

complaint

Mr and Mrs F complain about the actions of Debt Connect (U.K.) Limited ("DC") after they paid a lump sum to it for the purposes of debt settlement. They say DC has failed to distribute this payment to their creditors, and many of their debts remain unpaid.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 7 November 2014; a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I felt Mr and Mrs F's complaint should be upheld and what redress I thought was appropriate. I invited further comments from the parties before I reconsider the complaint and issue my final decision.

Mr and Mrs F responded and, in summary, reiterated their disappointment at the way they had been treated by DC and that the provisional decision is a true reflection of their complaint. I did not receive a response from DC or its liquidators.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, and in the absence of any further submissions from the parties here, I uphold this complaint.

I find that DC failed to administer Mr and Mrs F's plan correctly and it should have done considerably more. It failed to pass on a considerable amount to Mr and Mrs F's creditors and it should now refund this unpaid money, with interest. An additional payment should also be made for the considerable distress and inconvenience that has been caused.

my final decision

My final decision is that I uphold this complaint and order Debt Connect (U.K.) Limited to:

- pay Mr and Mrs F £35,657 – which is the difference between what they paid to DC, what has been paid to their creditors, and a sum of £4,000 for fees; and,
- pay an additional £500 for the distress and inconvenience caused.

Interest at 8% simple per annum should be added to the above £35,657. To allow for the initial period of negotiations, I consider it fair for this interest to be applied from 1 June 2007 until the date of settlement. If settlement is not made within 28 days of Mr and Mrs F accepting this decision then interest, at the same rate, should be added to the £500 from the date of this decision until the date of settlement.

If Debt Connect (U.K.) Limited considers it has to deduct tax from the interest element of my award, it should send Mr and Mrs F a tax deduction certificate when it pays them. They can then use that certificate to reclaim the tax if they are entitled to do so.

DC is now in liquidation and I would suggest that Mr and Mrs F contact the liquidators again with this final decision. It is unlikely that any settlement will be paid immediately and there is

a possibly that the settlement will not be made in full. I have a great deal of sympathy for Mr and Mrs F but this is something beyond my control and they will need to discuss this further with the liquidators.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs F to accept or reject my decision before 9 January 2015.

Mark Hollands
ombudsman

Copy - PROVISIONAL DECISION

complaint

Mr and Mrs F complain about the actions of Debt Connect (U.K.) Limited ("DC") after they paid a lump sum to it for the purposes of debt settlement. They say DC has failed to distribute this payment to their creditors, and many of their debts remain unpaid.

background

Mr and Mrs F entered into a debt reduction settlement programme (the plan) with DC in February 2007. The plan involved the release of equity from Mr and Mrs F's home, which would be used to negotiate short settlements on their outstanding debts. Some of Mr and Mrs F's debts were settled early in the plan. However it became apparent that many of the debts had not been repaid, and over time Mr and Mrs F began to feel ignored by DC. They raised a complaint with DC and, unhappy that no resolution had been agreed, ultimately referred the complaint to our service.

Initially DC agreed to settle the outstanding debts and pay Mr and Mrs F £500 in compensation. Our adjudicator informed Mr and Mrs F of this offer, which they accepted, and they received a cheque for £500. However, they were unhappy to note that the full settlement had not been carried out and their debts remained unpaid. Unable to resolve the matter, the complaint was then referred to me for consideration.

my provisional 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, and subject to any further submissions from the parties in this complaint, I am minded to uphold this complaint.

Our jurisdiction in relation to consumer credit activities took effect on 6 April 2007 and was not retrospective. This means I can't look at the advice given by DC at the start of the plan, around February 2007 and before. I can however look at the events which occurred on or after 6 April 2007.

The main aspect of this complaint is whether DC administered Mr and Mrs F's plan properly and in line with industry guidance. In this instance, DC was expected to adhere to the Office of Fair Trading's Debt Management Guidance which was issued in 2001 and was subsequently updated in 2008. I will refer to this as the "OFT guidance".

It should be noted that there is an overall lack of documentation in relation to the plan itself. I have not been provided with a copy of the original agreement, which sets out DC's responsibilities under the plan, or the fee structure which was agreed. Nor have I been provided with full records of what DC did for Mr and Mrs F. Further to this, we have made extensive enquiries with Mr and Mrs F's creditors. Whilst a large amount of information has been obtained, not all of the information remains available, mainly due to the passage of time and the retention of record schedules of those creditors.

Where the evidence is incomplete or contradictory, as much of it is here, then I must base my conclusions on the balance of probabilities – which is what I consider is most likely to have happened in light of the available evidence and wider circumstances.

The OFT guidance is clear on what is required of businesses managing debts on behalf of consumers. Monies held on behalf of consumers, including those intended to be paid to creditors, must be kept in a client account and not used by the business for other purposes. Consumers should also be kept fully informed of all communications which have taken place with their creditors, and the outcome of negotiations. Businesses are also required to retain all paperwork that has been forwarded to them from either the consumers or creditors, until such time that the contract is complete

or terminated. Mr and Mrs F's agreement with DC is still in place and DC should therefore have better records for Mr and Mrs F and their respective creditors. I feel it is important to note my disappointment at the lack of information that has been provided by DC and think that it has failed in some of the most basic requirements on record keeping.

Mr and Mrs F have told us that they initially forwarded a sum of £80,000 to DC, which was to be used to negotiate short settlements with their creditors. The exact sum paid has not been substantiated by either party; however our enquiries with Mr and Mrs F's secured loan providers would suggest that this figure is likely to be correct. It is reasonable to expect DC to have clear records of what was paid by Mr and Mrs F but its records are clearly lacking.

DC has clearly failed to keep accurate records of Mr and Mrs F's plan. DC told us that it had dispersed £48,651 to Mr and Mrs F's creditors, and had retained approximately £13,850 in fees. Looking at the information provided by Mr and Mrs F's creditors our enquiries show the creditors received £35,657 from DC. These payments were a mix of short settlements and monthly payments. Some of the short settlements were only partial settlements as the full amounts were not always paid to the creditors. This has resulted in some debts continuing as the creditors did not actually receive the agreed settlement amounts. Some creditors however received no payments.

Although the specific detail of the arrangement between Mr and Mrs F remains unclear, as no signed agreement has been presented by either party, in this case, there is nothing to suggest that DC fulfilled its basic obligations which would have been to disperse the £80,000 between the creditors. Having considered the somewhat limited information in this complaint I find that, on the balance of probabilities, DC failed to administer Mr and Mrs F's plan correctly and it should have done considerably more. Mr and Mrs F have told us they paid DC £80,000 and our enquiries show that DC failed to pass on all of that to their creditors. Our enquiries show that DC should still hold around £45,000. It is unclear why such a significant amount remains unpaid and ultimately unaccounted for and I am extremely concerned by DC's conduct here.

Should either party disagree with the amounts referred to above they should provide clear documentary evidence showing amounts received by the respective creditors. This should also clearly demonstrate why the amounts here are incorrect.

Although there is no clear fee structure, it is clear that DC has done some work on Mr and Mrs F's behalf as some accounts have been settled and others received some payments. I can see that Mr and Mrs F did benefit from a number of short settlements which were negotiated by DC, some of which were considerable. Some accounts did receive a number of smaller payments, albeit considerably less than I would have expected. As DC has done some work on Mr and Mrs F's behalf, which they have ultimately benefitted from, I therefore consider it reasonable for DC to retain some fees in recognition of the work it did do. On balance, I consider it reasonable for DC to retain £4,000, which is equal to 5% of the money DC received from Mr and Mrs F, for this work. The remaining balance from the initial sum, which I calculate to be £35,657 (after deducting the £4,000 of fees), should be returned to Mr and Mrs F. Interest should also be added to this sum.

I also consider that DC's significant failings have caused a considerable amount of worry and upset for Mr and Mrs F. DC has already paid Mr and Mrs F £500 for this and in the circumstances I think this seems reasonable. I do not think it should make an additional payment on top of the £500 it has already paid.

my provisional decision

For the reasons I have explained, but subject to any further comments or evidence I receive from either Mr F or Mrs F or from DC by 9 December 2014, my provisional decision is that I am minded to uphold this complaint. I intend to order Debt Connect (U.K.) Limited to:

- refund the remaining balance to Mr and Mrs F. I calculate this sum to be £35,657 – which is the difference between what Mr and Mrs F paid to DC, what has been paid to their creditors, and a sum of £4,000 for fees.
- Interest at 8% simple per annum should be added to the above sum. To allow for the initial period of negotiations, I consider it fair for this interest to be applied from 1 June 2007 until the date of settlement.

If Debt Connect (U.K.) Limited considers it has to deduct tax from the interest element of my award, it should send Mr and Mrs F a tax deduction certificate when it pays them. They can then use that certificate to reclaim the tax if they are entitled to do so.

Mark Hollands
ombudsman