

complaint

Miss L complains about the way David Alan Williams trading as Debts Maze Solutions ("DMS") managed her debt management plan.

background

Miss L entered into a debt management plan with DMS in March 2009. As part of that agreement, Miss L agreed to pay DMS a monthly amount for just over five years. In return, DMS agreed it would negotiate with creditors to try and reduce Miss L's monthly repayments. After DMS had negotiated on her behalf, Miss L began paying £22.50 a month. £5 of this went to five different creditors and the remaining £17.50 was kept by DMS as a fee.

It seems that Miss L spoke with some of her creditors in 2014. And they told her they hadn't been receiving the repayments regularly. So Miss L contacted DMS. Around the same time, one of Miss L's creditors issued county court proceedings against her. The court papers were sent to Miss L's old address so Miss L didn't reply to them. This meant that the creditor could – and did – apply for a county court judgment ("CCJ") against her. This was granted.

Miss L says DMS didn't manage her debts properly. She wants compensation for the missed repayments and the CCJ. DMS says that it made the £1 payments to each creditor every month. But creditors often move debts to different debt collection agencies and so these payments are sometimes returned. And it's often difficult to find out where any returned payments have come from. As for the CCJ, DMS says Miss L didn't tell it about the court proceedings until it was too late. And the logical conclusion is that Miss L didn't tell her creditors. So it says Miss L should be responsible for this.

One of our adjudicators looked at this complaint and thought it should be upheld. He recommended that DMS refund 28 months' fees, £131 in missed repayments, interest on those amounts, £1,077 to compensate Miss L for the CCJ and £150 for unnecessary stress and inconvenience.

DMS doesn't agree with the adjudicator. It's made a counter offer which Miss L has rejected. Because they can't agree, the complaint has been passed to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done that, I agree with the adjudicator's recommendation and I'm upholding this complaint.

the missed payments

Essentially, a debt management plan involves a customer handing over their relationship with some or all of their creditors to a third party. The third party (in this case, DMS) negotiates with the creditors, handles correspondence and makes repayments. Ultimately, that's why it can charge a fee.

In this case, although the agreement was due to last for 64 months, Miss L actually made payments for 71. We've been given some account statements by Miss L's creditors which show that for between 24 and 29 months, they didn't receive the £1 repayments. In total,

£131 has been missed. And there's no real dispute that this money needs to be paid back to Miss L.

DMS says no further compensation should be paid. That's because the missed repayments were caused in part because when creditors ask a collection agency to take over collecting a debt, payments will often be returned. And they won't have reference numbers on or other ways of working out which customer they belong to. But I have to tell DMS I think that's part of why it can claim a fee. If companies return payments to DMS then I think it has a responsibility to find out what account this relates to. I've been given no persuasive reason why DMS couldn't have done this. In fact, I think it's unlikely that DMS would receive so many returned payments from particular creditors that it couldn't work out where these came from with some investigation. A phone call, email or letter to these companies should have resolved this issue. I note also that some payments were missed even when DMS had been making otherwise regular repayments to a particular debt.

So I think this means overall that DMS hasn't managed Miss L's plan properly. I've taken an overall view of how it should compensate Miss L. And I agree with the adjudicator that it should pay 28 months' fees (£490) back in addition to the £131 in missed repayments. I also think DMS should pay interest on this to compensate Miss L for not having the money to use for other things.

the CCJ

The legal action was taken not by the original creditor, but by another company that had bought the debt. There's no doubt that it took legal action because of missed payments. Its solicitors have confirmed that in a letter. DMS says it had no idea that the creditor had sold this debt on. This is why payments weren't being made. It also says that if Miss L had told it about the court proceedings it would have done something to help. While Miss L may not have known about the court proceedings, this appears to be because Miss L didn't tell the creditor / debt owner.

Miss L says she always forwarded letters onto DMS. But whatever the position, for the same reasons I've given above, I think DMS should have known who was dealing with this debt. The creditor sold the debt in late 2012. Assuming that the creditor then started returning the payments DMS was making, I don't think it's reasonable for DMS not to appreciate this for two years. It should have investigated and it then would have understood the position.

The next important issue is why the court papers were sent to the wrong address. DMS says Miss L moved in early 2014. Miss L says it was actually in around July / August 2014. Either way, the court proceedings weren't issued until November 2014. Miss L says she let all her creditors know at the same time as she told DMS. DMS accepts Miss L told it in August that she had moved and gave it her new address. In my view, DMS should have passed this information onto Miss L's creditors. Miss L has given us a copy of a draft agreement she says formed the basis of her agreement with DMS. This says specifically that DMS would pass on any change of address. Even if it hadn't said this I would have expected DMS to do it anyway given that it was managing Miss L's relationship with her creditors. And there's no evidence that DMS did this (either to the original creditor or the new owner of the debt which I think it should have known about).

For those reasons I think DMS's failure to make payments to the debt owner caused it to issue court proceedings. And I think part of the reason why the papers were sent to the wrong address was also DMS's failings.

But should I also hold Miss L responsible for this? I don't think that would be fair. Miss L says that she told her creditors that she had moved in August 2014. And I accept that. It's accepted she told DMS about her new address in August and she's repeatedly said in letters to creditors that she told them at the same time. And I think it's likely that Miss L would have told DMS and all her creditors at around the same time. It may well be that the owner of this particular debt didn't receive Miss L's letter. But because I think she sent it I don't think it would be fair to hold her responsible.

For the above reasons, I think it's fair and reasonable to hold DMS responsible for the costs Miss L has had to pay because of the CCJ. As the adjudicator has said, these are £1,077. This is made up of interest (that has been added on because payments weren't made), court costs and legal fees.

I've considered everything DMS has said very carefully. But I'm afraid I don't think it's managed Miss L's debt management plan properly. And I think this has caused her loss. In addition to the loss I've set out above, I've no doubt Miss L would have been distressed by what's happened. And I think DMS should compensate her by paying £150 for this distress.

my final decision

For the above reasons I uphold this complaint. I direct David Alan Williams to pay Miss L:

1. £490 as a refund of 28 months' fees.
2. £131 as a refund of missed payments.
3. Simple interest at the rate of 8% a year on the above amounts from the date of the fee / missed payment until the date it's refunded.
4. £1,077 as compensation for the CCJ awarded against Miss L.
5. £150 for the unnecessary distress and inconvenience this has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 30 December 2015.

Ross Crawley
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