

complaint

Mr D complains about a debt management plan ('DMP') he had with Gregson and Brooke Limited. In summary, he says that Gregson and Brooke failed to distribute money on to his creditors, and took a lot of money in fees.

background

In summary, Mr D says that Gregson and Brooke did not explain its services clearly and has not looked after his debts in the way he expected. He is not satisfied with the service he has received from it.

Our adjudicator upheld this complaint. He found that, contrary to Office of Fair Trading (OFT) guidance on debt management, Gregson and Brooke had not clearly explained the nature of its services to Mr D at the outset, and had failed to act in his best interests. He noted that the DMP had not left the debt reduction stage and Gregson and Brooke had retained over 85% of all payments made to it while only making token payments to Mr D's creditors.

He acknowledged that Gregson and Brooke had done some work which Mr D benefited from, however, overall he found it reasonable that it refund the money Mr D had paid it minus the first two fees and the payments it had made to Mr D's creditors. He also recommended it pay Mr D £200 for the distress and inconvenience it had caused him.

While this complaint has been with this service Gregson and Brooke has gone into liquidation. This service has been informed there is no money available for creditors. A second adjudicator informed Mr D of this development and the potential implications it may have for him in terms of recovering any money he is owed. However, Mr D has requested a final decision so this matter has been passed to me for final determination.

The second adjudicator noted that from the start of March 2013 it appeared that a new business had taken over Mr D's DMP from Gregson and Brooke, and that there may be a separate complaint which Mr D could raise against that business. As a result, she informed Mr D that the redress in this complaint would only cover the payments he had made to Gregson and Brooke from the start of the DMP in January 2012 up to the start of March 2013.

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.

Overall, I am satisfied that in these particular circumstances it is appropriate to consider the payments Mr D made under the DMP up to 5 March 2013, after which point it appears likely that another entity took over the management of the plan from Gregson and Brooke.

Account statements from Gregson and Brooke show that from January 2012 up to 5 March 2013 Mr D had paid it £1,790. Mr D does not dispute this amount. However, Gregson and Brooke's records indicate that this money (except for £118.09 which appears to have been paid to creditors) has all been retained as fees while it challenged the enforceability of Mr D's debts.

From his credible submissions I am satisfied that Mr D understood that his debts would be challenged at an early stage in the plan, but I consider that he also understood that most of his money would be distributed to creditors to reduce his debts rather than taken in fees for debt reduction services.

I find that Mr D trusted Gregson and Brooke to act in his best interests in managing his debts over time. It appears that Gregson and Brooke put him in a long term debt reduction plan and took most of his money in fees - but I am not persuaded this was in his best interests in accordance with OFT guidance. Nor do I think that 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 DMP 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 total cost of those services. Gregson and Brooke 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 DMP. Furthermore, I do not consider that Gregson and Brooke has clearly explained the potential consequences of stopping regular payments to creditors while it negotiated with them.

Normally I would recommend that Mr D receive a full refund of fees, minus what Gregson and Brooke has distributed to his creditors. However, I note that Mr D was aware that debt reduction was a part of the service he was agreeing to (despite the overall length and cost implications of this not being clear to him). And in this instance I consider that Gregson and Brooke has done some things as part of this debt reduction stage which Mr D has directly benefited from (such as refunds of some charges, and interest and charges being frozen). Therefore, I consider a deduction from Mr D's refund of the first two months of fees (totalling £270) to be fair and reasonable here.

I consider that Mr D has been 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 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 Limited to:

- refund all payments Mr D made to it under the DMP to 5 March 2013 totalling £1,790, minus £118.09 it has already distributed to his creditors and the first two management fees totalling £270;
- pay interest at 8% per year 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 Limited decides 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