

## **complaint**

Mr H complains about a debt management plan he entered into with Bournes Limited. He says Bournes never explained how the plan would operate and payments were not distributed to his creditors as he expected them to be. He complains once he realised what had happened he pursued Bournes to find out what was going on but it ignored his communications.

## **our initial conclusions**

Our adjudicator recommended that the complaint be upheld. He was satisfied that Bournes mis-sold the plan because it appeared it had not complied with the debt management guidance issued by the OFT about the standards it expects from businesses offering debt management plans. He was also satisfied that some payments were missed and some made sporadically which is likely to have been a breach of the agreement between the parties.

Further, our adjudicator was not satisfied that Bournes had either carried out sufficient checks when it set up the plan or made it clear to Mr H that it could not deal with secured debt. He also considered that Bournes had given Mr H incorrect information when it said a debt had been written off when it had not.

Our adjudicator was satisfied that Bournes had not provided the level of customer service that Mr H was entitled to expect. In particular he highlighted that Bournes had apparently not responded to requests for information from Mr H and his representative and had consistently failed to provide information we had requested even after being given ample opportunity to do so.

Mr H accepted this recommendation. Bournes at first said nothing and then sent in a belated response. It did not explain why it had failed to provide information to us but it asked that we re-consider our recommendations about the secured lending as it said Mr H had failed to disclose it to it. It also said it was entitled to take a fee for the debt it had incorrectly said had been written off because the lender had confirmed to it that the debt was not currently enforceable after Bournes challenged it.

## **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 consider that the crux of this complaint is what Bournes said to Mr H when it was setting up the repayment plan. It is clear that the parties do not agree about this. Therefore where there is a dispute about what happened, I have based my decision on the balance of probabilities - in other words, on what I consider is most likely to have happened in the light of the evidence.

*the plan was mis-sold to "Mr H"*

The OFT guidance makes it clear that that Bournes should have explained the debt management plan in such a way that Mr H had all the information he needed to make an informed decision about whether the plan was the best solution for him in his circumstances.

It has provided us with a file note of the conversation it had with Mr H when they were discussing setting up the plan. It is not clear why this key document was not provided earlier. It is a very brief note and throws very little light on what the parties actually discussed. Whereas Mr H has consistently told us that he was surprised at how the plan operated and I find his recollections credible. This suggests to me that Bournes did not clearly explain the nature of the plan it was putting forward. I consider that Bournes were in the best position to explain what they were going to do and it ought to have realised Mr H was likely to rely on its explanation.

In the circumstances I am not persuaded that Bournes did provide all the information it should have done. In particular I agree with the adjudicator I consider it has failed to show that it told Mr H that whilst the plan was in operation creditors could still apply interest and charges, that payments would be suspended where it challenged the debts, the impact this could have on his credit file and the actions that the creditors could take in response.

#### *the secured debt*

The file note Bournes relies on and has only recently provided suggests that it asked Mr H about this loan and he confirmed it was not secured. Given the size of the loan I would reasonably have expected Bournes to have asked more questions about this. But it appears it did not.

In any event Mr H indicates that Bournes never had this discussion with him at all.

It is difficult to understand why Mr H would have provided incorrect information to Bournes on this point given he was seeking its help.

The information I have suggests that Bournes took approximately 9 months to follow up with the owner of the secured debt. If it had acted more swiftly - as it should have - it would most likely have found out the debt was secured much sooner.

On balance, for these reasons, I am more persuaded by Mr H's version of events.

#### *the payments made by Bournes*

Bournes has provided no information on this point. The information I have seen suggests that some payments were missed. Bournes was invited to comment on this information but has not done so. For these reasons I have reached the same conclusions as the adjudicator for the same reasons.

#### *Bournes provided incorrect information about the debt it said had been written off*

It appears that Bournes previously said that one of Mr H's debts had been written off after its intervention - when in fact the creditor had merely indicated that it was not currently in the position to pursue the debt. I consider that Bournes provided incorrect information on this point.

Bournes has told us that the terms of the contract it had with Mr H enabled it to take the "legal fee" it did for the debt it claimed was written off. I am surprised Bournes still seeks to recover a fee even where it provided incorrect information.

Overall and on balance I am not persuaded that the agreement Mr H and Bournes entered into complied with the OFT's debt management guidance. I am also not persuaded that Mr H would have signed up to the plan, if he had known how the agreement would actually work.

In the light of this I uphold this complaint. I consider that any money that Bournes did send to Mr H's creditors should not be returned. But I do not consider it would be fair or reasonable for Bournes to keep the balance of the money it charged Mr H including the "*legal fee*" it seeks to retain. This money should be returned with interest.

#### *customer service*

Mr H says Bournes failed to respond to him and his representative. Bournes refutes this. But I can see no reason why Mr H and his representative would have contacted Bournes so frequently and consistently mentioning Bournes' lack of response if they were indeed receiving communications from it.

Further I consider that Bournes has not provided the level of customer service Mr H was entitled to expect whilst the complaint has been with this service.

In the circumstances I consider Bournes' actions would have caused Mr H to experience distress and inconvenience for which he should be compensated. I consider £200 is a fair award for this.

#### **my final decision**

My final decision is that Bournes Limited should:

- Refund each payment that Mr H has made to it minus the part of each of the payments that have been made to Mr H's creditors (£5,300 - £40.99 = £5,259.01).
- Add interest to the balance of each refunded payment, calculated at a gross rate of 8% per year simple from the date each payment was made to the date of this final decision.
- Also pay Mr H £200 for distress and inconvenience.

If Bournes Limited considers that tax should be deducted from the interest element of my award, it should provide Mr H with a tax deduction certificate. He can then use that certificate to reclaim the tax, if his is entitled to do so.

Bournes Limited must pay the above award within 28 days of Mr H accepting this final decision. If it pays later than this it must also pay interest on the award, at the rate set out above, to the date of settlement.

Joyce Gordon  
**ombudsman**