

complaint

Mr and Mrs C complain that Debt Advisory Line Limited (DAL) mis-sold a debt management plan (DMP) to them.

background

Mr and Mrs C made an agreement with DAL to use its services in July 2012. They say that DAL should have told them that similar services to those it provided were available for free. They also raised a number of other issues, particularly that:

- payments weren't distributed to creditors in a timely fashion;
- the DMP wasn't reviewed as it should have been; and
- the fees charged by DAL increased dramatically.

They want all the fees they paid to be refunded.

Our adjudicator did not recommend that the complaint was upheld. She said that until April 2014 there was no requirement for debt management services to inform consumers about the availability of free services. That then applied only at first contact and was not retrospective. She thought payments had been distributed within a reasonable timescale, and DAL had tried to review the DMP every 12 months, as the terms of the plan required. Mr and Mrs C had been notified about the fee change but not contacted DAL about that at the time. DAL had provided the service Mr and Mrs C had agreed to.

Mr and Mrs C disagreed and asked for an ombudsman to review their complaint. They said guidance from the Office of Fair Trading (OFT) which was in place in 2012 clearly stated that debt management companies should be signposting customers to free services. They referred to views given by other adjudicators on other cases.

my findings

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

Free services

Each case is considered on its own merits, so the views given by other adjudicators previously are not relevant to my decision.

Since 2014 debt management companies have been under a duty to tell consumers that similar free services are available, in their first communication with the consumer. But DAL's first communication with Mr and Mrs C was in 2012, and the 2014 requirement therefore did not apply.

Mr and Mrs C have argued that a similar requirement already applied because of OFT guidance issued in 2012, and a review in 2010. But the parts of the 2010 review they quoted simply refer to companies not volunteering information about free services - they do not impose any requirement that that must happen in future. The parts of the 2012 guidance they quoted are more about provision of clear and accurate information about services and

debt management options. The guidance does refer to provision of information “where appropriate” about the availability of help and debt advice from not-for-profit organisations. Later the guidance gives some examples of situations where it might be inappropriate not to refer consumers for free advice eg where a consumer does not have enough disposable income to pay a fee, or in an emergency situation. But I have not seen anything to suggest that Mr and Mrs C were in a situation of that sort. And when the guidance gives examples where referral *should* take place, it seems clear to me that it was not intended to impose a general obligation in all cases.

So I do not think I have grounds to say DAL should have told Mr and Mrs C about free services.

Payment distribution

Mr and Mrs C have not referred to any particular payments or groups of payments. Looking generally at the account records, it appears that payments were being made to creditors systematically within about a week of Mr and Mrs C paying the money to DAL. I can see from the records that on occasion Mr and Mrs C contacted DAL about letters from creditors, which might have seemed to indicate appropriate payments had not been made. But those seem to have been due to issues with the creditors, eg when accounts were sold on to a new creditor or being handled by a new collection agent, rather than any failing by DAL. From DAL’s records I could see one occasion where Mr C was chasing DAL for a response to a query about such an issue, but DAL’s records showed that it had already been trying to contact him about it. Generally DAL seemed to have dealt with such issues reasonably promptly.

I cannot see grounds to uphold this aspect of the complaint.

DMP reviews

As the adjudicator noted, DAL did try to arrange the annual review due in 2013. Although Mr and Mrs C did not respond, shortly afterwards they contacted DAL about a different possible approach to their debts and were given some advice about that. A review did take place in 2014, and before the next annual review was due in 2015 Mr and Mrs C had started using a different service.

So I cannot see grounds to uphold a complaint about failure to review the plan.

Fee increase

The fees for the service did go up very significantly in October 2014, which led to reduced payments to creditors. But DAL wrote to Mr and Mrs C in September 2014, enclosing the new terms of business (which explained the new fees). The letter explained that payments to creditors would change. Mr and Mrs C had the option to cancel their contract with DAL, before the new terms were imposed, if they wished. They did not do that until the middle of 2015.

In all the circumstances I cannot see grounds to conclude that Mr and Mrs C suffered as a result of any failing by DAL over the fee increase.

Overall

So looking at the complaint overall. I have not found grounds to require DAL to refund the fees paid by Mr and Mrs C as they hoped. I can see why Mr and Mrs C may now wish they had used other, free, services. But I have not seen anything to show that DAL was under a duty to tell them about those services, or that generally Mr and Mrs C did not receive the service they chose to take and pay for.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 30 August 2016.

Hilary Bainbridge
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