

complaint

Mr and Mrs D complain that they were misled into entering into a debt reduction/debt management agreement with NEO Media Solutions Limited ("NEO"). They also complain that the payments they made to NEO have not been passed on to creditors. They would like a full refund of fees paid.

background

Our adjudicator recommended that the complaint be upheld because NEO had not provided any evidence that it had carried out any work on behalf of Mr and Mrs D. He also concluded that the agreement Mr and Mrs D had entered into did not comply with relevant guidance issued by the Office of Fair Trading because it did not clearly set out the nature of the service being offered by NEO. Also, it did not give an adequate estimate of the cost and duration of the service. Nor did it give adequate warnings that creditors are not obliged to reduce or freeze interest and that stopping payments to creditors may have adverse consequences.

The adjudicator recommended that NEO should refund all payments made by Mr and Mrs D, less any payments made to creditors, together with interest. He also recommended compensation of £150 for the distress and inconvenience caused to Mr and Mrs D.

NEO did not respond substantively to the adjudicator's assessment. Therefore, the complaint has been referred to an ombudsman for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I uphold Mr and Mrs D's complaint.

I understand Mr and Mrs D entered into separate agreements with NEO in 2011, although their accounts were subsequently joined. NEO has sent a copy of the agreement it says was signed by Mr and Mrs D. Under the terms of the agreement, NEO agreed, amongst other things, to: *"negotiate a reduction in the monthly unsecured payments to a figure of not more than £150 per month minus our administration fee", "attempt to stop interest and charges" and "pay the relevant amount monthly on your behalf to the creditors except in cases where your creditors have not proved their alleged debts to be enforceable."*

Despite the proviso relating to payments to creditors, I am satisfied that the services to be provided by NEO include debt adjusting. As such, the agreement is subject to the Office of Fair Trading Debt Management Guidance (the 'guidance'), which says:

- contract terms and conditions should be fair, written in plain, intelligible language and easily legible;
- the contract should set out the nature of the services that are being supplied and the total cost to the consumer of the service;
- consumers should be warned of the consequences of stopping contractual payments and that creditors are not obliged to accept reduced repayments or to freeze interest.

The guidance issued in 2008 was updated in 2012, but the above provisions are also incorporated in the new edition of the guidance.

I do not consider that NEO's agreement complies with the guidance. In particular, it does not clearly differentiate between the debt reduction and debt management elements of the service. It does not set out the stages of each part of the service or over what timescales they will be completed. Consequently, it is not clear that NEO will not undertake any debt management activities until the enforceability of a debt has been established. Nor is there adequate warning that the effective stopping of payments (apart from nominal payments of £1) to all creditors while enforceability is tested could have adverse consequences for their customers.

I also find that the 'costs information' in the contract is confusing and does not explain how payments are applied during the currency of the agreement. It does not explain how the fee of over £1,800 is calculated or that it could potentially all be used up in establishing enforceability of the debts. Therefore, no payments could be made to the creditors. The information about administration and management fees is equally unclear and does not distinguish explicitly between the different services covered by the agreement.

It is apparent that Mr and Mrs D did not understand that their payments would not be distributed to their debtors from the outset. NEO has not provided any evidence to demonstrate that it explained this to them before they entered into the agreement. Therefore, I am satisfied that they entered into the agreement based on misleading information and would not have entered into this type of contract had they been told how their payments would be used. For these reasons, I find that Mr and Mrs D are entitled to a refund of their payments.

It is not in dispute that Mr and Mrs D have paid £600 to NEO under the agreement. Despite its lengthy response to this complaint dated October 2012, NEO has not provided any evidence that payments were made to Mr and Mrs D's creditors. This service has obtained statements from their creditors which indicate that only nominal payments may have been made. As these payments are so small as to be negligible, I do not propose to make any deductions and award Mr and Mrs D a full refund, together with interest. Interest is to be calculated at the rate of 8% simple per year from the dates that Mr and Mrs D made each payment to NEO until the date of settlement.

I am also satisfied that Mr and Mrs D have been caused distress and inconvenience as a result of NEO's actions, including its failure to respond properly to their complaint. For this I award compensation of £150.

my final decision

For the reasons given, my final decision is that I uphold Mr and Mrs D's complaint and direct NEO Media Solutions Limited to:

- 1) refund all payments made by Mr and Mrs D under the agreement, together with interest at the rate of 8% simple per year, calculated from the date of each payment until the date of settlement; and
- 2) pay Mr and Mrs D compensation of £150 for the distress and inconvenience they have been caused.

Athena Pavlou
ombudsman