

## **complaint**

Mrs and Mr S have complained about Fairline Financial Limited's administration of their debt management plan. In particular, they say that payments to their creditors have been made late or not at all, and Fairline has applied a number of fees to their account which they disagree with.

## **background**

Mrs and Mr S were in a debt management plan with a third party, but received correspondence in February 2012 to say it was being transferred to Fairline. This letter explained that Fairline would "*be taking over the running*" of their account and instructed them not to make further payments to the third party.

Over the course of the next few years, Mrs and Mr S made monthly payments to Fairline, but became concerned when creditors started informing them that some payments were late or, in some cases, not received at all. They also pointed out that this had an adverse effect on their credit files.

They also discovered that when Fairline took over the account, it had kept £1,200 as a setup fee. In addition, it also retained two payments of the same amount in December 2012 and December 2013, which the firm has called "*review fees*". As a result, no payments were made to their creditors during these months.

In its final response, Fairline said that its fees had been taken in accordance with the terms and conditions that were provided to Mrs and Mr S when it took over their plan. It pointed out that their balances had reduced and it had sent all the agreed payments to their creditors.

It also said that any damage to their credit rating was most likely due to the fact they were not paying the full contractual payments, and not due to any mis-management of their plan.

Our adjudicator recommended that Mr and Mr S's complaint should be upheld. He felt that the setup fee and review fees were not made sufficiently clear to Mrs and Mr S, noting that the latter was not included in the terms and conditions provided to them when Fairline took over their debt management plan.

He established that payments hadn't been made to their creditors on eight occasions. He also noted a number of occasions where late payments were made and felt that this could have affected their credit ratings. He recommended the firm refund the setup fee and review fees, reimburse the eight payments that hadn't gone to creditors, and a compensation payment of £250 for the distress and inconvenience caused.

Fairline did not agree with the adjudicator, so the case has been referred to me.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator's assessment.

When Mrs and Mr S received the first correspondence from Fairline, it explained that it "*will be taking over the running*" of their debt management plan. There was no indication in this

letter that a fee would be charged for doing so and I can appreciate Mrs and Mr S's concern here.

Indeed, given the amount, I would have thought that the payment of a £1,200 setup fee would have been a very important matter to highlight to Mrs and Mr S – especially when they had not asked for Fairline to take over their debt management plan in the first place.

Instead, this fee is mentioned in section 4 of the associated terms and conditions, which says:

*“To reflect the company's initial work in establishing the program, the company will retain a setting up fee equal to twice the value of your calculated discretionary income, plus £50. This is payable over, no longer than, two calendar months”*

But based on the circumstances, it seems there was no need for Fairline to charge this fee. Mrs and Mr S's debt management plan had already been arranged. If Fairline was simply *“taking over the running”*, one might reasonably presume it had already been set up.

And no explanation is given as to what the fee is for or how it's been calculated, or the potential consequences of this money not being paid to Mrs and Mr S's creditors. I feel that the application of this fee goes against the spirit of the OFT's debt management guidance.

In particular, I refer to section 3.34 j, which provides an example of an unfair or improper business practice:

*“switching consumers between different debt management options and unjustifiably charging additional or duplicate fees for work that has already been carried out and charged for in respect of previous options and does not need to be repeated”.*

I also consider that this applies to the *“review”* fees that were charged. Again, Fairline charged Mrs and Mr S two further amounts of £1,200 for reviewing their account. I can see no evidence of such a charge being adequately explained to them.

In its response to our adjudicator's assessment, Fairline provided an alternative copy of its terms which explains that it will charge a fee equivalent to one month's payment, *“biannually”*. Its justification being that it would contact creditors and *“look at ways in which you may be able to pay off your debts more quickly”*.

I have not been provided with any evidence to suggest that took this place, or that Mrs and Mr S were given any prior notice of such fees being applied either.

With regards to the eight payments that were not cashed by creditors, I also consider that Mrs and Mr S need reimbursement for these. I accept that Fairline says that they have been paid out, but not 'cashed'. Given that it has now been more than a year since payment, it is unlikely they will be cashed, if payment was indeed issued.

And whilst Mrs and Mr S's credit file may already have adverse information, I agree with the adjudicator's view that further late or non-payments might have a further detrimental impact.

It's clear to me that Fairline's overall handling of Mrs and Mr S's debt management plan has been poor and for this reason I agree with the adjudicator's recommendation of £250 compensation for this matter.

**my final decision**

For the reasons given above, it's my final decision to uphold this complaint. I require Fairline Financial Limited to:

- refund the £1,200 set up fee and the two subsequent £1,200 review fees;
- reimburse the eight payments not received by creditors;
- add 8% simple interest per year to these amounts, from the dates that Mrs and Mr S paid the money until the date of settlement ; and
- pay Mrs and Mr S £250 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr S to accept or reject my decision before 30 October 2015.

Elspeth Wood  
**ombudsman**