

complaint

Mr M complains that Express Gifts Ltd:

- wrongly accused him of deliberately increasing his debt to Express Gifts knowing that he was about to take out a trust deed limiting the amount he would have to repay his creditors; and
- won't include all his debt to Express Gifts in the trust deed.

background

Mr M has had an account with Express Gifts since October 2013. Until the end of 2015, the balance on the account didn't exceed £300. In 2016, the balance rose gradually till in the middle of May it stood at £496.82. On 26 May 2016, Mr M bought several items which increased his debt by a further £992.98.

On 2 June 2016, Mr M signed a trust deed under which his creditors were asked to accept a reduction in his debts. This was accepted and came into operation as a protected trust deed on 1 August 2016. However, while Express Gifts accepted the balance of £496.82 into the trust deed, it wouldn't accept any later spending. In view of the timing of the later purchases, and the date he signed the trust deed, Express Gifts said Mr M must have bought these expecting that they would be covered by the trust deed.

Mr M denied this strongly. He said at the time he made the purchases, he was in receipt of a state benefit and so in a position to repay his debts. This benefit was withdrawn without warning, after which he realised that he would have to enter a trust deed.

our adjudicator's view

Our adjudicator didn't recommend that this complaint should be upheld. She said that this service couldn't interfere with Express Gifts' decision not to include all his purchases in the trust deed process.

She had listened to the phone calls between Mr M and Express Gifts, particularly the call in which Express Gifts' representative explained why it wouldn't accept the later spending into the trust deed, and Mr M vehemently denied making purchases knowing he was about to enter a trust deed.

The adjudicator said Express Gifts' representative could have handled this call better. But an Express Gifts manager had later apologised for the way this call was handled, and she thought it had done enough to resolve this aspect of the claim.

Express Gifts had treated Mr M positively and sympathetically when discussing how he could repay the balance outside the trust deed. It said it would freeze the balance and not charge interest on it. It would accept repayments of £12 a month, and would review the arrangements with Mr M every three months.

Mr M responded to say, in summary, that when he placed the order for the later goods, he was able to pay for them. But three days later he lost his state benefit of more than £125 a week. He was also unhappy with the fact that Express Gifts hadn't taken any action to oppose his trust deed – it just hadn't accepted all his debt into it.

my provisional findings

I issued my provisional view to Mr M and to Express Gifts on 15 December 2015. In it I said that after this complaint was passed to me, I had asked the adjudicator to ask both Mr M and his trustee to provide some further information.

The trustee said that from its records, the first time Mr M spoke to it about entering into a trust deed was on 26 May 2016 – the same day he bought nearly £1,000 worth of goods. However the trust deed wasn't signed until 2 June 2016. At present £19,754 of debts had been accepted on to Mr M's trust deed, but some creditors hadn't yet responded.

Mr M agreed that he had spoken to the trustee about trust deeds on 26 May 2016. At that stage he just wanted to know about his options. However it wasn't until his benefit was withdrawn three days later that he realised he would have to enter a trust deed and signed the trust deed on 2 June 2016.

Given the proximity of the later purchases by Mr M to his discussions about trust deeds with the trustee, and then entering the trust deed, I could understand the suspicions of Express Gifts. And indeed in a bankruptcy/sequestration situation, the Accountant in Bankruptcy would take action against a debtor if he believed that he had incurred debts before the date of sequestration which he had no reasonable expectation of being able to pay.

However I didn't think Express Gifts had gone about this in the right way. On the face of it, once the trust deed became protected, as Mr M's did on 1 August 2016, all his debts became subject to the trust deed unless the trustee had accepted otherwise. I hadn't seen anything to suggest that Express Gifts had raised this issue with the trustee, or got its agreement that the later purchases should be excluded from the trust deed.

It wasn't for me to interfere in the trust deed and say whether or not the later purchases should be included in, or excluded from, the trust deed. That had to be dealt with within the trust deed process. However, I didn't think it was fair that Express Gifts should continue to claim this part of Mr M's debt outside the trust deed without first discussing this with the trustee and getting its agreement that it wasn't part of the trust deed.

Until Express Gifts did so, I didn't think it should be claiming repayment of this part of Mr M's debt from him outside the trust deed.

That said, like the adjudicator, I didn't think Express Gifts needed to do more than it had done in apologising for the way its representative spoke to Mr M. And I accepted that having said it wouldn't accept the later debt as part of his trust deed, it wasn't unsympathetic in the proposals for repayment of this which it was willing to discuss.

Subject to any further comments or evidence I received from either Mr M or from Express Gifts by 16 January 2017, I said that I intended to uphold this complaint in part. I intended to order Express Gifts to stop claiming the debt which Mr M incurred on or after 26 May 2016 outside of Mr M's trust deed until such time as it had discussed this with Mr M's trustee, and obtained its agreement that it wasn't part of his trust deed.

Mr M accepted my provisional view. He thought that Express Gifts should also apologise for its treatment of him and make a goodwill payment to him.

Having spoken to Mr M's trustee, Express Gifts said that it now agreed to:

1. incorporate all of Mr M's debt in the trust deed;
2. repay to Mr M the six payments it had required him to make since June 2016;
3. send Mr M a letter of apology; and
4. pay him compensation of £100.

my findings

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

Express Gifts now accepts that it should have included all of Mr M's debt in the trust deed from the outset. So it's right that it should do so now, and take the further action set out below.

my final decision

My decision is that I uphold this complaint. I order Express Gifts Ltd to:

1. incorporate all of Mr M's debt in the trust deed;
2. repay to Mr M the six payments it has required him to make since June 2016;
3. send Mr M a letter of apology; and
5. pay compensation of £100. Unless Mr M's trustee agrees otherwise in writing, this sum should be paid to Mr M's trustee on his behalf for inclusion within his trust deed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 February 2017.

Lennox Towers
ombudsman