

complaint

Mrs J complains that she's being asked to pay a debt which Baines & Ernst Limited told her had been repaid in 2011.

background

Mrs J had a debt management plan with Baines & Ernst. In November 2011, following an inheritance, she was able to repay her debts and she paid the amount that Baines & Ernst told her was outstanding. Towards the end of 2015, she was contacted by one of her creditors who demanded repayment of an outstanding amount of more than £4,000. Baines & Ernst investigated and explained that the debt shouldn't have been removed from her DMP and that she did still owe the money. It offered to pay her £400 compensation, but Mrs J wants it to repay the outstanding debt.

Our adjudicator recommended that the complaint should be upheld. He concluded that although Mrs J would always have been liable for the debt if Baines & Ernst hadn't made a mistake, she would've been able to repay the debt in 2011. So he thought Baines & Ernst should pay the full outstanding balance.

Baines & Ernst didn't agree. It said, in summary, that Mrs J was always going to be liable for the debt, whether or not it had made a mistake. It referred to another case against it where our adjudicator had concluded the consumer needed to repay the debt.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Baines & Ernst acknowledged it made a mistake – the debt which Mrs J is now being asked to repay shouldn't have been removed from her DMP. When Mrs J asked Baines & Ernst how much she needed to pay to clear all of her debts, she relied on it to give her the right figure and this is the amount she paid. She had no reason to believe any debt remained outstanding, until she received contact from the creditor in 2015.

I have looked at the case Baines & Ernst referred to and there are similarities. But the difference in this case is that, having looked at Mrs J's financial situation in 2011 and her situation now I think, in all likelihood, she would've been able to repay the amount due in 2011. Baines & Ernst's mistake meant she was stopped from repaying the debt then – and she is unlikely to be able to repay it now, without experiencing financial difficulties. In this case, I find it is fair and reasonable that Baines & Ernst pay the amount she owes - £4,179.28.

Baines & Ernst should also takes steps to make sure Mrs J's credit file does not contain any adverse information from the date she would've been able to settle the debt if she'd been told about it – 1 November 2011.

my final decision

My final decision is that I uphold this complaint. In full and final settlement, Baines & Ernst should:

1. Pay Mrs J £4,179.28 so that she can repay the debt she owes.
2. Contact the creditor to make sure no adverse information has been reported on Mrs J's credit file since 1 November 2011.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 12 October 2016.

Elizabeth Dawes
ombudsman