

complaint

Miss B complains that 123 Debt Solutions Ltd did not treat her reasonably or fairly in that it took money for a PPI claim when she had expressly told it not to. She also complains that when she told it she could not afford her monthly payments towards the PPI claim and debt management plan fee, the business increased payments to itself and reduced payments to her other creditors.

background

In September 2010, Miss B entered into a debt management plan with 123 Debt Solutions. Under this plan, Miss B would pay £150 per month, from which 123 Debt Solutions would take a percentage as its fee, and the rest would be distributed to her creditors. In December 2011, 123 Debt Solutions changed its terms and conditions, to include a provision that the business would also make Payment Protection Insurance (PPI) claims on its clients' behalf, charging an additional fee for doing so.

Miss B knew she had taken out PPI policies, and was confident she would be able to make a claim herself. On this basis, she did not want to agree to the new terms and conditions, but says she was told the alternative would be to withdraw from her debt management plan. Miss B therefore reluctantly signed the new agreement.

In May 2012, Miss B received the proceeds from a successful claim. She was then told by 123 Debt Solutions that she owed it nearly £500 in fees for that claim. Miss B had used the money, and was not able to pay the fee. 123 Debt Solutions added the fee to her existing debt management plan, and increased her monthly payments to £160.

In November 2012, Miss B told 123 Debt Solutions she could not afford the increased payment, and the business reduced this to £80. It made its fee a priority debt, taking the majority of the monthly payment and paying Miss B's other creditors only £1 per month. This led to one creditor issuing a default notice. In May 2013, Miss B cancelled her debt management plan with 123 Debt Solutions.

The adjudicator recommended that the complaint should be upheld. He considered that, in carrying out the PPI claim against Miss B's wishes, 123 Debt Solutions had breached its obligation to put Miss B's best interests first. He also considered that the business had prioritised its commercial interest to Miss B's detriment. He recommended that 123 Debt Solutions should refund to Miss B all fees taken after making the PPI claim and should pay her £200 compensation for distress and inconvenience.

123 Debt Solutions does not agree. It says Miss B agreed to the PPI claim and benefited from it. It says it was her decision to spend the proceeds of that claim, and that it had helped her to repay its claim fee by accepting monthly repayments.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Providers of debt management services are expected to meet certain obligations, which are set out in the Office of Fair Trading's Debt Management Plan Guidance. Section 2.2 sets out two key overarching principles:

“It is therefore vital that when providing services to such consumers in particular, having regard to their best interest should be a paramount consideration – and the commercial interests of a business should never be prioritised to the detriment of the consumer”.

Looking at 123 Debt Solutions’ treatment of Miss B, I consider it has breached these obligations. I have set out how, below.

When the business contacted Miss B to tell her of the change to its terms and conditions, she made it clear she did not wish to agree to them if it meant she would have to pay 123 Debt Solutions to carry out a PPI claim on her behalf. She was confident she would be able to make the claim herself, and did not wish to incur a fee. Nonetheless, the business made a claim on her behalf and then charged her a fee for doing so.

123 Debt Solutions has provided a note of its telephone conversation with Miss B in early December 2011 about the PPI claim. This shows Miss B told the business she did not want it to make the claim. 123 Debt Solutions offers a reduction in its fee, and Miss B asks it to send her the paperwork. 123 Debt Solutions has acknowledged that Miss B did not return the paperwork agreeing to the claim. It says it spoke to her again in February 2012, making it clear that it would be a condition of its services that it could make any PPI claim on her behalf.

I consider that Miss B made it clear she did not need 123 Debt Solutions to make the PPI claims for her and that she did not want to pay a fee for any such claim. Despite this, the business made the claim a condition of staying in the debt management plan, and then charged a fee of nearly £500 for the claim. I do not consider this was having regard to Miss B’s best interests, and I do not consider the business treated her fairly or reasonably. When Miss B agreed to the debt management plan, there was no requirement to agree to her PPI claims being handled by 123 Debt Solutions. When presented with the choice between agreeing to the new terms or leaving the plan, she had little choice to agree, despite her reluctance.

When presented with the fee for this claim, Miss B was not able to pay it, and 123 Debt Solutions added it to her plan. However, this increased her monthly repayments to an unaffordable level. The business reduced her payments, but took the bulk of them to repay her debt to it, which it classified as a priority debt. It also reduced payments to Miss B’s other creditors to £1 a month, Miss B says she was unaware of this until she received a notice of default from one of her creditors.

By taking payment ahead of Miss B’s other creditors and reducing their allocation of her monthly payment, 123 Debt Solutions damaged Miss B’s financial situation. It clearly put its own commercial interests ahead of her interests, contrary to its obligations to her. I consider it did not treat her fairly or reasonably in this regard.

my final decision

My final decision is that I uphold this complaint. In full and final settlement, I order 123 Debt Solutions Ltd to:

1. Refund to Miss B all management fees it took from her after making the PPI claim;
2. Refund to Miss B all money taken to pay the PPI claim fee;

3. Pay interest at a rate of 8% simple on the above amounts from the date each payment was made to the date of settlement of this complaint;
4. Pay Miss B £200 compensation for the distress and inconvenience its errors have caused her.

Catherine Wolthuizen
ombudsman