

complaint

Mr A complains that Lloyd Anderson Financial Management Limited has not distributed his payments towards a debt management plan between his creditors. He was unable to contact Lloyd Anderson for an update and the token payments it did make to his creditors were late.

background

Mr A entered into a debt management plan administered by Lloyd Anderson, to help him manage the repayment of his debts.

He agreed to pay £500 each month to Lloyd Anderson, and it would distribute this between his creditors on his behalf. He understood that Lloyd Anderson would help him to repay these debts by negotiating with his creditors.

However, he found that payments had not been made to his creditors as he expected, and he was unable to contact Lloyd Anderson to find out what the situation was with the payments he was making.

So he chose to continue to make the contractual minimum payment to his debts as well as his payments to Lloyd Anderson. He then complained to Lloyd Anderson and said he would no longer make any payments towards the debt management plan until his money had been fairly distributed between his creditors.

Lloyd Anderson said that Mr A had accepted its terms and condition which said that it would retain his first three monthly payments to it as fees but would pay a token amount of £1 each month to his creditors. But it offered to allow Mr A to change his plan so that these fees would be taken over a six month period to allow more of his money to be distributed to his creditors earlier.

Our adjudicator recommended that the complaint should be upheld. She said that she did not believe that Lloyd Anderson's terms and conditions made it sufficiently clear to Mr A what the consequences of only token payments being made to his creditors were. She was unable to conclude that it was in Mr A's best interests to pay such a large amount in fees over a three month period when he was suffering from financial difficulties and the money could have been better distributed between his creditors. The adjudicator concluded that Lloyd Anderson should refund Mr A's payments to him with interest but less the token payments to his creditors. She also said it should pay Mr A £50 to recognise the distress and inconvenience he was caused by the situation.

Lloyd Anderson did not accept the adjudicator's findings. It said its terms and conditions made Mr A aware that only token payments would be made for the first three months of his debt management plan. It believed it had made him a fair offer to change his plan.

my findings

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

The Office of Fair Trading's debt management guidance sets out that consumers must be clearly warned in writing of the likely impact such a debt management programme may have on a consumer's credit rating and ability to obtain future credit.

Having considered Lloyd Anderson's terms and conditions, I do not find that they would have made Mr A aware of the consequences of only token payments being made to his creditors for a three month period, especially if these are delayed.

Mr A sought the help of the debt management plan as he wanted to ensure he repaid his debts in an affordable and timely way. In Mr A's particular circumstances, I am unable to find that it was in his best interests for such a high proportion of his disposable income at that time to be paid in fees, rather than towards his debts.

When Mr A became concerned about how his payments were being distributed, he found Lloyd Anderson was not contactable by either telephone or through its website. This lack of updates and information about his payment plan will undoubtedly have caused Mr A upset and distress. He made the choice to continue to meet the required monthly payments of each of his creditors, despite making payments towards a plan to assist him with this, when he was already financially stretched.

Overall, I am unable to conclude that Mr A was made sufficiently aware of the consequences of the token payments being made to his creditors during the initial three month period, whilst the remainder of his payment was retained as fees.

my final decision

My decision is that I uphold this complaint. I require Lloyd Anderson Financial Management Limited to:

- refund Mr A's payments to it, less the £9 paid to his creditors;
- add interest on these amounts at an annual rate of 8% simple from the date of each payment, to the date of settlement;
- pay Mr A £50 for the distress caused.

If Lloyd Anderson considers it has to deduct tax from the interest element of my award, it should send Mr A a tax deduction certificate when making payment, which he can use to reclaim the tax, if he is entitled to do so.

Cathy Bovan
ombudsman