

complaint

Mr and Mrs Q complain about a debt management plan they entered into with Bournes Limited. They say payments were not distributed to their creditors as they expected them to be. They also complain that they were not kept updated with the progress of the plan.

background

Mr and Mrs Q entered into a debt management plan with Bournes in March 2012. They paid £300 per month to the plan before cancelling it in October 2012. Before and after cancellation Mr Q raised a number of concerns with Bournes about payments made – or not made – to his and Mrs Q's creditors. He also said they were duped into signing up to the plan and were not kept updated about what was happening with their debts. Mr and Mrs Q asked for a refund of their money.

Bournes did not uphold the complaint. It said Mr and Mrs Q were made fully aware of how the plan would work before they signed up. It denied they had been duped. And it provided Mr Q with a call recording of one of his discussions with a staff member.

Our adjudicator recommended the complaint be upheld. He did not think Bournes had assisted Mr and Mrs Q with their debts or provided them with a reasonable level of service, or kept them up to date with what was happening. The adjudicator recommended Bournes refund the money Mr and Mrs Q had paid into the plan (which both sides seem to agree comes to £1,500), less the money Bournes said it had forwarded to Mr and Mrs Q's creditors (£271.59).

The adjudicator also recommended Bournes add interest to the refunded payments and pay Mr and Mrs Q a further £150 for distress and inconvenience.

Bournes responded by providing a signed copy of the debt management agreement. It said it had complied with the provisions of that agreement throughout. Bournes also argued that this complaint fell outside the jurisdiction of this service because it was referred more than six months after Bournes said it had issued a final response to Mr and Mrs Q.

I have already issued my decision on this service's jurisdiction. I concluded that the complaint is in jurisdiction because Mr and Mrs Q do not appear to have ever received Bournes' letter and Bournes had also led Mr Q to believe it had not issued its final response.

The case has now been returned to me to consider its merits.

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 uphold this complaint.

I have listened to the call recording Bournes emailed to Mr Q. This seems to be later on in a series of calls during which Bournes tried to persuade Mr and Mrs Q to sign up to the debt management plan. The call took place before Mr and Mrs Q had signed up.

During the call Mr Q clearly said he had previously been in a debt management arrangement with another business.

He said he was unhappy that his first two payments to that plan had been kept by that business, which he said had led to missed payments on his credit card and caused a default to be registered on his credit file. It is clear that Mr Q had not been expecting that outcome when he entered into that earlier plan. It is also clear he was unhappy with the impact it had on his credit file.

Given Mr Q's stated concerns, it would have been appropriate at that point for Bournes to clearly explain the nature of the plan it was proposing that Mr and Mrs Q now enter into. It would have been prudent to explain that no (or only token) payments would be made to their creditors whilst the enforceability of their debts was challenged – and that this could lead to an extended period of time during which little or no payment was made and during which there was a risk their debts might substantially increase. Clearly this would also further impact on Mr and Mrs Q's credit file.

Instead of addressing Mr Q's concerns and clarifying how the plan would work, the Bournes' staff member focussed heavily on waiving the £100 charge for a courier to come to Mr and Mrs Q's house to collect their signed agreement. He emphasised that the account was already set up and that Bournes would be 'on it straight away' when the paperwork was signed. I can understand, from this, why Mr Q was left with the impression that his payments would be distributed to his creditors from the start of the plan.

Bournes did not take the opportunity, during the call I have listened to, to explain the key aspects of the plan. Bournes has not provided recordings of any other calls, despite saying the plan was clearly explained during earlier calls.

I am not satisfied that the agreement Mr and Mrs Q signed clearly explained the nature of the plan either. It mentioned that Bournes would 'stop interest and charges being added to your account before making payment to your creditors'. But it did not make clear that this outcome was not guaranteed, or explain how long Bournes would dispute charges and interest before making payments to creditors.

The agreement also said Bournes would 'Pay the relevant monthly amount on your behalf to the creditor(s), except where the debt is in dispute'. Again this did not make clear at what point payments would start, or how long Bournes would dispute the debts for, before distributing any payments. I also do not find the charges clear and transparent.

Overall I am not satisfied that the agreement Mr and Mrs Q entered into with Bournes complied with the Office of Fair Trading's Debt Management Guidance. Given what Mr and Mrs Q have said during the course of their complaint about what they believed the plan would do, I am also not satisfied they understood what they were entering into.

I am not persuaded that Mr and Mrs Q would have signed up to the plan, or paid any money to Bournes, if they had known how the agreement was expected to work – or if it had been properly explained to them by Bournes. I therefore uphold this complaint. Given the significant concerns I have about the shortcomings in Bournes' service to Mr and Mrs Q, and the lack of adequate explanation of how the plan would work, I do not think it would be fair or reasonable for Bournes to keep any part of the money it charged Mr and Mrs Q.

Mr and Mrs Q have provided bank statements showing they paid Bournes a total of £1,500 whilst they were in the plan. Bournes told Mr Q it had distributed £271.59 of that to their creditors. So Bournes must now refund the balance of those payments, with interest.

As I find that Bournes' actions will have caused distress and inconvenience to Mr and Mrs Q – at what was already a financially difficult time for them – I will also make a further modest award for that. I will award a slightly higher amount than recommended by the adjudicator, as I feel £250 is a more accurate reflection of the degree of distress and inconvenience Bournes has caused to Mr and Mrs Q.

my final decision

My final decision is that I uphold this complaint and I direct Bournes Limited to:

- Refund each payment Mr and Mrs Q have made to it, less the part of each of those payments that Bournes Limited can demonstrate it distributed to Mr and Mrs Q's creditors;
- 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; and
- pay Mr and Mrs Q a further £250 for distress and inconvenience.

If Bournes Limited considers that tax should be deducted from the interest element of my award, it should provide Mr and Mrs Q with a tax deduction certificate. They can then use that certificate to reclaim the tax, if they are entitled to do so.

Bournes Limited must pay the above award within 28 days of Mr and Mrs Q 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.

Dawn Griffiths
ombudsman