

complaint

Mr S complains that Debt and Credit Ltd (Debt and Credit) have overcharged him for managing his Debt Management Plan (DMP). He also complains that Debt and Credit shouldn't have transferred his plan to another company without his consent.

background

Mr S entered into a DMP with Debt and Credit in July 2014. He says that they charged him too much. In November 2014 Debt and Credit transferred management of the plan to another company, so payments after this period have not been considered in this complaint.

Debt and Credit are not currently trading and Mr S therefore struggled to get hold of them. So, he referred his complaint to this service and our investigator managed to contact one of the directors who responded on the Debt and Credit's behalf.

They explained that, as they ceased trading some time ago, much of the information they would have liked to supply was no longer available. However, they did tell us that the contract Mr S was bound by stated that 50% of the payments he made into the plan would be retained for each of the first six months. They explained that this was to pay for the management of the plan. They went on to clarify that the agreement would have been explained on the phone and they said it would have been part of the due diligence process for the company, who the accounts were transferred to, to listen to the calls and satisfy themselves about the detail of the agreement. So they said they wouldn't uphold Mr S's complaint.

They also explained that they transferred the plan to another company to protect their clients as they were in the process of surrendering their license with the Financial Conduct Authority (FCA). Debt and Credit explained that the FCA did not require them to gain the consent of consumers.

So, as Mr S was still not satisfied, our investigator looked at his complaint. He thought the agreement that Mr S signed with the business was poorly explained. He noted Debt and Credit had retained 50% of Mr S's payments because the contract said they could. He didn't dispute this but he thought the welcome letter, which Mr S was sent at the outset, made the terms unclear. He noted that the section entitled "*Your Fees Explained*" said that the costs of setting up the plan would be spread over the first six months and once the plan was set up a fee of 17.625% would be charged. He thought most people would think the plan was "*set up*" once the contract had been signed. So he said that, if this was the case, Mr S should have been charged 17.625% of any payments made into his plan and not an additional 50% over the first 6 months.

He went on to consider the payments made. He established that Mr S:

- had paid £3,400 to Debt and Credit
- they charged him £1,825.02 in fees
- they paid creditors a further £1,547.98

But the investigator said his understanding of the fees due was that 17.625% of what was paid in to the plan (£3,400) should have been fees and that this meant the fees should have been £559.25 instead of £1,825.02. So he thought Debt and Credit should refund the difference - £1,265.77

But Debt and Credit disagreed. They said the terms of the contract were clear and that a management fee of 50% was payable over the first 6 months. They went on to explain that a fee of just 17.625% wouldn't be enough to viably manage the plan and 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 know it will disappoint Debt and Credit but I agree with the investigator's view. 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.

Mr S received his contract in a welcome pack that also contained a summary of his debt management scheme. I think it was incumbent on the business to ensure that the information, about how Mr S's DMP was going to be charged, was clear and unambiguous. Whilst that's a requirement I would think reasonable of any contractual documents I think it's even more pertinent here. I say that because many of the people entering a DMP may be vulnerable and perhaps less able to understand complex statements.

But here I don't think Debt and Credit have been clear. I'll explain why:

the section entitled "Your Fees Explained"

This section says:

"The cost to set up your plan is spread over 6 months which is included in your monthly payment".

So it's not possible from this information to identify what that monthly payment is and as it transpires the payment is a significant one, I think it should be mentioned here. But it's not and that's ambiguous.

The section also says:

"once your plan is set up, a monthly management fee of 17.625% or £39.50 (whichever is greater), is included in your on-going payments to us".

Again, it's ambiguous when the plan is set up. I agree with the investigator that most people would expect the plan to be "set up" when the contract was signed and even if it's been explained that the cost of set up is spread over 6 months, that doesn't mean the plan isn't set up until that 6 month period has expired.

It's also ambiguous what the management fee of 17.625% is a percentage of.

The answers to these questions may be found in the contract but again, that takes a bit of digging.

section 5.1 of the contract "Our fees"

says:

"for the first 6 months we will retain 50% of your disposable income to cover our initial fees and management costs with the remaining 50% being distributed to your creditors".

The amount of disposable income is referred to in the income and expenditure statement that's attached to the welcome letter. So having read the *"our fees explained"* paragraph, Mr S would have to read the contract and then interpret what was meant by *"disposable income"* by reference to an earlier document. He'd be confused by what *"initial fees"* meant as that wasn't covered in either the *"our fees explained"* paragraph or the contract.

the contract then goes on to say:

"From month 7 you'll be charged a monthly management fee which will be equivalent to 17.625% of your disposable income ... for the duration of your plan"

This would clarify that the monthly management fee was only payable from month 7 onwards. But this would only become obvious if Mr S had read the small print of the contract.

The amount Mr S would have to pay was simply not illustrated and was ambiguous.

Whilst the business may say that he had a responsibility to ensure he understood what he was signing I think the weight of responsibility in ensuring a plan of this complexity is communicated simply, to a consumer who is evidently struggling with financial commitments and may well be vulnerable, is on the business. And here they've not been clear.

I therefore agree with the investigator that it's likely Mr S would have thought he was being charged a fee of 17.265% as that's what he was told in the summary paragraph.

the redress

I've reviewed the charges and payments the investigator has helpfully, and painstakingly, developed and agree with the calculations he's made.

The fees charged to Mr S were £1,825.02 and should have been £559.25. So a rebate of £1,265.77 is required.

the transfer of Mr S's account to another company

Mr S also complains that Debt and Credit shouldn't have transferred his account without informing him but I don't agree.

There are no requirements for the business to do this and whilst the contract doesn't explicitly give permission for this to happen I think it was in the interest of Mr S for the business to transfer the plan, so it would survive and Mr S could continue to be supported by it.

So I don't uphold this element of Mr S's complaint.

my final decision

For the reasons given above I uphold this complaint in part and tell Debt and Credit Ltd to refund to Mr S the difference between the fees they charged and the fees this decision says they should have charged. That sum being £1,265.77.

They should add 8% simple interest per annum from the day they received payment of these funds to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 November 2018.

Phil McMahon
ombudsman