.

At the time in August 2013 Mr and Mrs G had unsecured debts of approximately £100,000 which they couldn't afford to repay. They also had a mortgage of over £300,000 which I understand was in arrears. These are considerable sums and I don't doubt that this would be a worrying and stressful time for Mr and Mrs G. One of the creditors had also notified Mr and Mrs G of its intention to commence legal proceedings to obtain a county court judgement and charging order.

Mr and Mrs G say that when they met with Pentagon's advisor they were told the court action could be stopped. It was this reason that Mr and Mrs G say they decided to proceed with the plan. Pentagon disputes this and says that its agent didn't provide any guarantees about stopping the pending court action.

I can't be completely certain what was discussed between the parties at the time. I don't doubt that the pending court action would have been worrying for Mr and Mrs G and they would have ideally liked to prevent this from proceeding any further. At the time of the meeting with Pentagon on 8 August 2013 only preliminary action had begun and it would have been possible to stop the proceedings and therefore prevent the judgement being applied. However, although technically possible this is something that the creditor would have to decide. While Pentagon could try and influence the creditors' decision about court action there would be no guarantee that the action could be prevented and it would be for the court to decide whether to grant the judgement.

There are conflicting versions of events here and I've not seen any documentary evidence either way that clearly indicates what assurances, if any, were provided around the court action. I accept it's possible the agent provided assurances about stopping the legal action. But, I don't however think that's more likely. On balance, I think it's more likely than not that no guarantees were given but Mr and Mrs G proceeded in the hope that Pentagon would be able to prevent the court action proceeding. I think it more likely than not that Mr and Mrs G took out the plan on the understanding no *guarantees* could be provided but were hopeful Pentagon would succeed. Because of this, I'm unable to uphold this aspect of the complaint.

Mr and Mrs G have also complained about the payments they made to Pentagon and which should have been passed to their respective creditors. They say they weren't told that payments would not be passed to their creditors until they'd made all the initial fee payments to Pentagon.

At the meeting with Pentagon's agent Mr and Mrs G were shown a number of documents. One of these was the 'debt management agreement – your contract'. Amongst several things this sets out the fees and charges that apply to the plan. This is in my view clear and Mr and Mrs G should have therefore understood exactly what it was they were required to do around the initial and ongoing fees for the plan.

It states that three 'token' payments of £40 will be distributed to the respective creditors with an estimated payment of £2 per creditor. The first token payment would be made shortly after outset and the second and third payments would be made from partial fee payments Mr and Mrs G were to make to Pentagon. Pentagon has told us that an initial token payment of £34 was paid to creditors on 20 August 2013. The planned subsequent payments weren't however made.

Looking at the documentation the agreement doesn't indicate that payments will be withheld until all initial fees are paid. The plan should have allowed three, albeit small and token payments, to be made during the three to four months that Mr and Mrs G were paying the initial fees. Pentagon has however said that the agreed initial fees weren't all paid by Mr and Mrs G and an outstanding amount of the original fee remained unpaid.

While I accept that Pentagon didn't make all of the three initial payments as it should have done, Mr and Mrs G also failed to make the agreed payments to Pentagon. Having very carefully considered the submissions from all parties here, including the very clear documents Mr and Mrs G signed, I'm

not persuaded this part of the complaint should be upheld. Had Mr and Mrs G made the agreed payments it quite likely that Pentagon would have also made the agreed payments to creditors. Looking at the documents Mr and Mrs G signed I find this should have been clear to them had they read the documents. I appreciate Mr and Mrs G have told us they didn't read the documents but I can't find Pentagon responsible for that.

When considering this complaint I've also looked at whether or not a debt management plan was suitable to Mr and Mrs G at the time. There are a number of solutions or options open to consumers who are in financial difficulties and cannot meet their credit commitments. In certain circumstances there may be a number of solutions that a consumer may be eligible for. When giving advice a business must ensure that the consumer is provided with clear information and sufficient information to allow them to make an informed decision.

Mr and Mrs G's debts are considerable. Looking at what they could afford to repay it would have taken a significant number of years to repay all of those debts on a debt management plan. However, it's quite possible that Pentagon was intending to negotiate with Mr and Mrs G's creditors to arrange a reduced settlement on some or possibly all of the debts. This could, for example, have been funded through releasing equity in Mr and Mrs G's property or other refinancing means. Having considered the specific circumstances of this complaint I'm not persuaded that Pentagon acted unreasonably by recommending the debt management plan. The plan has since been cancelled after Mr and Mrs G stopped making payments to Pentagon so it's difficult to say with any certainty now what Pentagon would have gone on to do for Mr and Mrs G had the plan continued as expected.

I appreciate that my decision will come as a significant disappointment to Mr and Mrs G but from the submissions made so far in this complaint I don't find there's enough grounds to uphold it.

my provisional decision

My provisional decision is that I do not uphold this complaint and I make no award or direction against Pentagon (UK) Limited.

Mark Hollands
ombudsman