

## **complaint**

Mrs D complains about the management of her debt reduction plan by Haydon Associates Debt Management Consultants Ltd. She is assisted in her complaint by the Citizens Advice Bureau (CAB).

## **background**

Mrs D entered into a debt reduction plan with Haydon in early 2013 to allow it to challenge the liability of her debts. The terms of the plan allowed Haydon to keep 90% of the payments Mrs D made to it until it finished investigating her debts. The terms of the plan said that if the debts were found to be enforceable, Haydon would then manage Mrs D's debts for her. As not all of her creditors responded to Haydon, it continued to investigate the sums she owed for a number of months. This meant that Haydon kept most of Mrs D's payments to it as fees.

Mrs D did not actually dispute the validity of the debts she owed. She accepted that she needed to repay them. Despite this, Haydon continued to query the legality of her debts on an ongoing basis, and took a monthly fee for this. Haydon did not send statements to Mrs D. As a result, she did not realise that very little of her payments were being sent to her creditors. Haydon kept £72 a month for its fees, and paid only £3.11 to Mrs D's creditors. It put the remaining £4.13 in a surplus account.

Haydon took £240 as a set-up fee from money paid to it by Mrs D. This was without her knowledge, and it was not permitted by the terms and conditions of the plan.

When Mrs D entered into the plan in 2013, she was told that she was likely to be debt free within two years. In fact, the balances she owes to her creditors have not significantly reduced.

Mrs D complained to Haydon. It agreed to refund the set-up fee of £240, and to pay her £50 for trouble and upset for failing to send statements to her. Mrs D is unhappy at the other fees Haydon has retained, and she brought a complaint to us to consider.

The adjudicator recommended that the complaint should be upheld. He considered that the terms of the plan were not clear. They do not distinguish between Haydon's role as a claims manager, and the debt adjusting services it provides. Further the plan had not set out that the debt adjusting activities would take place until the liability for the debts had been established. Haydon had not made Mrs D aware of the consequences of not paying her creditors while the debt adjusting activities were taking place.

The adjudicator also considered that Haydon had not warned Mrs D that her debts could increase if her creditors refused to accept the repayments offered, or if they refused to freeze interest charges. This is not in line with the guidance of the Office of Fair Trading (OFT) on debt management.

Finally the adjudicator considered that Haydon had failed to make Mrs D aware of the services it was to provide under the plan.

The adjudicator recommended that Haydon should refund the sums Mrs D had paid to it less the sums it had made to her creditors. Interest at 8% should be added.

Haydon is not happy to accept the adjudicator's recommendation. It says that it has already refunded the sum of £326.24 to Mrs D. This includes the set-up fee and other compensation. It says this is in settlement of her complaint.

### **my findings**

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

Haydon wrote to Mrs D on 29 July 2014 after she had complained to it about the way her plan had been run. It agreed to refund the set-up fee as the terms of the plan had not made it clear that this would be charged. Haydon also agreed to pay Mrs D £50 as compensation for the fact it had not sent her monthly statements in line with the plan's terms. It was not prepared to refund any of the other fees Mrs D had paid as it had charged these in line with the terms and conditions.

I have not seen anything which Mrs D signed to say that she accepted the above sums from Haydon in full and final settlement of her complaint against it. In the circumstances, I consider that the refund is only a partial satisfaction of some of her complaints about the plan.

Mrs D paid Haydon £1,360. Most of this sum was kept by Haydon as fees for its debt challenging activity. I do not consider this is fair. The terms of the plan allowed this fee to be charged indefinitely. This was not appropriate for Mrs D who did not challenge the legality or enforceability of her debts. The terms of the plan did not make it apparent that none of the debt adjusting activities would take place until liability for the debts had been established.

The plan did not make it clear to Mrs D that her debts could increase when she stopped making payments to her creditors, other than the nominal amount which Haydon paid to them.

As the adjudicator has pointed out, the terms of the plan were not in line with OFT guidance on debt management. I do not find that Haydon has acted fairly or reasonably in the way it has handled the sums Mrs D owed to her creditors on her behalf. I agree with the compensation recommended by the adjudicator. I note that Haydon has clarified that it has refunded the set-up fee and has already paid Mrs D £50 for its failure to send her monthly statements. I have taken the refund of the set-up fee into account in my order. I consider that Haydon should still pay Mrs D £150 for the trouble and upset caused to Mrs D by the way her plan has been administered overall. This is in addition to the £50 it has paid already for its failure to send statements to her.

### **my final decision**

My decision is that I uphold this complaint. In settlement of it, Haydon Associates Debt Management Consultants Ltd should:

- Refund the sums paid to it by Mrs D less any payments made to her creditors and the set-up fee and any other fee which has already been refunded to her.
- Pay interest on the above sum at 8% interest simple per annum from the date of payment to the date of settlement
- Pay Mrs D £150 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 30 April 2015.

Rosemary Lloyd  
**ombudsman**