

complaint

Mrs B complains about the way which Haydon Associates Debt Management Consultants Ltd ('Haydon') has run her debt management plan ('DMP'). In summary, she says it passed very little of her monthly payments on to her creditors, and took excessive fees.

background

In summary, Haydon says that it was only paying token payments to Mrs B's creditors and was charging a 90% fee as her plan was still in the debt reduction stage. It says it was trying to get her debts reduced and claim back unfair bank charges.

Our adjudicator recommended this complaint be upheld. She was not satisfied that Haydon had clearly explained the terms of the DMP to Mrs B at the outset in accordance with Office of Fair Trading ('OFT') guidance. She did not consider that Mrs B would have entered the plan had she known how it would actually operate.

Our adjudicator noted that Mrs B did not appear to have received good customer service from Haydon, and it had not responded to her complaint. She found it fair that Haydon should refund everything Mrs B had paid it plus interest, except for the amount it had distributed to her creditors. And pay her £150 compensation for the distress and inconvenience caused.

Haydon has not substantively responded to the adjudicator's recommendation so this matter has been passed to me for final determination.

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 matters are unclear I make my findings based 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.

From the information available to me, including Mrs B's bank statements and creditor statements I am satisfied that between January 2012 and September 2013 she paid Haydon a total of £5,950 in monthly payments, and it distributed £775.31 of this to her creditors.

Mrs B is unhappy about the relatively small proportion of money that has been passed on to her creditors. From her submissions to this service I am satisfied that she was under the impression that a much higher amount of her monthly payments would go towards paying off her debts.

I find Mrs B's submissions credible. It appears that Haydon put her in a long term debt reduction plan in which it would retain 90% of her payments in fees and challenge her debts indefinitely. The payments that it did make to Mrs B's creditors appear to mainly comprise of inconsistent token distributions. However, I am not persuaded this is the type of plan she wanted or expected.

From the information provided (including the terms and conditions of the plan) I am not satisfied that the features of the plan were clearly and transparently explained to Mrs B in accordance with the OFT debt management guidance. In particular, I am not satisfied that Haydon clearly explained the specific nature of the services supplied, and the likely or anticipated costs of those services. Haydon has retained a large portion of Mrs B's payments for debt reduction - yet its terms do not clearly explain how long this process lasts or how much it is likely to cost her in total. If it had, I am not satisfied that Mrs B would have chosen to go ahead with the plan. Furthermore, I do not consider that Haydon has clearly explained the potential consequences of stopping regular payments to creditors while it negotiated with them.

Even if I accepted that Mrs B had understood that at least some of the plan would comprise of debt reduction Haydon has not provided persuasive evidence that it has done work to justify taking a fee. Overall, it appears that its customer service has been poor - it has failed to provide Mrs B with regular statements and appears not to have responded to her initial complaint.

In these particular circumstances I do not consider that Haydon is justified in retaining any fees. It should refund all the money Mrs B paid it plus interest, except for the amount it has distributed to her creditors. It should also pay her £150 for the distress and inconvenience caused by its poor handling of her DMP and its failure to adequately respond to her complaint.

my final decision

My final decision is to direct Haydon Associates Debt Management Consultants Ltd to:

- refund all payments Mrs B made to it under the DMP totalling £5,950 minus £775.31 it has already distributed to her creditors;
- pay interest at 8% per annum on the refunded payments from the date each payment was made to the date of settlement; and
- pay Mrs B £150 compensation for the distress and inconvenience it has caused her.

If Haydon wishes to deduct tax from the interest element of my award it should provide Mrs B with a certificate of tax deduction so she may claim a refund, if appropriate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs B to accept or reject my decision before 23 January 2015.

Mark Lancod
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