

complaint

Mr and Mrs R complain about a debt management plan they entered into with Bournes Limited. They are unhappy that the payments they made to Bournes were kept to pay its fees rather than being passed on to their respective creditors.

background

The adjudicator who considered the complaint recommended it be upheld. He found that Mr and Mrs R were not sufficiently informed about how the plan would work. In particular, Bournes failed to ensure they understood the payments they were making each month would not be passed to their creditors while the debts were being challenged by Bournes. The adjudicator was not persuaded that Bournes had followed the guidelines laid out by the Office of Fair Trading.

The adjudicator recommended Bournes refund £858.70, which represented the payments Mr and Mrs R made to Bournes, less what had been passed to creditors. He also recommended Bournes refund the £443 fees charged by one of the creditors when it took court action after one of the debts was not paid. Finally, an additional £200 was proposed for the distress and inconvenience caused by Bournes.

Bournes did not respond to this complaint during the investigation stage, nor did it respond to the adjudicator's view of the complaint. The complaint has therefore been passed to me for consideration.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same overall conclusions as the adjudicator for what are broadly the same reasons.

Mr and Mrs R have said they thought the plan they took out with Bournes would ensure the payments they made each month were passed on to their respective creditors. They were not aware that Bournes would challenge the debts at outset and that during this period only minimal payments would be made to the creditors.

It is disappointing that Bournes has chosen not to respond to this complaint and I have therefore had to reach a conclusion on somewhat limited information. Having considered what Mr and Mrs R have said, and what they have provided, I am not persuaded they were fully aware of how the plan with Bournes would actually work.

The Office of Fair Trading guidance states that consumers should be fully aware of how their debt management plan will work, before they enter into the agreement. I cannot see that was the case here and I am not persuaded they were fully informed about when and how their debts would be challenged, or the effect this will have on their creditors.

Had Mr and Mrs R been correctly and fully informed about how the plan would work I think it is more likely than not that they would not have entered into the plan. I therefore find that Bournes should refund the £895 Mr and Mrs R paid to Bournes, with interest. It appears that only £36.30 has been passed to Mr and Mrs R's creditors and it would be reasonable for this amount to be deducted from the £895 that is to be refunded.

One of the creditors here took court action against Mrs R after payments were not made by Bournes. On balance, I think it more likely than not that action was taken as a result of Bournes' failure to make the required payments and it is therefore unreasonable for Mr and Mrs R to be liable for the court costs they were charged. Bournes should therefore refund the £443 court costs that have been incurred here. Interest should also be added to this sum from 2 October 2013 which is the date of the court judgement.

Finally, I agree with the adjudicator that Bournes failure to correctly inform Mr and Mrs R would have caused them worry and upset and an additional payment should be made for this. In the circumstances, £200 is reasonable here.

my final decision

My final decision is that I uphold this complaint and direct Bournes Limited to pay Mr and Mrs R:

- A. £858.70 (which represents the £895 paid less the £36.30 passed to creditors);
- B. £443 that represents the court costs incurred; and,
- C. an additional £200 for the distress and inconvenience caused.

Interest at 8% simple per year should be added to the refunded payments in A above from the date of each payment until the date of settlement. Interest, at the same rate, should be added to B from 2 October 2013.

If Bournes Limited does not issue the settlement within 28 days of this final decision it should also add interest, at the same rate set out above, to the payment of £200.

If Bournes Limited believes that tax should be deducted from the interest element of my award it should provide Mr and Mrs R with a tax deduction certificate so they can reclaim the tax if required. I would also remind Bournes Limited that my decision is enforceable through the courts.

Mark Hollands
ombudsman