

complaint

Mrs G is unhappy about the sale and management of a debt management plan ("DMP") by Baines & Ernst Limited.

background

Mrs G's representative says Baines & Ernst mis-sold her a DMP. It says Baines & Ernst didn't give her certain information when it should've. The DMP continued past the date when the Financial Conduct Authority (FCA) introduced certain standards in 2014 - concerning debt counselling and adjusting. So Mrs G's representatives also say Baines & Ernst should've made her aware she could've got the same service for free elsewhere – at least at that stage.

Our investigator concluded we don't have the power to look at part of Mrs G's complaint. That's because her DMP was sold in February 2007. Our jurisdiction over debt counselling and debt adjusting didn't begin until April 2007. But he did look at whether Baines & Ernst had ongoing responsibilities to make Mrs G aware of free alternatives to the service it was providing. He didn't think they did. Mrs G's representatives don't accept that. The complaint has been passed to me to look at.

my findings

Nobody disputes Mrs G's DMP was sold in February 2007. At that time we didn't have the power to look into complaints about debt counselling and adjusting. We're now only allowed to look at complaints about those events which happened from April 2007. So we can't consider whether Baines & Ernst did anything wrong when Mrs G entered into the DMP.

But Mrs G also complains that Baines & Ernst didn't tell her she could get a similar service for free elsewhere, after the DMP was entered into. I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of that complaint – and whether Baines & Ernst has done anything wrong. I don't think it has in this particular case.

Mrs G's representative makes reference to the Consumer Credit Sourcebook (CONC) and in particular CONC 8.2.4. That says "*a debt management firm must prominently include in its first written or oral communication with the customer that free debt counselling, debt adjusting...is available to customers...*"

It's clear the focus is on what should happen when first communicating with a customer. Mrs G's DMP had been in place for many years by the time CONC was introduced so it doesn't apply here. And there's nothing to say Baines & Ernst had a continuing obligation once CONC was introduced to pro-actively contact Mrs G to tell her about similar services available free elsewhere.

my final decision

We don't have the power to look into what happened in February 2007. So we can't consider what happened when Mrs G entered into her DMP. And Baines & Ernst Limited hasn't done anything wrong by not proactively telling Mrs G there are free services available elsewhere.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 1 March 2017.

David Curtis-Johnson
ombudsman