

## complaint

Ms W complains that Caversham Finance Limited, trading as Brighthouse, won't refund payments she made to her daughter's account in error.

## background

Ms W's daughter took out finance with Brighthouse and made purchases whilst living at home with Ms W. In December 2016 Ms W's daughter left home and took the purchases with her.

Ms W received weekly text reminders from Brighthouse to make payments. She thought that because her daughter had purchased the goods whilst living at her address she was liable for the debt. So she made payments when she received reminders.

When Ms W experienced financial difficulties she spoke to advisors who explained she wasn't liable for her daughter's debt. So she complained to Brighthouse and asked for her money back. They told her that they could not share details of her daughter's account with her without her daughter's consent.

So Ms W referred her complaint to this service where an ombudsman explained that although Ms W wasn't the account holder she was an "*eligible complainant*" as the ombudsman was satisfied Brighthouse had attempted to recover the debt from her by sending text messages to her phone and not her daughter's.

Our investigator considered the complaint on its merits. He thought, on balance, there was sufficient evidence to suggest that Ms W believed she was liable for the debts rather than her simply paying for them on her daughter's behalf. He was persuaded this was the case because:

- Brighthouse hadn't provided an explanation about why Ms W's telephone number had been added to the account and he thought they could have done more to clarify it was the right number;
- he was persuaded by Ms W's recollection of speaking to a store and being told the debt was her joint responsibility as she was a joint tenant;
- the requests for payment were sent directly to her and this, he thought, would reinforce Ms W's view she was liable.

So the investigator thought to put things right Brighthouse should refund all payments Ms W had paid to the account since her daughter left the property in December 2016. He also thought it was clear Ms W had been inconvenienced by these matters and that Brighthouse should pay her £150 to compensate her for this.

Brighthouse didn't agree with the investigator. They referred us to our dispute rules 3.3.4B (4) and said as there was more than one eligible complainant (Ms W and her daughter) and the complaint had been referred without the consent of the other, we may consider it would "*seriously impair the effective operations of our service*". They could not see how they'd be able to comply with any direction given by this service without releasing their customer's payment history. They explained that the General Data Protection Regulations (GDPR) prevented them from doing that and they therefore suggested we should only consider the complaint if we had Ms W's daughter's permission. They went on to explain that they had no

way of knowing which payments Ms W made voluntarily on her daughter's behalf and which weren't. They asked for a final decision by an ombudsman.

### my findings

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

I agree with the investigator's view. I know that will disappoint Brighthouse so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Brighthouse say it would not be right to consider the complaint without getting Ms W's daughter's consent to share her account details. DISP 3.3.4A (5) says we "*may dismiss a complaint without considering its merits if the ombudsman considers that dealing with such a complaint would otherwise seriously impair the effective operation of the financial ombudsman service*" and DIPS 3.3.4B (4) suggests this may include if the complaint involves more than one eligible complainant and it's been referred without the consent of the other.

I'm not persuaded that our operation would be seriously impaired by considering the merits of this complaint without Ms W's daughter's consent. Payments made by Ms W can be distinguished without sharing her daughter's account details or statements and I therefore think it's possible to distinguish Ms W's actions from her daughter's without placing Brighthouse in a situation where they'd be at risk of breaching the GDPR.

So I've thought about whether Ms W was led to believe she was liable for her daughter's debt with Brighthouse and I think, on balance, that she probably was.

I say that because:

- Brighthouse contacted her on her mobile phone and asked for payments. I think, in those circumstances, Ms W was likely to believe they had a right to do so;
- there's not been a reasonable explanation provided by Brighthouse about why they would be using Ms W's number. I agree that they could have taken more care to ensure the mobile number they held was for their customer;
- Ms W has explained that she became aware of the fact she may not be liable for the debt when she spoke to advisors after she began to struggle financially. It seems to me that she would not have been likely to be making *voluntary* payments towards her daughter's debt if her financial situation was fragile. I think it's more likely she thought she *had* to make the payments;

So I think it's right that Brighthouse repay the money that Ms W has paid in error. She's explained that when her daughter lived with her she did, on occasion, make payments on her behalf. So I think the payments Brighthouse should refund are the ones made by Ms W

towards her daughter's debt since her daughter left home in December 2016. Should Brighthouse not be able to clarify these payments Ms W may need to supply bank statements to Brighthouse and identify the payments that will need to be returned. They should also add 8% interest to these payments as it's clear Ms W has been deprived of that money.

I'd agree with the investigator's view that Ms W has been distressed and inconvenienced by Brighthouse sending demands straight to her. In the circumstances, I think Brighthouse should therefore pay her £150 compensation.

### **my final decision**

For the reasons I've given above I uphold this complaint and tell Caversham Finance Limited to:

- refund all payments Ms W has made to her daughter's account since December 2016 and add 8% simple interest from the date of payment to the date of settlement;
- pay Ms W £150 to compensate her for the distress and inconvenience their actions have caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 10 March 2020.

Phil McMahon  
**ombudsman**