

## **complaint**

Mr S complains that Baines & Ernst Limited ("BEL") didn't advise him properly about his debt management options and the charges involved. The complaint is brought to this service on his behalf by a firm of solicitors. But for ease, I shall refer below to all actions being taken by Mr S.

## **background**

Mr S complains that BEL didn't explain the full range of debt management options available to him. In particular, it should have advised him about a Debt Arrangement Scheme ("DAS") which was only available in Scotland where he lived. He also said that it didn't explain its charges which caused his debt to increase.

The adjudicator did not recommend that the complaint should be upheld. She had listened to the call between Mr S and BEL in mid-June 2009. She explained that BEL had outlined two options available to Mr S under Scottish Law and that another company ("C") would be able to provide further information regarding his options under Scottish Law. She also noted that BEL had informed this service that at the time the advice took place, it wasn't authorised to be a DAS administrator. So, it would have been irresponsible for it to advise Mr S about this course of action. She felt it was reasonable for it to refer Mr S to C to provide advice on the matter. The adjudicator also concluded that Mr S had been told about the fees that would be payable, and also, that he agreed to these fees.

Mr S disagreed and responded to say, in summary, that:

- BEL and C were part of the same group and not separate entities;
- BEL didn't tell Mr S that other providers could provide free advice; and
- BEL should refund Mr S the fees he had paid plus interest as he would have been better off on a DAS.

## **my findings**

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

I've listened to two phone calls between Mr S and BEL. In the call in mid-June 2009, BEL explained that C was another department within the company. Its agent said that C was based in Edinburgh and did Protected Trust Deed work which was the option Mr S was interested in. So, I'm satisfied that BEL had explained to Mr S that there was a relationship between it and C.

I also note that Mr S felt that he should have been told that there were other organisations which provided free debt management advice. The Office of Fair Trading's ("OFT") Debt Management Guidance dated September 2008, which was in effect at the time of the call between Mr S and BEL, said that it had no objection to debt management companies charging for debt management services. The OFT's later Guidance in March 2012 said that it was an unfair business practice for a debt management company to fail to refer a consumer *where appropriate* to a free advice agency for further help. But it then gave examples of what it meant by "*where appropriate*". These included situations where a consumer had priority debts or did not have enough disposable income to meet the cost of paying fees. This might be the case if the consumer was on benefits or in receipt of a

pension. But, I note that these situations did not apply to Mr S. So, I am not persuaded that BEL acted inappropriately by not telling Mr S about the free advice agencies.

I am also satisfied that BEL had provided Mr S with details of its charges in its phone call with him about the debt management plan, and in its documentation. In the call, it was clear that Mr S understood the charges he had to pay. I also note that BEL's letter dated 7 July 2009 showed the monthly fee of £35 and drew Mr S's attention to reading the information about "What you pay". It also said that Mr S could change his mind. The welcome brochure and frequently asked questions sent with this letter also provided information about the initial fee and the monthly management fee. And the Authorisation Form which Mr S signed on 8 July 2009 said that before Mr S signed it, he should read carefully Clause 3 (headed "What you Pay") of the Terms of Business to make sure that he fully understood it. If he didn't understand it, the form said that he should seek advice. By signing the form, Mr S agreed to the Terms of Business and confirmed that he had read and understood them. The fees were also set out again in BEL's letter dated 14 July 2009. If Mr S had second thoughts, I also note that there was a seven day cooling off period in which he could have cancelled the plan and received the return of his initial fee. So, I think that the charges were satisfactorily explained to Mr S.

Mr S is also seeking a refund of the fees he has paid to BEL and interest as he believed that he would have been better off on a DAS. I don't know if the DAS was explained to Mr S by C and whether he considered and rejected this option. This may be a matter to raise with C. I note that BEL wasn't authorised to be a DAS administrator. So I can see that it wasn't appropriate for it to discuss this with Mr S. But I can also see that a DAS is not suitable for everybody especially as DAS customers' names are published in a public register and it can affect a borrower's credit score. This may not have been suitable for Mr S as he was self-employed. So, in these circumstances, and as Mr S had agreed to the fees, I don't think that it would be reasonable for me to order BEL to refund the fees and interest.

I appreciate that this is not the outcome which Mr S wants. But he doesn't have to accept my decision and may pursue his case by alternative means should he wish to do so.

### **my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 September 2015.

Roslyn Rawson  
**ombudsman**