

complaint

Miss N complains that PDL Finance Ltd (trading as Mr Lender) took money from her bank account to settle an outstanding debt without her permission.

background

Miss N took out a loan with Mr Lender in March 2011, repayable the following month. She fell into financial difficulties and was unable to repay. Mr Lender agreed a repayment plan with Miss N in August 2011 so that she would pay £337.50 in seven instalments over seven months.

In September, a debt management company contacted Mr Lender to say that it was working on Miss N's behalf. Mr Lender considered this to be a breach of the repayment plan's terms and conditions and immediately took the full balance of £696.92 from Miss N's bank account.

Our adjudicator upheld the complaint. She concluded that Mr Lender was aware that Miss N was in financial difficulties – and had made the first payment under a repayment plan – yet took almost £700 from her bank account to settle the debt. Our adjudicator was not persuaded that Mr Lender should have done this simply because Miss N had engaged a third party to help manage her debts. She recommended that Mr Lender refund the sum it took from Miss N, plus interest, reinstate the agreed repayment plan and pay Miss N £200 to reflect the distress and inconvenience this matter has caused her.

Mr Lender accepted our adjudicator's decision to uphold the complaint but disagreed with her proposed redress. As a result, the matter has been referred to me for review and determination.

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. I have, however, changed the redress Mr Lender should pay to settle this matter.

Mr Lender says that Miss N's decision to engage a third party debt management breached the terms of her repayment plan: *"Whilst Mr Lender is working directly with you for this repayment plan, we will not work with any other third parties who wish to manage your account which includes 'debt management agencies'"*.

However, Mr Lender had not told Miss N the consequences of such a breach – that it would immediately take the full balance from her bank account. It was also an extremely poor decision given Mr Lender was well aware that Miss N was in financial difficulties.

The Office of Fair Trading (OFT)'s debt collection guidance says that *"operating a policy, without reason, of refusing to negotiate with debt management companies"* is unfair. It could also be argued that Mr Lender pressurised Miss N *"to pay in full, in unreasonably large instalments, or to increase payments when [she was] unable to do so"* – another unfair practice highlighted by the OFT. In the circumstances, I find that Mr Lender did not meet the OFT's requirements.

Our adjudicator recommended that Mr Lender refund the sum it took from Miss N's bank account in full, plus interest, and reinstate the repayment plan. I do not consider this the most sensible resolution to this complaint as it would effectively reinstate Miss N's debt. Instead, I find that Mr Lender should refund the difference between the amount it took and the amount it had agreed Miss N would pay to settle the debt through the repayment plan, plus interest.

I also find that Miss N has suffered a certain amount of distress and inconvenience by Mr Lender taking such a large sum from her bank account when she was in financial difficulties. I believe that an award of £200 is reasonable to reflect this.

my final decision

My final decision is that I uphold this complaint and order PDL Finance Ltd (trading as Mr Lender) to:

- Refund £359.02 to Miss N, plus interest calculated at 8% simple per year from 26 September 2011 to the date of settlement; and
- Pay Miss N £200 to reflect the distress and inconvenience this matter has caused her.

If PDL Finance considers that tax should be deducted from the interest element of my award, it should provide Miss N with the appropriate tax deduction certificate so that she is able to claim a refund if appropriate.

Simon Begley
ombudsman