

complaint

Mr D complains that Gregson and Brooke Ltd misrepresented a Debt Management Plan (DMP) he entered into with it. He says that it has not distributed his money to creditors as expected.

background

Mr D says that he has paid Gregson and Brooke £2,280 but that it has distributed very little to his creditors over the time (around two years) he has been in the DMP.

Gregson and Brooke has said that in accordance with its terms and conditions the initial part of the DMP is a debt reduction stage where only token payments are made to creditors. It says that this part of the plan has no fixed duration, and during this time 82.5% of Mr D's payments are retained as management fees.

Our adjudicator recommended this complaint be upheld. He was not satisfied that Gregson and Brooke had clearly explained to Mr D how the plan would work and the associated fees. He recommended that it refund all payments Mr D had made to it minus the amount it has paid to his creditors, plus simple interest. He also recommended it pay Mr D £200 for the distress and inconvenience it has caused him.

Gregson and Brooke has not responded to the adjudicator's recommendation. So this matter has been referred to me for final 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.

Where evidence is incomplete or matters are unclear I make my findings on the balance of probabilities – which is to say, what I find is most likely to be the case based on the available evidence and the wider surrounding circumstances.

Account statements from Gregson and Brooke show that Mr D has paid it £2,280. Mr D does not dispute this amount. However, Gregson and Brooke has indicated that this money (except for £301.77 which it says has been paid to creditors) has been retained as fees while it challenged the enforceability of Mr D's debts.

Mr D says that he thought his debts would be challenged for the first three months, but understood most of his money would then be distributed to creditors. He says that he believed he had signed up to a DMP where his debt would reduce over time. He says that he has paid over £2,000 to Gregson and Brooke but it has done very little and his debts have not reduced in the way he was led to believe.

I find Mr D's submissions credible. It appears that Gregson and Brooke put him in a long term debt reduction plan, but I am not persuaded this is the type of plan he wanted or expected. From the information provided (including the terms and conditions of the plan) I am not satisfied that the features of the plan were clearly and transparently explained to Mr D in accordance with the Office of Fair Trading's debt management guidance.

In particular, I am not satisfied that Gregson and Brooke clearly explained the specific nature of the services supplied, and the likely or anticipated costs of those services. Gregson and Brooke has retained a large portion of Mr D's payments for debt reduction - yet its terms do not clearly explain how long this process lasts or the associated fees. If they had, I am not satisfied that Mr D would have chosen to go ahead with the plan. I also do not consider that Gregson and Brooke has clearly explained the potential consequences of stopping regular payments to creditors while it negotiated with them.

Mr D does not dispute that he thought the first three months of the plan would involve Gregson and Brooke challenging his debts for a fee. However, I do not consider there to be persuasive evidence to satisfy me that Gregson and Brooke has done work for it to justify keeping any of the management fees it has taken. And Gregson and Brooke has failed to respond to this service to dispute this. In this instance I consider it fair and reasonable that Gregson and Brooke refund Mr D all the payments he made to it, totalling £2,280, minus what it has paid to his creditors. Account statements show that Gregson and Brooke has paid £301.77 token payments to Mr D's creditors during the time he has been in the plan – which Mr D does not dispute.

I can see from Mr D's correspondence that he is very upset and frustrated by Gregson and Brooke's failure to fully explain the nature of the plan to him from the outset or fully address his subsequent complaint. I also consider that he has been caused inconvenience by the business being unresponsive to his complaint with this service. Therefore, I consider it fair and reasonable that Gregson and Brooke pay Mr D an additional £200 compensation for the distress and inconvenience it has caused him.

my final decision

My final decision is to direct Gregson and Brooke Ltd to:

- refund all payments Mr D made to it under the DMP totalling £2,280, minus £301.77 it has already distributed to his creditors;
- pay interest at 8% per annum on the refunded payments from the date each payment was made to the date of settlement; and
- pay Mr D £200 compensation for the distress and inconvenience it has caused him.

If Gregson and Brooke wishes to deduct tax from the interest element of my award it should provide Mr D with a certificate of tax deduction so he may claim a refund, if appropriate.

Mark Lancod
ombudsman