

complaint

Mr H complains that Barrington Lewis Limited failed to distribute his payments to his creditors as agreed.

background

It appears Mr H entered into a combined claims management and debt management agreement with Bankfair Limited at the beginning of 2010. A full copy of the signed agreement has not been provided by either party. However, correspondence provided to this service indicates the debt management services were subsequently administered by Barrington Lewis Limited under its trading styles.

Mr H has paid a total of £11,200, but it appears that payments were not distributed to creditors until around September 2010. A total of £2,376.88 was passed on to Mr H's creditors.

In addition, in April 2012, Mr H made lump sum payments in full and final settlement of four debts.

Mr H has since terminated the agreement.

our initial conclusions

The adjudicator recommended that the complaint be upheld. Barrington Lewis had failed to provide any information about Mr H's debt management plan. Therefore, she relied on the information provided by Mr H and his creditors.

Based on the available evidence, she concluded that the payments to creditors were inconsistent and inadequate. In addition, there was a significant sum out of the total amount paid by Mr H that was unaccounted for.

She recommended that Barrington Lewis refund all sums paid by Mr H from September 2010, less the amount distributed to creditors, plus interest. She also recommended a further refund of £1,162.65, plus interest. This is because Barrington Lewis had settled one of Mr H's accounts for less than he had been asked to pay.

Finally, she asked Barrington Lewis to pay Mr H £250 to compensate him for the distress and inconvenience its failure to administer the debt management plan with care and skill had caused him.

Barrington Lewis responded only to ask for the evidence upon which the adjudicator had relied to be re-sent. Although the evidence was re-sent, Barrington Lewis has not responded substantively to her assessment.

my provisional findings

In my provisional decision issued earlier this month, I explained why I was proposing to uphold Mr H's complaint and the redress I was intending to award. I invited both parties to let me have their further comments and evidence. Mr H has accepted my decision. Barrington Lewis Limited says it cannot add anything further because it 'bought the business'.

my findings

I have already considered the available evidence to decide what is fair and reasonable in all the circumstances of this complaint. As no new information has been provided, my decision remains the same. Therefore, I repeat my findings below.

the respondent to the complaint

Barrington Lewis Limited has not been able to provide a substantive response to Mr H's complaint, or to the adjudicator's conclusions.

Prior to my provisional decision, Barrington Lewis Limited queried whether it was the correct respondent to Mr H's complaint. It questioned whether it might have been confused with another similarly named company. However, I am satisfied that Barrington Lewis Limited is the correct respondent for the following reasons.

Based on the evidence available, Mr H appears to have entered into a 'debt elimination' agreement with a company called Bankfair Limited in 2010. Judging by the date when Mr H's payments began and the dates of certain letters from Bankfair Limited, the agreement seems to have commenced at the beginning of 2010.

In the absence of a complete copy of the agreement, the precise terms are unclear. However, it appears the agreement was part claims management, part debt management, even though, according to the Office of Fair Trading's records, Bankfair Limited did not hold a consumer credit licence in early 2010. A licence would have been necessary to provide debt management services.

Mr H has provided a copy of what seems to be page 2 of the agreement. It says as follows:

"3. Charges

3a You will pay Bankfair in accordance with the fee agreement and then a monthly management charge again in accordance with the fee agreement.

3b Your seventh payment to the plan is the first payment to be fully distributed in accordance with the plan to your creditors."

Mr H says that he was initially paying a fee 'to solicitors'. This appears to be consistent with correspondence from Bankfair Limited's in house solicitor who said he had conduct of Mr H's case. That letter was sent in January 2010.

Whilst Mr H complains that he did not receive any service from solicitors, we are unable to look at this aspect of the complaint. Claims management is regulated by the Claims Management Regulator at the Ministry of Justice. The solicitor himself is also likely to be regulated by the Solicitors Regulation Authority.

In addition, the Financial Ombudsman Service can only consider complaints about consumer credit activities, such as debt management services, against consumer credit licence holders. According to the Office of Fair Trading's records, Bankfair Limited did not hold a consumer credit licence in early 2010. Therefore, this service could not look at any consumer credit activities it carried out whilst unlicensed.

However, information held on public registers, including at the Office of Fair Trading, indicates that Barrington Lewis Limited and Bankfair Limited later became connected entities. The Office of Fair Trading's public register records that Barrington Lewis Limited and its trading name, Bankfair Limited, were granted a licence on 19 April 2010.

Whilst there is limited documentation, the available evidence shows that Barrington Lewis Limited was administering Mr H's debt management plan under its trading styles Barrington Lewis Financial Management, Barrington Lewis Law and Bankfair Limited. Mr H has received correspondence from Barrington Lewis Limited's trading names, as have Mr H's creditors, which have provided copies to this service. The correspondence shows that all names operated under the same company registration number and Office of Fair Trading licence number as Barrington Lewis Limited.

For these reasons, I am satisfied that Barrington Lewis Limited was responsible for the debt management services provided to Mr H. Since receiving my provisional decision, Barrington Lewis Limited has not sought to deny that it was responsible for the debt management services provided to Mr H.

the quality of the service

The available evidence indicates that Mr H's monthly payments ought to have been distributed to his creditors in accordance with his debt management plan after six months. Mr H's payments were continuous from the time he entered into the agreement with Bankfair Limited, throughout the period Barrington Lewis Limited administered his debt management plan. Mr H has provided copies of his bank statements which show he has paid a total of £11,200 since January 2010. £8,800 has been paid since the initial six-month period ended. However, only £2,376.88 was distributed to Mr H's creditors.

Payments to creditors were also irregular and inconsistent with the payment schedule dated September 2010 that was sent to Mr H. Mr H has also provided correspondence from his creditors which supports his claim that payments were not distributed. No explanation has been provided by Barrington Lewis for why this has happened.

Mr H says he eventually felt compelled to settle some of his debts. However, he says that Barrington Lewis then charged him further fees that exceeded the administration fees he had agreed.

There is also a dispute about one of Mr H's settled accounts. Evidence provided by the creditor indicates it accepted a payment of under £700 from Mr H. However, Barrington Lewis took a payment of over £1,800 from him. Again, Barrington Lewis has provided no explanation for this discrepancy.

In all the circumstances, I am satisfied that there were substantial shortcomings in the service provided by Barrington Lewis. I do not consider that Barrington Lewis can justifiably keep any fee for the administration of Mr H's debt management plan, as it has not administered it with reasonable care and skill. This includes the fees taken for settling several of Mr H's accounts, which must also be refunded.

Therefore, I find that Barrington Lewis must return all payments made by Mr H, apart from the first six payments, less the amount distributed to his creditors. I also consider that Barrington Lewis must add interest to the amount it refunds.

Finally, I also agree that Barrington Lewis' poor management of Mr H's account has caused him distress and inconvenience. I see no reason to interfere with the adjudicator's recommendation to pay compensation of £250. I consider this to be fair in all the circumstances.

my final decision

For the reasons given, my final decision is that I uphold Mr H's complaint. I direct Barrington Lewis Limited to-

1. refund £6,423.12 to Mr H. That is, all payments made by Mr H after his sixth payment (£8,800), less the amount distributed to his creditors (£2,376.88);
2. add interest to the amount to be refunded under 1. above at the gross rate of 8% per year calculated from the date Mr H made each payment to the date the money is refunded;
3. pay Mr H £250 compensation for the distress and inconvenience caused by its actions.

Athena Pavlou
ombudsman