

complaint

Mr M complains that Bournes Limited (trading as Bournes Debt Solutions) failed to distribute payments to creditors under a debt management plan.

background

Mr M entered a debt management plan with Bournes in September 2011. He says he paid Bournes £200 per month but continued to receive letters and phone calls from his creditors demanding payment. He also says Bournes promised to send him monthly statements about the plan but failed to do so. He cancelled the plan in July 2012.

Bournes says it made Mr M aware of all its charges and sent him monthly statements so that he *"was aware throughout of the sums paid"*. It believes his complaint to be *"frivolous and speculative"*.

Our adjudicator upheld the complaint. Following his investigation, he was satisfied that Mr M had paid Bournes over £1,400 but only a small proportion of this was distributed to his creditors. He also concluded that Bournes had failed to meet the requirements of the Office of Fair Trading (OFT)'s debt management guidance. He recommended that Bournes refund all payments not distributed to Mr M's creditors, plus interest, and pay Mr M £100 to reflect the distress and inconvenience this matter had caused him.

Bournes did not accept those conclusions so the matter was referred to me.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold the complaint.

The agreement Mr M signed in September 2011 says Bournes will, amongst other things, *"identify situations where you may have grounds for challenging the liability for the debts listed on the debt schedule"*, *"negotiate a reduction in the monthly unsecured payments"* and *"stop interest and charges being added to your account"*.

As such, Bournes is providing a debt adjusting service and the agreement is subject to the OFT's debt management guidance. This guidance provides – among other things – that the nature, total cost and duration of the service being offered must be clearly explained, that the consumer should be clearly informed and warned of the consequences of stopping contractual payments, and that the consumer must be clearly warned in writing that creditors are not obliged to accept reduced repayments or to freeze interest.

Mr M's agreement does none of this and there is no evidence that Bournes explained this elsewhere (for example, in a 'terms and conditions' document). As such, I find that Bournes failed to comply with the OFT guidance.

Despite repeated requests, Bournes has not provided any evidence of the payments it made to Mr M's creditors or a statement for his debt management plan. I have instead relied on information from Mr M and his creditors to establish what he paid and what Bournes paid to his creditors.

Mr M's bank statements for the period show that he paid Bournes £1,420 between September 2011 and May 2012:

- He made an initial payment of £220 in October 2011.
- He paid £200 per month from November 2011 to May 2012 (except March 2012).
- No more payments were made to the plan after May 2012.
- He cancelled the plan at the start of July 2012.

Mr M's creditors have provided us with comprehensive statements of his accounts. Having reviewed these statements, it is clear that only six of Mr M's ten creditors received any payments during the period Mr M was in the Bournes plan. Furthermore, these payments totalled just £123.82 and were made in just two months (April and May 2012).

I find that Bournes failed to comply with the OFT guidance and failed to explain adequately the service it provided. It also failed to distribute payments to Mr M's creditors. Finally, the agreement says Bournes would *"keep you informed of progress by sending you monthly statements outlining all activity on the account"*. Mr M says he did not receive these and Bournes has not provided any evidence that it sent them.

I am satisfied that Mr M decided to enter into an agreement on the basis of inadequate, and in some respects misleading, information. It follows that Bournes should refund all payments it received that were not distributed to Mr M's creditors. I do not consider that it should be entitled to keep any of this as fees.

Finally, I find that Mr M has suffered a certain amount of distress and inconvenience by Bournes failing to administer his plan appropriately and failing to respond to his requests for information. I consider an award of £150 is reasonable to reflect this.

my final decision

My final decision is that I uphold the complaint and order Bournes Limited (trading as Bournes Debt Solutions) to:

- refund £1,296.18 to Mr M, plus interest calculated at 8% simple per year from 4 July 2012 to the date of settlement; and
- pay Mr M £150 to reflect the distress and inconvenience this matter has caused him.

If Bournes considers that tax should be deducted from the interest element of my award, it should provide Mr M with the appropriate tax deduction certificate so that he is able to claim a refund if appropriate.

Simon Begley
ombudsman