

complaint

Ms N complains that The Money Group (Cornwall) Limited did not tell her that it would take her first two monthly payments towards her debt management plan as a set-up fee.

background

Ms N agreed to enter into a debt management plan arranged by The Money Group. She discussed the details over the telephone with an advisor who went through her income and outgoings. The advisor suggested the amount that he considered Ms N could afford to pay each month to her creditors to repay her debts.

Ms N felt that she could afford a bit more than he suggested, so she agreed to pay a set monthly payment to The Money Group. It would then distribute this between her creditors.

A few months after the plan was set up, Ms N was contacted by one of her creditors as it had not received any payments from her. The Money Group had made payments to it using incorrect account details so the creditor had received the money, but it did not know this was for Ms N's account.

Although this was then corrected, Ms N stopped making the payments to The Money Group. She complained about the cost of the debt management plan, including the set-up fees. She said she had understood that some of her monthly payment would be taken for fees. But she was not told that the total amount of her first two payments would all go to The Money Group rather than her creditors.

The Money Group said that the fees had been explained to Ms N in her telephone call with its advisor, and in its welcome booklet.

Our adjudicator recommended that the complaint should be upheld. He listened to a recording of Ms N's initial telephone call with The Money Group's advisor. He did not consider it was clearly explained that Ms N's first two payments would be kept as set-up fees. He said this was not in line with the debt management guidance of the Office of Fair Trading (OFT), which said that an example of unfair or improper business practice included failing to make clear what fees would be charged. He said he believed The Money Group should retain a portion of the payment taken for its service, and return £650 to Ms N with 8% interest. He also said The Money Group should pay Ms N £100 for the distress and inconvenience she had been caused.

The Money Group did not accept the adjudicator's findings. It said Ms N had been clearly informed about the fees by its advisor. They were also detailed in the paperwork Ms N was sent, and she had a full week to read and understand these before she returned them.

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 have also listened carefully to the full recording of Ms N's telephone call with The Money Group's advisor. Ms N asked about the cost of The Money Group's service at the outset of the call. She was told that it was not a big outlay, that a small administration fee would be

charged and that it was '*a drop in the ocean*' when compared with the interest she was paying on her debts.

The fees were explained in more detail midway through the almost hour long call. The advisor said the fees would be '*covered by months one and two*' and that a management fee would be charged from month three. He said that this would all be included in Ms N's monthly payment to it.

Later in the call, the advisor explained there would be a short delay in her payments reaching her creditors '*because the first payment stretching over two months comes to ourselves as a set-up fee....*'.

At this point in the telephone call, I can understand why Ms N did not realise that the entire amount of her first two months payments would be kept by The Money Group as a set-up fee. Ms N had been told that she would be making a payment each month to The Money Group, so she would have known that it would receive her money. But I do not find that it was made sufficiently clear that all of the first two months' payments would be kept as fees. To say it was 'covered' by the first two payments does not suggest that they would be taken in fees.

Ms N asked for the payment suggested by the advisor to be increased so she could try and pay off her debts sooner. But this also meant that The Money Group would receive a larger set-up fee by keeping two months' payments. I find it unlikely that Ms N would have suggested this if she had fully understood that no money from these two payments would reach her creditors.

Towards the end of the call, the advisor asked Ms N if she was in a position to make any form of payment to The Money Group at that time. He said that this would show her creditors the level of her commitment and that it would come off her first payment. But Ms N said she was not able to make a payment until her pay day.

Having listened to this call, I do not consider that it was clearly explained to Ms N that her first two payments would be kept entirely by The Money Group. The suggestion was that the fees would be included in her overall payments, and so form part of them with the rest going to her creditors.

If she had made a payment at that time, then it would seem that this would have been included in The Money Group's set-up fee. It would not have been paid to her creditors to show them that she was committed to repaying her debts, as the advisor had suggested.

Following this telephone conversation, The Money Group sent Ms N an information booklet about its services. Its terms of business say that the initial fee means the first two monthly payments are paid to it as a set-up fee and not paid to creditors. It also says that The Money Group retains '*an amount usually equal to two months payments*' which it classes as a set-up fee.

However, Ms N agreed to the plan based upon her conversation with the advisor and during that telephone call. She had given her personal details for the debt management plan to begin based upon what she had been told by the advisor during the telephone call.

The OFT's debt management (and credit repair services) guidance refers to charging for debt management and related services. It raises concern about lack of transparency about

the fees, particularly where the initial payment is kept for fees and the consumer believes that payments have begun to be made to their creditors.

Section 3.34 of the guidance gives examples of unfair or improper practices, and this includes failing to make it sufficiently clear that fees are charges for debt management service; what the fees are; how they are calculated and what they cover.

Overall, I do not consider that The Money Group was sufficiently clear in explaining its set-up fees to Ms N.

my final decision

My decision is that I uphold this complaint. I require The Money Group (Cornwall) Limited to:

- refund Ms N £650 of the fees charged and pay interest on this amount at an annual rate of 8% simple, from the date of payment to the date of settlement;
- pay Ms N £100 for the distress and inconvenience caused.

If The Money Group considers it has to deduct tax from the interest element of my award, it should send Ms N a tax deduction certificate when making payment, which she can use to reclaim the tax, if she is entitled to do so.

Cathy Bovan
ombudsman