

complaint

Mr M complains, in summary, that Baines & Ernst Limited, ("BEL"), didn't provide him with appropriate information when he entered into a debt management plan ("DMP") with it. The complaint is brought to this service on Mr M's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mr M unless stated otherwise.

background

Mr M entered into a DMP with BEL in February 2012. The CMC said, in summary, that Mr M wasn't made aware that a DMP could have been provided by the free sector, that there was a set up fee, that there would be an adverse impact on his credit file and that payments were made infrequently to his creditors. The CMC said that BEL was expected to make Mr M aware of the free sector under the provisions of:-

- the Office of Fair Trading's ("OFT") Debt management guidance dated September 2008 ("the 2008 Guidance");
- the OFT's Debt Management Guidance compliance review dated September 2010 ("2010 Review");
- the OFT's Debt management (and credit repair services) guidance from March 2012 ("the 2012 Guidance");
- the Consumer Protection from Unfair Trading Regulations ("the CPRs") of 2008 under which it thought that D's failure to refer to fee-free services was a "misleading omission"; and
- the Financial Conduct Authority's ("FCA") Handbook.

The adjudicator didn't recommend that the complaint should be upheld. She noted that the CMC had referred to the sale of the DMP being subject to the 2012 Guidance but said that the sale took place before the 2012 Guidance was issued. She also noted that during the initial call between Mr M and BEL, Mr M had been told about the set up fees and the impact on his credit file of the DMP. She said that she had asked for information about missed payments, but not received this.

The CMC disagreed and responded to say, in summary, that BEL had obligations to tell Mr M about free services in the 2008 Guidance, the 2012 Guidance and the 2010 Review. It also should have told Mr M about fee free services on each review of his account.

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 propose to deal mainly with the issues raised by the CMC in its response to the adjudicator's view in my decision.

I note that the 2008 Guidance applied at the time that Mr M entered into the DMP. There were no obligations within this for BEL to tell Mr M about fee-free debt advice. The 2008 Guidance specifically said that the OFT had no objection to firms charging for debt management services.

The CMC has also referred to the 2010 Review and the 2012 Guidance. The recommendations in the 2010 Review were included in the 2012 Guidance. But, the 2012 Guidance was published after Mr M had approached BEL and so wasn't applicable at the time the DMP was sold to Mr M.

The CPRs were in force at the time of the sale. But as the 2008 Guidance issued by BEL's regulator didn't specify a failure to refer to fee-free services as a "misleading omission", I don't think that BEL acted inappropriately in failing to refer Mr M to these. I also believe the specific industry guidance on debt management is more relevant here than the CPRs.

I accept that after 1 April 2014, FCA guidance said that debt management companies have a duty to tell consumers that a free service is available. But that is "*in its first written or oral communication*", whereas Mr M had already been in a DMP with BEL since 2012.

I note that the CMC said that Mr M should have been told about free services on each review of his account. But, having considered the relevant guidance and regulations, I don't think that BEL has acted inappropriately by not doing so.

So, overall, I don't think that BEL has done anything wrong in rejecting Mr M's complaint.

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 M to accept or reject my decision before 16 December 2016.

Roslyn Rawson
ombudsman