

complaint

Miss N complains that the money she paid to NEO Media Solutions Limited ("NEO") was not passed on to her creditors. She feels she is entitled to a full refund.

background

Miss N entered into a debt reduction/debt management plan with NEO in September 2010. By August 2011, she had paid a total of £1,925 to NEO. This figure is not in dispute. She says she was told that only £20 per month would be retained by NEO in fees. The balance of her monthly payment would be distributed to creditors. As this had not happened, she terminated the agreement and asked for a refund. She says NEO told her that it was entitled to a fee of over £2,000. Therefore, no refund was due.

Before Miss N signed the agreement, NEO says it sent her pre contract information which explained the debt reduction plan, NEO's charges and how the customer's money would be used. NEO also says a subsequent conversation with Miss N did not reveal any misunderstanding about the service to be provided.

During the period September 2010 to August 2011, NEO says it contacted Miss N's creditors to identify the enforceability of her agreements. While enforceability was being determined, token payments of £1.50 per month were made to her creditors. NEO says it then distributed payments to creditors whose agreements were enforceable. NEO says its costs for administering Miss N's debt reduction plan totalled just over £420.

our initial conclusions

Our adjudicator recommended that the complaint be upheld. She considered NEO had not complied with the relevant guidance issued by the Office of Fair Trading in a number of respects, which meant that Miss N was unclear about the service being offered, including the cost and timescale. She recommended that Miss N should be refunded all the money she had paid to NEO, together with interest. She also recommended that Miss N should receive £200 compensation for the distress and inconvenience caused by NEO's actions.

NEO did not respond substantively to the adjudicator's assessment. Therefore, the complaint has been referred to an ombudsman for review.

my findings

I have considered all the available evidence to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I uphold Miss N's complaint for reasons which I give below.

NEO has sent a copy of the agreement signed by Miss N. Under its terms, NEO agreed, amongst other things, to:

- identify situations where Miss N may have grounds for challenging the liability for the debts and challenge where appropriate;
- negotiate a reduction in Miss N's monthly unsecured payments to a figure of not more than £175 per month;
- stop interest and charges;

- pay the relevant amount monthly on her behalf to the creditors except where the debt is in dispute;
- keep her informed ... by sending her monthly statements;
- advise her on matters relating to action commenced by creditors;
- defend any court action.

I am satisfied that the services to be provided by NEO included debt adjusting. As such, the agreement is subject to the Office of Fair Trading Debt Management Guidance (the 'guidance'), which, in summary, provides that:

- contract terms and conditions should be fair, written in plain, intelligible language and easily legible;
- the contract should set out the nature of the services that are being supplied and the total cost to the consumer of the service;
- consumers should be warned of the consequences of stopping contractual payments and that creditors are not obliged to accept reduced repayments or to freeze interest.

The guidance issued in 2008 was updated in 2012, but the above provisions are also incorporated in the new edition of the guidance.

I do not consider that NEO's agreement complies with the guidance. In particular, it does not clearly differentiate between the debt reduction and debt management elements of the service. It does not set out the stages of each part of the service, or over what timescales they will be completed. Consequently, it is not clear that NEO will not undertake any debt management activities until the enforceability of a debt has been established. Nor is there adequate warning that the effective stopping of payments (apart from nominal payments of £1.50) to all creditors while enforceability is tested could have adverse consequences for its customers.

I also find that the 'costs information' in the contract is confusing and does not explain how payments are applied during the currency of the agreement. It does not explain how the fee of over £2,300 is calculated or what it will be used for. The information about administration and management fees is equally unclear and does not distinguish explicitly between the different services covered by the agreement.

In addition, whilst Miss N has signed a compliance form agreeing to a number of statements, it relates to advice about a debt management plan only. It is also not evidence, in my view, that Miss N was given the best advice possible before entering into the agreement with NEO.

I do not agree that it is enough for NEO to say that it sent pre-contract information to Miss N. NEO has provided no other evidence to substantiate its claim that it gave Miss N the best advice possible for her, or that it adequately explained the type, duration and cost of the service it was providing.

Miss N is unhappy that NEO has not kept to the terms of the agreement, as she understood them. She understood that NEO's fee of just over £2,300 would not be taken in one lump sum, as this is what is stated in the agreement. She believed it would be taken out of her monthly payments, with the balance being distributed to her creditors. She also complains that she was not sent a payments schedule or monthly statements to keep her up to date, as promised.

I have considered NEO's only response to this complaint dated October 2012. It says it has sent 16 letters and completed three hours ten minutes work on Miss N's behalf, which it has valued at over £420. However, apart from two similar letters to creditors dated April 2011 and August 2011, it has provided no other evidence of work carried out. It has also not accounted for the remaining £1,500 paid by Miss N.

Miss N had been in the agreement for almost a year by August 2011. It is unsatisfactory that NEO has been unable to provide any evidence to demonstrate which stages of its process had been completed, whether any contracts were found to be unenforceable, or whether any payments had been distributed to creditors of enforceable agreements. The information provided by Miss N indicates that only five nominal payments were sent to her creditors for the entire period of the agreement.

In my view, NEO has not provided sufficient evidence to justify keeping any of Miss N's payments. Therefore, I agree that Miss N should be refunded all payments she has made to NEO under the agreement, together with interest.

I am also satisfied that Miss N has been caused distress and inconvenience as a result of NEO's actions. I see no reason to interfere with the recommendation of the adjudicator in this respect. I therefore award £200, which I consider to be fair in the circumstances.

my final decision

For the reasons given, my final decision is that I uphold Miss N's complaint and I direct NEO Media Solutions Limited (trading as One Debt Solution) to-

1. pay Miss N £1,925, together with interest calculated at 8% simple per year from the date each payment was made by Miss N to the date of settlement; and
2. pay her an additional sum of £200 to reflect the distress and inconvenience this matter has caused.

If NEO Media Solutions Limited considers that tax should be deducted from the interest element of my award, it should provide Miss N with the appropriate tax deduction certificate so that she is able to claim a refund if appropriate.

I remind NEO Media Solutions Limited that my decision and award is enforceable through the courts.

Athena Pavlou
ombudsman