

complaint

Miss B complains that a debt management plan was mis-sold to her by Baines & Ernst Limited. She is being helped with her complaint by a representative.

background

Miss B entered into a debt management plan with Baines & Ernst in November 2012. It was cancelled in April 2014. A complaint was made to Baines & Ernst in January 2016 that the plan had been mis-sold to Miss B and that bankruptcy would've been a more suitable option for her in November 2012. She wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He wasn't persuaded that the recommendation of a debt management plan was unsuitable for Miss B when it was made in November 2012. Whilst other options may have been available, he couldn't see that Baines & Ernst had done anything wrong in recommending the plan to Miss B. Miss B had signed a client authority form and confirmed that she had read Baines and Ernst's terms of business. And he was satisfied that the terms and conditions made Miss B aware that her creditors could continue to charge interest during the plan and that they could take action against her during the plan. He was also satisfied that Miss B was made aware of the fees applicable under the plan. He didn't think that Baines & Ernst acted inappropriately in not referring Miss B to a not-for-profit organisation. And letters showed that Baines & Ernst tried to contact Miss B to carry out a review but it was unable to do so. When the plan was cancelled in April 2014, Miss B's debts had decreased by £5,409.

Miss B's representative – on her behalf - has asked for this complaint to be considered by an ombudsman. The representative says, in summary, that it believes Baines & Ernst did have an obligation to refer Miss B to the free sector under the Office of Fair Trading guidance issued in 2008 and 2012. And it says that a licensed insolvency practitioner has advised that bankruptcy was a suitable option for Miss B – and Miss B would've opted for bankruptcy if that option had been discussed with her. So it says that the adjudicator's decision should be reconsidered.

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 – for the same reasons

I'm not persuaded that there's enough evidence to show that the debt management plan was an unsuitable recommendation to be made to Miss B in November 2012. As a result of her entering into the plan, interest was frozen on her debts which were reduced by £5,409. Other options – such as bankruptcy – may also have been suitable for her. But that doesn't mean that a debt management plan was unsuitable for her. Miss B signed a client authority form and accepted Baines & Ernst's terms of business. I consider that the terms of business contained the necessary information about the plan.

The Office of Fair Trading's guidance says:

“Examples of unfair or improper business practices include: ...

failing to refer the consumer, where appropriate, to a not-for-profit advice organisation for further help. This may include under circumstances in which he:

has priority debt problems and/or an immediate 'emergency' that the licensee is unable or unwilling to assist with and/or does not have enough disposable income to meet the cost of paying the fees charged by the licensee."

And the Debt Managers Standards Association code of conduct says:

"Where it appears that applicants are unable to pay any management fees due to the severity of their financial position, members should, where appropriate recommend such clients to non profit advice centres."

I've not seen evidence to show that Miss B had priority debt problems or that she couldn't pay Baines & Ernst's fees. So I'm not persuaded that Baines & Ernst has used unfair or improper business practices in its dealings with Miss B. And I'm not persuaded that Baines & Ernst was required to refer Miss B to "non profit advice centres" in these circumstances.

I'm not persuaded that the debt management plan was mis-sold to Miss B or that Baines & Ernst has acted incorrectly in its dealing with her. So I find that it wouldn't be fair or reasonable for me to require it to pay any compensation to Miss B or to take any other action in response to her complaint.

my final decision

For these reasons, my decision is that I don't uphold Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 December 2016.

Jarrold Hastings
ombudsman