

complaint

Mrs B complains that Pentagon (UK) Limited is looking to terminate her debt management plan (DMP) because she doesn't accept its advice regarding bankruptcy. She also says that had she been told to declare herself bankrupt years ago she would be in a better position now.

background

Mrs B entered into a DMP in 2005. In March 2018, the DMP was reviewed and Mrs B says that on this call she was told that bankruptcy was the only solution to her debts. She says she explained that since starting the DMP she had been continually advised not to take the option of bankruptcy, to which she says that advisor told her she had been given the wrong advice. She then received a letter from the advisor which said she had agreed to self-manage her debts which was not correct.

Mrs B was told that her DMP would cease after the March 2018 payment (although this was extended) and she feels that her DMP is being terminated because of her age. She says she has been told her DMP is commercially unsustainable but says she has been paying the same fee for many years and previously had negative disposable income so it shouldn't now be an issue.

Pentagon says that the advice on setting up the DMP was provided by another company and then Mrs B's case was passed to it. This happened in 2005. It says that the option of bankruptcy had been discussed on a number of occasions with Mrs B and she has made it clear she did not want to take this option. It says that in the call in March 2018, Mrs B wasn't told that previous advice was wrong but that the adviser thought the advice at this point should be for her to consider bankruptcy. This was because at that time Mrs B had a negative disposable income and did not wish to include her husband in her income calculation.

Pentagon says that in March 2018, Mrs B did not ask to self-manage her debts but that she asked about contacting her creditors and making arrangements. She was told that she could do this and that a list of her creditors would be sent to her.

Pentagon says that there is not an issue with Mrs B's age but that it cannot continue a DMP if Mrs B has negative income and that it cannot take fees when she has no disposable income available.

Our investigator did not uphold this complaint. She noted Mrs B's comments regarding advice about bankruptcy but thought Pentagon had done what was required of it by providing Mrs B with the options available to her.

Our investigator said there was no evidence to suggest that Mrs B would have opted for bankruptcy at an earlier date had she received advice to declare bankruptcy sooner.

Mrs B asked that her complaint be considered by an ombudsman. She reiterated that on a call in March 2018 she was told all previous advice was wrong and that bankruptcy was the solution for her and that her DMP would be terminated in April. She said this was different to the advice she had received in previous years when she was advised not to go bankrupt. She said that had she been advised to go bankrupt at the start and had this explained to her

then she would have acted on the advice. She also said that she had not said on the call that she would self-manage but is now having to negotiate with her creditors.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Pentagon has mentioned our jurisdiction in cases such as these and has said that we cannot consider events that happened more than six years before the complaint was raised. The rules about which complaints we can consider are set out in the Financial Conduct Authority Handbook and are known as the DISP rules. DISP 2.8.2 contains two parts in regard to timing. The first part says the complaint cannot be considered if it is brought more than six years after the event. The second part says that the complaint can't be considered if it is brought more than three years after the consumer became aware, or ought to have reasonably been aware, of their cause to complain. Exceptional circumstances can also be considered.

In this case I accept that Mrs B only became aware of the issue following the call in March 2018, when she says she was told that previous advice had not been correct. Because of this I find that we can consider issues going back to when the service was given jurisdiction over these cases, that is April 2007.

Mrs B's complaint is that in a call in March 2018 she was told that bankruptcy was the only solution and she feels that had she been told this previously she would have taken the advice and now been in a better position.

I have listened to the call that took place in March 2018. On this the adviser says that having gone through everything Mrs B is overspending by £30 and that it couldn't continue with the DMP because of this. The adviser explains that Mrs B can deal with her debts directly or use a free debt service. Mrs B says that she has been in the same position for years and that her DMP has continued.

The adviser then discusses bankruptcy and Mrs B says she was told when she set up the plan not to go bankrupt. The adviser says that Mrs B should have been told to go bankrupt in the previous review and at the start of the DMP. He then confirms it is the best option for Mrs B at that time.

I understand why Mrs B says that she should have been told about bankruptcy at the start of the DMP. However as this took place before 2007, I cannot consider this part of her complaint. I also note that the information at that time was provided by a different entity.

I have looked at the information provided from Pentagon about more recent correspondence, in particular details of the conversations with Mrs B in 2015, 2016 and 2017. It is clear from these that the option of bankruptcy was discussed. Mrs B made it clear she did not wish to take this option. It is also noted that Mrs B had spoken to another party and it had recommended bankruptcy and again she had not wished to pursue this. Pentagon has also said that Mrs B was sent the 'In Debt? Dealing with your creditors' guide in 2015 and 2016 and the 'Bankruptcy Journey' leaflet in 2017 and 2018.

I do not have information going back to 2007, and so I cannot say whether bankruptcy was discussed at that time. But having looked at the information available, it is clear that

bankruptcy has been discussed on a number of occasions and each time Mrs B has said she does not wish to take this option. Therefore, on balance, I find it more likely than not that had bankruptcy been discussed at an earlier stage Mrs B would not have done anything differently.

I understand that Mrs B wishes her DMP to continue. I also note that the most recent income and expenditure figures showed she did have positive disposable income. However Pentagon has said that the DMP will be terminated on 1 March 2019. It has noted that Mrs B has refused to increase her payments to her outstanding creditors when she has settled other debts, which was part of its process. It said that a debt was settled in November 2018 and a further one settled in December 2018.

I understand why Mrs B is upset that her DMP is being terminated. However, given the concerns that Pentagon have raised about its suitability for Mrs B and its concerns about managing the DMP, I do not find that Pentagon is doing anything wrong.

I understand that my decision will be disappointing for Mrs B, but in this case I don't find that I have enough evidence to uphold her complaint.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 13 March 2019.

Jane Archer
ombudsman