

complaint

Mr C complains that Moneyplus Group Limited ("MGL"), formerly trading as The Debt People, incorrectly advised him to enter into an individual voluntary arrangement ("IVA").

background

Mr C was advised by MGL to enter into an IVA, which he did in 2010. He said that he wanted all his debts to be settled within five or six years. His largest debt was secured by a final charging order dated April 2006 on Mr C's property. But four years after entering into the IVA, MGL told him that the secured debt could not be included in the IVA. Mr C also said that he would not have entered into the IVA if all of his debts could not be dealt with under it. He is seeking a refund of MGL's fees and the payments he has made to the IVA.

The adjudicator concluded that MGL should have initially established whether the largest debt could be included in the IVA. He said that if MGL had been unsure about the secured status of this debt, this should have been clearly explained to Mr C. If this had been done, he thought that it was unlikely that Mr C would have gone ahead with the IVA. The adjudicator was also concerned that MGL had delayed in responding to this service. He recommended that MGL refund 50% of the fees paid by Mr C and his wife. He noted that as of 17 April 2014, the refund amounted to £2,419.92. But, he said that MGL would need to provide an up-to-date statement in its response showing any additional fees charged since this date. He also said that MGL should pay £100 compensation for Mr C's time, effort and trouble in trying to resolve the matter.

MGL disagreed and responded to say, in summary, that £474 of the total fees paid were in respect of payments to third parties for their services, so that 50% of its fees amounted to £2,214.72. It also said that it had been originally told by Mr C's largest creditor ("D") that its debt was unsecured which was why it had included the debt in the IVA. The position was uncertain, and to investigate it now by obtaining legal advice would be costly, so it offered to refund fees of £1,500 (which it would pay into the IVA), and to pay £100 as a goodwill gesture. Mr C rejected this offer.

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 note that MGL said that it had been told by D before the IVA was made that its debt was unsecured. But I also note that MGL had carried out a Land Registry search on Mr C's property ten days before the IVA was made. This search clearly referred to a restriction created by D. The restriction note on the Land Registry entries said that D had the benefit of a final charging order made in April 2006 against Mr C.

I note that the Insolvency Service's Enquiry Line confirmed that a final charging order has the effect of turning an unsecured debt into a secured debt.

MGL said that it had spoken to two members of D's staff to confirm whether or not D's debt was unsecured and accepted their verbal confirmation that it was not secured. It does not have recordings of these calls. But, in view of the conclusive evidence provided by the Land Registry search, I would have reasonably expected MGL to have researched the position more extensively, and not just to have relied on speaking to two members of D's staff. In

view of the possibility of the largest debt being secured, and its significant effect on the IVA if it was, I would have reasonably expected MGL to have at the very least obtained written evidence from D that its debt was unsecured, before the IVA was made.

I note that MGL's letter dated May 2010 said that it would act in Mr C's best interests, but in view of its insufficient research about D's debt, I am not persuaded that it did so.

So, in these circumstances, I am satisfied that MGL has not acted appropriately. I agree with the adjudicator's recommendations, save for an adjustment being made to reduce the refund of fees by the amount paid to third parties.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order MoneyPlus Group Limited to:-

1. Refund 50% of its fees. I note that it said 50% of its fees amounted to £2,214.72; and
2. Pay compensation of £100.

I understand that the IVA is currently still in effect. So, the refund and compensation should be applied to the IVA as MGL considers appropriate. However, in the circumstances of this case, it may be appropriate for my award to be used towards repaying Mr C's creditors, bearing in mind that Mr C's debts were the reason he sought advice from MGL in the first place.

Roslyn Rawson
ombudsman