

complaint

Mrs B complains that Wilson Andrews Limited ("WAL") provided her with unsatisfactory debt management advice.

background

Mrs B sought debt management advice in 2007 from WAL, and was advised to enter into a Trust Deed. At the time of entering the Trust Deed, her total unsecured debts were calculated as £24,545. This amount did not include her student loan, which, in error, was not initially included. But, the student loan was added to the Trust Deed prior to February 2008.

Under the Trust Deed, Mrs B initially had to pay contributions of £184.62 every four weeks. The payment was assessed by taking into account Mrs B's income and expenditure. Mrs B's income at that time was incorrectly shown to include tax credits of £700, when she in fact received £900.

The length of the Trust Deed was 36 months, although this period could be extended in certain circumstances. An annual review of Mrs B's circumstances in October 2009 took into account Mrs B's actual income from tax credits and other increased income, and Mrs B's monthly contribution was then increased to £505.

Mrs B then received an inheritance in November 2009 of over £133,000, but she did not disclose this to WAL. Under the terms of the Trust Deed, this should have been used to pay Mrs B's debts, but instead she used it to buy a property.

Mrs B complains that the Trust Deed was not the right solution for her and it was not properly explained to her. She also complains that WAL had incorrectly understated her income at the time of entering into the Trust Deed, and that she was incorrectly advised that her student loan would not be included in the Trust Deed.

The adjudicator did not recommend that the complaint should be upheld. He concluded that the error in calculating Mrs B's original surplus expenditure would not have changed the advice to enter into the Trust Deed. He also did not believe that the increase in the level of total debt by the later inclusion of Mrs B's student loan would have meant that the advice to enter a Trust Deed was inappropriate. He considered that subsequent events regarding Mrs B's inheritance and house purchase had made her reconsider entering the Trust Deed in hindsight. But, he explained that these events could not have been foreseeable at the time she sought debt advice in 2007. He also said that he was unable to consider Mrs B's complaint about the administration of the Trust Deed, as this fell outside the jurisdiction of this service.

Mrs B disagreed and responded to say, in summary, that WAL misinformed her at the outset and she then made choices based on the data WAL gave her which was incorrect and incomplete. She also said that WAL had told her that once her Trust Deed was protected, her debt would be over. She also complained that WAL had increased her monthly payments because it had originally miscalculated her income.

my findings

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

I have considerable sympathy for the situation in which Mrs B now finds herself. And it is especially unfortunate that her present difficulties have resulted from an inheritance. But, for the purposes of this decision, I need to consider whether WAL acted inappropriately when advising Mrs B to enter into the Trust Deed. So I need to look at Mrs B's situation in August 2007 when she decided to enter into the Trust Deed.

In August 2007, I note that WAL recorded Mrs B's debts at just over £24,500, with a monthly income of £1,366 and expenditure of £1,166. So, on the basis of these figures, WAL noted that Mrs B had "spare" monthly income of £200 to make her Trust Deed repayments. As the Trust Deed was anticipated to last for the usual three year period, I can see that in August 2007, Mrs B would have been expecting her debts to be settled in August 2010, as at the conclusion of the Trust Deed, the remaining debts would be written off. And if Mrs B had continued to pay her monthly repayments regularly, and not received her inheritance, it is more likely than not that this would have been the case. Mrs B said that WAL had told her that her debts would be over once the Trust Deed was protected, but as this was not reflected in the documentation she had signed, I cannot safely conclude that she was told this. So, taking into account Mrs B's circumstances in August 2007, I am not persuaded that WAL acted inappropriately in advising Mrs B to enter into a Trust Deed.

I also note that Mrs B's income in August 2007 was understated by WAL in error by £200. But, I can see that Mrs B benefitted from this error by having £200 more to use each month than she should have had if it had been recorded accurately, until her overall financial position was reviewed. I also note that Mrs B had signed the statement showing the incorrect amount for her tax credits. Whilst Mrs B said that she had made incorrect choices based on the data WAL had given her, I can see that she would have known her actual financial circumstances and could make choices to reflect these.

I can also see that the late addition of the student loan to the Trust Deed before February 2008 had no bearing on Mrs B's monthly contributions at the time, as the contributions were based on Mrs B's income and expenditure, and not on her level of debt. The addition of the student loan to the debts also benefitted Mrs B at the time, as it meant that the loan should have been settled at the end of the Trust Deed.

I can also see in August 2007 that Mrs B had the option of being interviewed in person about the Trust Deed but she chose not to take this option. She was sent the Trust Deed and confirmation letter to sign. I can see that these documents included provisions that required Mrs B to inform her trustee if her circumstances changed, if she received an inheritance, and if she had any equity in property. If she had any such equity, she would need to pay this to her trustee. I consider that Mrs B was responsible for ensuring that she understood what she was signing, or for raising questions about the Trust Deed and confirmation letter if she was not. I cannot hold WAL responsible if she chose not to read these documents. So, I am satisfied that Mrs B should have reasonably known about her obligations under the Trust Deed before signing it.

I also note that WAL's letter dated 24 September 2007 to Mrs B reminded her of her obligations including the need to tell WAL of any change in circumstances, and to contribute 100% of any inheritance and property equity to the Trust Deed.

But, Mrs B did not take advice about the consequences of entering into the deed of variation of a relative's will and its effect on her Trust Deed. And, by omitting to take into account her obligations under the Trust Deed and proceeding with the deed of variation, it is very unfortunate that Mrs B is now suffering the adverse consequences of these actions.

Mrs B has also complained about WAL's administration of the Trust Deed. As the adjudicator explained, we are unable to consider this aspect of her complaint

So, notwithstanding WAL's errors regarding the initial exclusion of Mrs B's student loan and the understating of Mrs B's income, taking into account Mrs B's circumstances at the time she entered into the Trust Deed, I am not persuaded that WAL's overall advice to Mrs B at that time was inappropriate. I appreciate that Mrs B will be unhappy with my decision. But, if she does not wish to accept it, her legal rights remain intact.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs B to accept or reject my decision before 7 April 2015.

Roslyn Rawson
ombudsman