

complaint

Mr A1 and Mr A2 complain about a debt management plan administered by Pentagon (UK) Limited ("Pentagon").

background

Mr A1 and Mr A2 took out a joint debt management plan with Pentagon in 2004. At the outset they paid an instruction fee and thereafter a monthly, management charge for the plan. A set amount was paid to Pentagon each month, and it distributed the money to Mr A1 and Mr A2's 32 creditors in an agreed proportion.

Mr A1 and Mr A2 say the plan ran well until January 2017, when Mr A2 asked if Pentagon would waive their management charges. Mr A2 says he was told that Pentagon wanted to terminate the plan and suggested a declaration of bankruptcy.

Mr A1 and Mr A2 wish to carry on with the plan. But they are concerned that the level of debt has increased significantly. Mr A1 and Mr A2 now say they'd like Pentagon's fees and charges to be refunded.

Pentagon confirms that interest and charges were frozen on 30 out of the 32 debts. It says it wanted to conduct a full review on the plan due to concerns that Mr A1 and Mr A2 held other assets, had continued to borrow and had business interests. As Mr A1 and Mr A2 wouldn't co-operate with provision of further information, Pentagon says no recommendation or advice could be given. But it did raise termination of the plan.

Mr A1 and Mr A2 say Pentagon isn't entitled to the business information it requested. They point out that their circumstances haven't changed since the last review. Mr A1 and Mr A2 are willing to co-operate with a review meeting, but do not wish to share information about their business interests.

Whilst this complaint has been ongoing, Pentagon continued to administer the plan for free since February 2017. I understand that the plan has now been terminated and Mr A1 and Mr A2 have moved to a new provider.

Our investigator considered the complaint. He thought Pentagon had asked the lenders to freeze interest on the accounts, which the majority agreed to do. Also Pentagon had properly

passed on payments to the lenders. He thought Pentagon had fairly raised terminating the plan because it was no longer appropriate.

I wrote a provisional decision in November, in which I did not uphold the complaint. Both parties have now come back with further comments:

Mr A1 and Mr A2 say:

- i. its speculation and lack of common sense to say the reason for wanting to review the plan and terminate it was due to the FCA letter of December 2016;
- ii. its illegal for any questions to be asked about any limited companies Mr A1 and A2 may be involved with;
- iii. Pentagon have been aware of their asset as a residential home since 2004;
- iv. Pentagon only agreed to waive fees and wanted a review after the complaint had been brought to this service.

They maintain that the decision to terminate the plan was done in an illegal way so all fees should be refunded from April 2007.

Pentagon say they didn't get to do a full assessment of Mr A1 and Mr A2's financial circumstances as they wouldn't disclose information about their income and assets. They say Mr A1 and Mr A2 terminated the plan and moved to a new provider in November 2017.

I've looked at everything again before reaching my final decision.

my findings

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

As I explained in my provisional decision, we're not able to consider complaints about this type of debt management activity before 6 April 2007 as that's when our Consumer Credit jurisdiction started. So I'm sorry to say that I won't be looking at the sale of this debt management plan or the advice given when Mr A1 and Mr A2 took it out in 2004. I know Mr A1 and Mr A2 will be disappointed by this.

I've taken into account that Mr A2 has debt management qualifications and he's explained in some detail that he had a full understanding about debt management plans from the time he gained his qualifications.

suitability and refund of fees and charges

As I explained in my provisional decision, I'm not able to look at the suitability of this plan at the point it was sold. But I can see this was a substantial debt that was highly unlikely to be paid off in the lifetime of Mr A1 or Mr A2 given the agreed rate of repayment. This would have been obvious at each review point. But I have to balance that against the clear evidence from Mr A2 that he was always intending to sell his business at some point to clear the debts. So the debt management plan was helping manage the debts until that point was reached. Also it's clear that Mr A2 didn't want to go into bankruptcy, he's said repeatedly that this is something he wanted to avoid because of the impact it would have on his business.

Mr A2 is clearly knowledgeable about debt management. He's said he and Mr A1 were happy with the plan and wanted it to continue. Also they were happy to pay for it (up until January 2017), Mr A2 says in his letter of July 2017 that they had no reason to complain before January 2017. So I think Mr A1 and Mr A2 had made an informed choice to continue with this plan for over 10 years from when it was put in place.

Given the circumstances in this case and the lack of any new information on this point, there's not enough to show that this plan was unsuitable for Mr A1 and Mr A2. And even if it was, I can't see that Mr A1 and Mr A2 would've done things differently. They explained they wanted the plan to continue and Mr A2 went to the trouble of approaching other debt adjuster companies and says they all told him such a plan was the best deal for him. Mr A1 and Mr A2 have now continued in a plan with a new provider. That re-enforces my view that a debt management plan is the option Mr A1 and Mr A2 wanted and still want.

There's nothing to suggest Pentagon haven't administered the payments in the way that was agreed. And they're entitled to charge for this service, as set out in the terms and conditions. Pentagon did administer the plan without fees from February, which is what Mr A2 had asked for. So I don't think it would be fair and reasonable in this case to ask Pentagon to refund any fees and I've taken into account that they administered the plan without fees between February and November.

decision to withdraw from the plan

Mr A1 and Mr A2 say Pentagon said it would withdraw from the plan after a request was made for fees to be reduced in zero in January 2017. I've taken into account the points raised by Mr A1 and Mr A2, but I don't agree that was the trigger for the full review.

Pentagon received a letter from the Financial Conduct Authority (FCA) in December 2016 about the FCA's expectations of firms that administer debt management plans. It emphasised the need for at least annual reviews which would entail: *"a reasonable and reliable assessment of the customer's financial position (including their income, capital and expenditure), personal circumstances and any other relevant factors before giving any advice or make any recommendations."* The letter warned firms about unresponsive customers and said, *"there may come a point when your firms' lack of confidence about the*

accuracy of the information it holds means it becomes sensible for it to consider bringing to an end its involvement in the DMP." On balance, I think it's likely that this letter triggered the review.

Pentagon raised concern that Mr A1 and Mr A2 have continued to borrow on credit cards and have buy-to-let mortgages, evidenced in credit reports that I've seen. It also thinks there are assets held by companies owned by Mr A1 and Mr A2. As I explained in my provisional decision, I'm making no finding about business assets and I understand that a company is a separate legal entity. But I don't think it was unreasonable for Pentagon to seek to explore whether there were other means of settling these long-standing debts, I think information about Mr A1 and Mr A2's properties and businesses were relevant considerations. I've also taken into account that the sale of the property business was the final part of the plan to clear the debts.

So it seems to me that the purpose of the review was to look at everything in more detail, as the FCA guidance required. I understand that Mr A1 and Mr A2 feel strongly about this, but can't say it was unreasonable of Pentagon to ask for further information.

The flat refusal to enter discussions about the property business and their assets is a matter for Mr A1 and Mr A2, but it meant Pentagon couldn't carry out a reasonable and reliable assessment of their financial position. Pentagon couldn't properly look at the prospects of the debts being cleared. And as Mr A1 and Mr A2 can see, the plan was unlikely to pay off the debts in their lifetimes.

In any event Mr A1 and Mr A2 moved to a new provider and the plan with Pentagon has been terminated. Taking everything into account, I don't think Pentagon acted unreasonably here.

administration of the plan

Mr A1 and Mr A2 complain about the escalation of their debt, saying fees and interest were added in the period 2004-2006. But as I've explained, I'm not able to consider that period.

Mr A2 has raised some additional considerations in his letter of July 2017 about the administration of this debt management plan and application of PPI payments. I can see that our investigator said some PPI payments hadn't been applied to the debts but Pentagon says that's incorrect. It says the refunds were offset against the applicable debts, but this hasn't been considered in any greater detail and I can see new issues have been raised in Mr A2's letter of July. It seems to me that these are new issues which Pentagon hasn't yet had the chance to investigate.

So I'm not making a finding about the administration of the plan within this decision. It's a matter for Mr A1 and Mr A2 as to whether they wish to raise a new complaint about

this. But I would add that in addition to the time limit in our Consumer Credit jurisdiction, we're only able to consider complaints within the last 6 years or within 3 years of when a consumer should've known they had cause to complain. So if Mr A1 and Mr A2 do wish to raise a separate complaint, they should bear in the mind these timeframes.

my final decision

I appreciate Mr A1 and Mrs A2 will be disappointed, but for the reasons I've given I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A1 and Mr A2 to accept or reject my decision before 12 February 2018.

Sarah Tozzi
ombudsman