

The complaint

Mr and Mrs C complain C D Fairfield Capital Limited (CD) failed to provide the debt adjusting services they paid for.

What happened

Mr and Mrs C have said they had an interest only mortgage with a company I'll refer to as B. The term of the mortgage was coming to an end and Mr and Mrs C were arranging for a family member to buy their home – but this would have left a shortfall. They'd asked CD to negotiate with B about the shortfall and paid them £2,500 for this.

Mr and Mrs C have said things went on for a while, and ultimately they contacted B to find out what was going on. B told them CD hadn't been in touch with them. So, Mr and Mrs C complained to CD and asked for evidence of their contact with B – which CD ultimately didn't provide. Mr and Mrs C say because of the delays by CD, where they didn't negotiate with B, it's cost them extra interest on their mortgage of between £5,000 to £7,000.

Ultimately, unhappy with CD's actions, Mr and Mrs C asked us to look into things.

As part of this, we asked CD for their file. They provided a copy of the form they intended to send to B but say it was never sent. They summarised the reasons for this as:

- The property was undervalued by Mr and Mrs C, so putting the application forward would have been seen as fraudulent – as the application was to say the property was in negative equity when it wasn't. This means B would have turned down any shortfall negotiations, because Mr and Mrs C would have had to clear the shortfall regardless.
- Mr and Mrs C stopped paying the mortgage against their advice which increased the overall balance.
- The family member was buying the property, and B had previously said they were turning down any application for shortfall negotiations if a family member was buying the property. CD said they'd told Mr and Mrs C this was highly likely to happen, but Mr and Mrs C asked them to proceed anyway.

Overall, CD said they'd told Mr and Mrs C the shortfall application was likely to fail, but despite this Mr and Mrs C still wanted to go ahead. And there were issues regarding the valuation of the property and the lack of continued payments towards the mortgage itself.

Our Investigator gathered information from Mr and Mrs C – which included showing they had continued making their mortgage payments from 2023 onwards.

After multiple requests for more information from CD, which weren't responded to, our Investigator decided to uphold the complaint. He said CD should refund the £2,500 payment, plus 8% interest from the date of payment to the date of settlement. He also felt £750 compensation for CD's failings was fair to reflect the impact on Mr and Mrs C.

Mr and Mrs C accepted this. But CD didn't, so the complaint's been passed to me to decide.

What I've decided – and why

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

I think it's important to explain I've considered all of the information provided by both parties in reaching my decision. If I've not reflected or answered something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is.

As a starting point, I think it's helpful to set out that some of our questions weren't answered by CD. On 29 July 2025, our Investigator asked CD:

- For confirmation if a Third Party form from B was completed – and if so please provide a copy.
- To provide a list of all contact with B, as it was unclear what dates and times they were contacted.
- When did Mr and Mrs C give them the lower valuation talked about? Was that based on an actual valuation Mr and Mrs C had done? Were any professional valuations done and if so can any evidence of these be provided?
- About them saying Mr and Mrs C stopped paying the mortgage, do they have evidence of this and from when did this happen?

We set a deadline of 12 August 2025 for a reply.

No reply was received, so CD were contacted again on 13 August 2025 asking for a reply by 20 August 2025.

This time an out of office was received.

We gathered some more information from Mr and Mrs C in the meantime – and then contacted CD again on 3 September 2025 as at this point no reply had been received. In this information request, as well as asking for the same information we first asked for on 29 July 2025 we also asked if CD could provide call recordings of the calls they said they'd had with B.

Again no reply was received from CD, but our Investigator gathered additional information from Mr and Mrs C – as well as B. The information from B said CD had never been in touch with them to negotiate anything on behalf of Mr and Mrs C.

Our Investigator thought it was appropriate to go ahead and issue his outcome at this point, given the lack of replies from CD. He'd previously explained the Financial Conduct Authority's rules about complaint handling which is captured in the Dispute Resolution (DISP) Handbook allow us to do this – specifically:

DISP 3.5.14R which says

The Ombudsman may:

(1) exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;
(2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;
(3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and
(4) treat the complaint as withdrawn and cease to consider the merits if a complainant fails to supply requested information.

And DISP 3.5.9R which says

If a respondent fails to comply with a time limit, the Ombudsman may:

*(1) proceed with consideration of the complaint; and
(2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.*

Our Investigator asked CD to reply by 8 October 2025. Not having received a reply, we contacted CD on 15 October 2025 asking for a reply by 22 October 2025.

On 22 October 2025 we received a reply, where CD said:

I haven't been in the office and therefore available to reply.

I find your decision baffling, and it is quite clear you have very little understanding of both the case, our work and contract law.

We of course would like this reviewed by the Ombudsman who I would hope does have a grip of the situation and understands same.

Our Investigator asked CD to explain what specifically they disagreed with – and reminded them they could provide all the information previously requested and said he was happy to consider this further to see if it changed his opinion.

In response, CD said:

As I said in our opinion, you really have no grasp on the particulars of the case or on contract law. The clients signed a contract knowing fine (sic) well that the outcome may not be to their advantage. We accepted it on that basis, and they paid us to undertake work.

We undertook said work and during this time the clients made their situation worse / deteriorate on their own accord, it was established to us that they lied about the property value, they did not instruct the estate agent properly and as advised by us, amongst other issues we had.

Their actions caused our work to be null and void, not us. We carried out the work based on the contract. They caused a breach of contract. Now you have established that we should have done the work for free, by asking us to refund the monies.

This is baffling and ridiculous to say the least!

Our Investigator explained he wouldn't be changing his opinion unless CD provided more evidence. He said this by email 22 and 30 October 2025 – and then called on 11 November 2025 leaving a message.

CD haven't replied as at the date of this decision.

I've set all of this out, because I wanted to explain why I thought it was appropriate to go ahead with deciding the outcome of this case – as the rules allow me to. When a financial business doesn't reply to our information requests then we do still have a responsibility to the people bringing the complaint to progress it.

I also wanted to set this out so it's clear why I'm satisfied CD have had enough opportunities to answer our Investigators questions. Instead, they've chosen not to reply with the information when given chances to do so.

But, just because CD haven't replied to our Investigator, it doesn't mean I can automatically uphold this complaint. I still need to reach a fair and reasonable outcome taking into account the evidence I do have.

I should also explain I'm required to take into account the law – where CD have mentioned contract law in one of their replies – but I'm not bound by it. I'm ultimately required to decide things on a fair and reasonable basis.

In deciding this case, the starting point should be the contract Mr and Mrs C entered into with CD. This says:

You have asked us to act on your behalf in relation to the above. Based on your instructions the next steps will include;

- *Lender communication and negotiation relating to disposal of property*
- *Retrieval and review of client documentation*
- *Evidence-back (sic) proposals to support your case*
- *Shortfall sale application;*
 - *Costs; 2,500 (please refer to Payment Profile (page 6 of this document)*

I think it's sufficiently clear that the expectation is CD would negotiate with B on Mr and Mrs C's behalf about any shortfall following the sale of the property.

CD have accepted they haven't done that. And their justification for doing so is for three reasons.

The first is that Mr and Mrs C understated the value of the property – and as a result of that any application to discuss addressing the shortfall between the sale price of the property and the outstanding deficit wasn't relevant. This is because the property value – based on what CD have said – was enough to cover the shortfall.

The second reason given is that Mr and Mrs C stopped making any payments towards the mortgage – which was against their advice and artificially increased any outstanding debt.

While CD have given these two reasons for why they didn't put forward any shortfall application, they haven't *evidenced* this to us. And for me this is the key part of this case.

I accept it's possible Mr and Mrs C did give the wrong valuation on the property. But I'd need to fully understand what question they were asked, how precisely it was phrased, what they actually said in response and so on. Without this information, I can't reasonably conclude Mr and Mrs C have purposefully misled CD in relation to the property value. And, even if they did mislead CD, this could have been entirely accidental. It could have been as a consequence of the question asked, they could have qualified their answer by saying they weren't sure in which case CD shouldn't have directly relied on it.

CD have been given multiple opportunities to provide this information and haven't. This means I can't be 100% certain what CD were referring to when they said Mr and Mrs C gave them the wrong information about the valuation.

I have still thought about the information on file. The relevant information that I have to this point is the Case Review Questionnaire. The question asked is 'Approximate value of this property' and the information entered is £180,000.

The question doesn't ask for a specific value – and it doesn't say the valuation has to be professionally done. It asks for an approximate value. The valuation doesn't appear to be wildly inaccurate. And CD also haven't justified to our service *why* they think Mr and Mrs C lied about the property value. I also don't know, because CD haven't provided an answer to this question, if this is precisely what CD are referring to when they've said Mr and Mrs C misled them about the value.

Given all of the above, I can't say I'm entirely satisfied Mr and Mrs C have done anything wrong on this point to justify CD taking the fee but then not providing the service required.

The second reason CD have given for not fulfilling their part of the contract is because Mr and Mrs C stopped paying their mortgage meaning the mortgage balance kept increasing.

Again we asked CD for why they were saying this – and they didn't provide any evidence of this point. During our investigation we asked Mr and Mrs C for a mortgage statement showing their payments. What this showed was they were making payments of around £470 a month, but the interest on the mortgage was between £700 and £1,000 more than this.

Based on the statements, Mr and Mrs C didn't stop making any payments, and the increase in the mortgage balance is explained as a result of the interest being higher than the mortgage payments being made.

The Case Review Questionnaire asks 'What are your current total monthly repayment(s) on this property' and the answer given is £468.76. The mortgage is noted as being interest only, and the outstanding balance is noted as £217,646. In the circumstances, I think it's likely CD knew, or should reasonably have been able to see, that the payment of £468.76 a month was unlikely to be fully servicing the account balance given it was an interest only mortgage at the time. But, even if they couldn't, I've not seen anything from CD to show they questioned this figure to check its accuracy before relying on it. As far as I can see, Mr and Mrs C answered CD's question correctly because they told CD what their current monthly repayments were.

So, again, without a clear explanation from CD about why they believe Mr and Mrs C stopped paying their mortgage, I can't find this to be a legitimate reason either to have not fulfilled their part of the contract.

The final reason CD have given for not negotiating with B about a shortfall is because they told Mr and Mrs C it was very likely B wouldn't allow the sale of their property to a family member to be completed with a shortfall. And this is what B confirmed, so there never would have been a shortfall to negotiate anyway.

The information CD seems to have had is they knew B wouldn't allow the sale of the property to a family member with a shortfall – and are using this to justify taking the fee because Mr and Mrs C still asked them to do the work.

But, as set out above, the fee was to negotiate a shortfall application. CD seemingly knew B wouldn't allow this – so I find it difficult to then see a justification for taking the fee – whether Mr and Mrs C asked them to do the work or not. In general terms if a company knows it's not going to be able to deliver a service that needs to be paid for, then I'd say it's fair and reasonable that company then doesn't take the payment.

At the time CD took the payment, they were confident it was very likely there wouldn't be any ability to negotiate a shortfall. CD's internal notes refer to a phone call to B asking if this policy – which had been in place for over a year seemingly – had changed and they were told no it hasn't. They were told the same thing again later on.

This is seemingly just CD confirming B's current policy position regarding sales of property in negative equity to a family member – and I'm struggling to see why this couldn't have been done in advance – so CD knew whether they could offer Mr and Mrs C the service they were paying for.

Instead, it seems CD took Mr and Mrs C's money, and didn't provide the service paid for – which can't be fair and reasonable.

Overall then, I'm not satisfied Mr and Mrs C are the responsible for the shortfall application not going ahead, nor am I satisfied CD were ever able to provide the actual service they were paid to provide.

I also agree with our Investigator. It's clear during the events of this complaint Mr and Mrs C were going through a difficult time. The issues involved themselves are inherently difficult and stressful. And given I've concluded CD couldn't ever provide the service Mr and Mrs C paid for – while also taking into account the extensive time period over which this occurred – this undoubtedly has had a significant impact on them. Because of that, I'm satisfied a £750 compensation award is fair.

Putting things right

I uphold this complaint and require CD to:

- Refund the payment of £2,500
- Apply 8% interest* from the date of payment to the date of settlement
- Pay Mr and Mrs C £750 compensation – this payment must be made within four weeks of Mr and Mrs C's acceptance, otherwise CD must start adding 8% interest* to this figure as well.

*HM Revenue and Customs requires CD to deduct tax from the interest payment referred to above. CD must give Mr and Mrs C a certificate showing how much tax they've deducted if asked for one.

My final decision

I uphold this complaint and require C D Fairfield Capital Limited to carry out the actions in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 30 December 2025.

Jon Pearce
Ombudsman

