

complaint

Miss O complains that she was mis-sold a debt management plan ("DMP") by Butler-Do Ltd (trading as Kensington Finance).

background

Miss O is represented in this complaint by a claims management company which I will call D.

In 2013 Miss O entered a DMP provided by Kensington Finance. In 2015 she complained that the DMP had been mis-sold. When her complaint wasn't upheld, D brought it to our service. It says:

- The fees for setting up and managing the DMP were not made clear to Miss O.
- She was not told that interest and fees could continue while she was on the DMP, or that her credit file would be affected.
- She was not offered a more suitable alternative, such as bankruptcy or a debt relief order.
- Her payments under the plan exceeded her disposable income.
- She was not told about free alternatives to Kensington Finance's service.

Our adjudicator did not uphold this complaint. D asked for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have seen plenty of evidence to show that Kensington Finance made its fees very clear to Miss O. These include its terms and conditions, a document entitled "Key Facts," a letter, and a script for advice to be given over the phone to potential customers. That evidence also makes me think that she was told that her credit file would be affected, and that her creditors might not freeze their interest and charges.

The Key Facts document recorded that Miss O had said she didn't want bankruptcy. And she wasn't eligible for a debt relief order, because those are only available to people with a disposable income of less than £50 a month. Kensington Finance's income and expenditure ("I&E") form recorded that her disposable income was £74.50 a month. So a debt relief order would not have been possible for her.

D says that Miss O's disposable income was less than that – £31 a month. I've seen no evidence to support that. It might still be true, but in that case I would expect Miss O to have told Kensington Finance that its I&E assessment was wrong when it sent it to her. She didn't do that, which leads me to think that Kensington Finance filled in the I&E form in accordance with what Miss O told it. And I think it's fair and reasonable to judge Kensington Finance based on what Miss O told it about her finances, rather than what her finances (if different) were in reality. So I wouldn't expect it to have recommended a debt relief order when she wasn't eligible for one.

Under the DMP, Miss O had to pay £80 a month. That is £5.50 a month more than her disposable income was. I have given careful thought to whether I should uphold this complaint on the ground that the DMP was mis-sold because she could not have afforded it.

But her I&E form from 2013 shows that her income was £950 a month, and her expenses were £875.50 a month. Those expenses include £308 a month on “housekeeping.” She had no dependents. So on balance, I think she could still have afforded the DMP by reducing that part of her expenditure to £302.50 a month, without appreciably compromising her living standards. I don’t think that would have been a significant cutback. So I am just persuaded that the DMP was affordable.

Regulations did not require Kensington Finance to refer Miss O to free debt advice and counselling services until April 2014. But D has pointed out, correctly, that the Office of Fair Trading’s *Debt management (and credit repair services) guidance*, issued in 2012, recommended this “where appropriate.” So I have considered this point, because while the OFT guidance was not mandatory, I regard it as industry best practice.

This guidance appears at paragraph 3.23. It 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.” (Emphasis in original.)

It goes on to give three examples of where it *may* be appropriate to do so. These are where the consumer has an emergency or priority debt that the business is unwilling or unable to assist with, where the consumer can’t afford the fees for the DMP, and where the consumer has a very low fixed income.

On balance, I don’t think I can say that it was outside Kensington Finance’s reasonable commercial judgement for it not to decide to refer Miss O to a free service at the time.

In any case, there’s evidence that Kensington Finance told Miss O about free debt advice services in July 2014, but she still continued with the DMP. So I think it’s not likely that she would have reacted differently if she had been told that in 2013.

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss O to accept or reject my decision before 29 December 2016.

Richard Wood
ombudsman