

complaint

Mr C and Miss B complain that Fresh Start Financial Management Ltd mis-sold them a debt management plan. The complaint is brought on their behalf by a claims management company. It says a debt relief order would've been more suitable for Mr C and Miss B.

background

Mr C and Miss B sought advice from Fresh Start in August 2010 and, as a result, entered into a debt management plan ("DMP"). They paid £150 a month into the plan until they cancelled it in June 2011. Fresh Start says Mr C and Miss B's disposable income exceeded the requirements for debt relief orders ("DRO").

Our adjudicator didn't recommend that the complaint should be upheld. He concluded that there was no obligation on Fresh Start to make Mr C and Miss B aware of free of charge services and that it had made them aware of its fees; that it conducted regular reviews of their financial circumstances and that their disposable income was too high to be eligible for a DRO. He also thought it wasn't unreasonable for Fresh Start to include Mr C's disability living allowance in their income figures.

Mr C and Miss B didn't agree. Their claims management company said, in summary, that:

- Fresh Start should have told Mr C and Miss B that free debt advice was available – and the claims management company cited the Consumer Protection from Unfair Trading Regulations 2008 and the Office of Fair Trading guidelines.
- If disability living allowance is included in the income calculation, there should be a corresponding entry in expenditure, leaving no excess available towards debt repayment.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr C and Miss B were asked to give details of their income and expenditure and this showed they had more than £150 a month disposable income, so they weren't eligible for debt relief orders. Given their circumstances, I don't think it was unreasonable for Fresh Start to recommend a debt management plan.

Fresh Start included disability living allowance as part of Mr C and Miss B's monthly income. This benefit is to pay for the additional expenses caused by the individual's disability. But any such expenses would have been included in the monthly expenditure figures Mr C and Miss B gave Fresh Start. So I don't think it was wrong to include the allowance in the income figure.

Fresh Start made Mr C and Miss B aware of its fees and these were set out in the "welcome pack" and the terms and conditions of the agreement. Our view is that before 1 April 2014, the OFT Guidance didn't require the provider of a DMP to refer a customer to the availability of not-for-profit advice and services in every case. In the circumstances of this case, like the adjudicator, I consider that Fresh Start gave Mr C and Miss B enough information to make an informed decision about whether or not to take and pay for its services.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss B to accept or reject my decision before 28 October 2016.

Elizabeth Dawes
ombudsman