



complaint

Mr C complains about information he was given by Payplan Partnership Limited to enter into an individual voluntarily arrangement (IVA). He says he was told his total debts were in excess of £42,000 and this included a debt of approximately £27,000 that was owed to one creditor. He has since found out that the £27,000 debt was written off a considerable time before the IVA was proposed and had he known this he says he would not have entered into the IVA.

background

The adjudicator recommended the complaint be upheld. He explained that Mr C was led to believe he owed in excess of £42,000 and this is what led him to enter into the IVA. The IVA protocol sets out that his existing debts should have been verified and it was reasonable for Mr C to assume they had been. As his debts were not verified, and it was therefore not apparent that the £27,000 debt had been written off, Mr C was led into an unsuitable arrangement based on false information.

The adjudicator recommended Payplan Partnership Limited refund what Mr C had paid towards the IVA, less the amounts that had been passed onto his creditors. An additional sum of £200 should also be paid for the distress and inconvenience caused to Mr C.

Payplan Partnership Limited did not accept the adjudicator's conclusions. It says it is not industry practice to verify every debt with each debtor. It also says it did not say that it had verified every debt and Mr C's previous debt management company was also not aware that the £27,000 debt had been written off. It says that even if it knew the £27,000 debt had been written off the other creditors in the IVA would still have approved the IVA. It thinks that regardless of the £27,000 being written off, Mr C was still insolvent at the time.

Mr C says that although the IVA has now been cancelled it has been recorded as failed and he would like this changed. He also says that he incurred court fees and costs and he would like these to be refunded. He also reminded the adjudicator that he had previously referred to paying £351.90 to a 'cover me' scheme that was intended to cover his IVA repayments if he fell ill.

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 have upheld this complaint.

Mr C's complaint is about the advice or information he was given by Payplan Partnership Limited which led to him entering into the IVA. As the adjudicator has explained, our service has no power to consider the administration of the IVA after it is set up. My findings here are therefore limited to the setting up of the IVA only and I have not considered how the IVA was actually administered. This has been subject to a separate complaint that was not dealt with by our service.

Mr C complains that he was misled by Payplan Partnership Limited as he was not made aware that £27,000 of his debts had already been written off. I understand that Mr C

provided the list of creditors with each respective debt amounts. The £27,000 debt is recorded on that initial list and Mr C's previous debt management company was also still making payments to the £27,000 debt before he entered into the IVA. It is reasonable to assume therefore that Mr C had no knowledge of that particular debt being written off, as he would not have been making payments if he had. It would also not have been recorded on the list of creditors.

Payplan Partnership Limited says it did write to Mr C's creditors, on more than one occasion, but it did not get a response from the £27,000 creditor. It feels that the efforts it made to verify the amount of the debt were reasonable and it is not industry practice to verify every debt.

The Insolvency Service's IVA protocol sets out the requirements and procedures that should be followed when advising someone to enter into an IVA. The protocol that was in place when Mr C entered into the IVA states that full details of all known and potential debts should be obtained from the debtor. It also says these should be verified by obtaining documentary evidence from each creditor within six weeks of the debtor first approaching the IVA provider.

I appreciate Payplan Partnership Limited did attempt to contact all creditors. I also accept there will be circumstances when it may not be practical or possible to verify every debt with each creditor. However, having considered the circumstances here I think it should have done more to verify, or confirm, that the £27,000 debt was still due. Mr C's unsecured debts were recorded as being £42,040 and the £27,000 debt was approximately two thirds of this. It was therefore a considerable sum that was due to one creditor and not simply a small or insignificant sum. In view of this I think it would have been more appropriate to take further steps to verify the debt was still due.

Had it done this it would have been apparent that Mr C was not being asked to repay the debt and it would not have formed part of the IVA. Had this not been included it would have reduced Mr C's overall debts by a considerable sum. Payplan Partnership Limited says that even if the £27,000 debt had been excluded Mr C would still have been insolvent. It also says that the remaining creditors have said that they would still have chosen to go ahead with the IVA even if the £27,000 was not included.

Mr C says that he spoke with the remaining creditors and he was told that they would not have proceeded with the IVA had they known the £27,000 did not need to be repaid. He also says that he would not have entered into the IVA had he known he was not required to repay the £27,000 debt.

I cannot be certain whether the remaining creditors would have still proceeded with the IVA if the £27,000 debt was not included. However, I find Mr C's submissions, about not proceeding with the IVA had he known he owed considerably less, plausible. On balance, I find that Payplan Partnership Limited should have done more to verify the £27,000 debt and had Mr C been told the debt had been written off he would not have proceeded with the IVA.

Had Mr C not proceeded with the IVA it is reasonable to assume that he would have continued with his existing debt management plan. I understand this arrangement was provided to Mr C without cost and he would not have therefore incurred the costs associated with the IVA. Payplan Partnership Limited should therefore refund the costs it has taken from the payments Mr C has paid. Mr C also says that he made additional payments of £351 for a 'cover me' scheme that was intended to cover his IVA repayments if he could not work. Had

he not taken out the IVA there would be no requirement for this plan and the repayments should also be refunded.

Any refunded payments should include interest at 8% simple per year from the date of each payment until the date of settlement.

Mr C has also asked that he be reimbursed for the court costs he incurred after the court hearing about the way Payplan Partnership Limited administered the IVA. As these costs relate to the court proceedings Mr C will need to raise any questions about those costs with the court separately. Also, as the court has made a decision on the costs that Mr C should pay it would not be appropriate for me to order the business to do anything different.

Similarly, as the court has already considered issues relating to how the IVA was administered, and therefore how it should be recorded as it has ended, Mr C will need to refer to the court if he would like this changed. I am unable to instruct the business to change how the terminated IVA is recorded.

Finally, I agree with the adjudicator that Mr C has been caused distress and inconvenience by the business and it should pay him an additional £200.

my final decision

My final decision is that I uphold this complaint and direct Payplan Partnership Limited to:

- refund the payments Mr C has paid, less the amounts that have been passed on to the respective creditors. This should include the payments made to the 'cover me' scheme;
- add interest at 8% simple per year from the date of each payment until the date of settlement; and,
- pay Mr C an additional £200.

If Payplan Partnership Limited believes that tax should be deducted from the interest element of my award, it should provide Mr C with the appropriate tax deduction certificate so that he is able to claim a refund if appropriate.

Mark Hollands
ombudsman