

complaint

Mr D complains that Barrington Lewis Limited failed to administer his debt management plan correctly. In summary, he says that it failed to pass agreed payments to his creditors, acted unprofessionally, and was not transparent about its fees.

background

Our adjudicator recommended this complaint be upheld. He was satisfied that Barrington Lewis had taken £5,460 from Mr D but only distributed £1,475.74 to his creditors.

Overall, he was not persuaded that Barrington Lewis had administered his debt plan fairly, or adhered to the Office of Fair Trading ('OFT') debt management guidance. He recommended that Barrington Lewis refund all money Mr D had paid it which it had not distributed to creditors.

He considered that Mr D had suffered distress and inconvenience due to the actions of Barrington Lewis, and that non-payment of his debts had caused a charging order on his property to be issued by the court. He recommended it pay Mr D £250 in recognition of the distress and inconvenience caused by this.

Barrington Lewis has failed to provide a substantive response to Mr D's complaint. Therefore, this matter has been passed to me to consider.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where evidence is unclear or incomplete I make my findings on the balance of probabilities – which is to say, what I consider most likely to be the case based on the evidence that is available and the wider surrounding circumstances.

I am satisfied from the correspondence which Mr D has provided that he was in a debt management plan with Barrington Lewis, and that under that plan Barrington Lewis had agreed to make regular payments to his creditors. Mr D says that Barrington Lewis failed to pass his money on to his creditors as agreed. I consider Mr D's submissions to be consistent and credible. Furthermore, after looking at his bank and creditor statements I am persuaded that this is the case. From this information I am satisfied that out of the £5,460 Mr D paid Barrington Lewis while he was in the plan, it only distributed £1,475.74 to his creditors. The creditor statements that I have seen also show that these payments were erratic and irregular – on balance, they indicate to me that the plan was not being managed properly.

Barrington Lewis has failed to provide a substantive response to Mr D's complaint. It has not shown that it has administered the plan properly (such as making timely and regular payments to creditors), or that it has acted fairly and in accordance with the OFT debt management guidance (such as clearly explaining the fees and nature of the plan from the outset). In light of this, Mr D's credible submissions, and the creditor statements available to me - I am not satisfied that Barrington Lewis has managed the plan appropriately or that it is justified in retaining any of Mr D's payments as fees for its services. Overall, I consider it fair that Barrington Lewis should refund Mr D all monies he paid it (plus simple interest), minus that already distributed to his creditors.

I consider that Barrington Lewis's failures (including its lack of response to this complaint) have caused Mr D distress and inconvenience. I also note that while Barrington Lewis was administering the debt management plan Mr D had a charging order placed on his property as a result of a non-payment of a debt. While it is not possible for this service to have this charging order removed I can award a sum to reflect the distress that this has likely caused Mr D. Overall, I am satisfied that in this case Mr D should be fairly awarded £400 in recognition of the distress and inconvenience he has been caused by Barrington Lewis.

my final decision

My final decision is I uphold this complaint and direct Barrington Lewis Limited to:

- refund Mr D £3,984.26 representing the payments which it has not distributed to his creditors; and
- pay Mr D £400 for the distress and inconvenience it has caused him.

Interest at 8% simple per year should be added to each of the refunded payments from the date of each payment until the date of settlement.

Should Barrington Lewis not make the directed settlement within 28 days of the date of Mr D accepting this decision, interest at the same rate above should be added to the £400 distress and inconvenience payment.

If Barrington Lewis Limited believes that tax should be deducted from the interest element of my award it should provide Mr D with a certificate of tax deduction so he may claim a refund, if appropriate.

Mark Lancod
ombudsman