

complaint

Mrs H complains that Gregory Pennington Limited, ("GPL"), didn't provide her with appropriate information when she entered into a debt management plan ("DMP") with it. The complaint is brought to this service on Mrs H's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mrs H unless stated otherwise.

background

GPL sold a DMP to Mrs H in late June 2013. Mrs H is unhappy that GPL didn't tell her about organisations offering a similar service for free or the availability of free debt advice.

The adjudicator didn't recommend that the complaint should be upheld. She'd noted the relevant industry guidance at the time Mrs H entered into her DMP. This was the Office of Fair Trading's, ("OFT"), Debt management (and credit repair services) guidance from March 2012 ("the 2012 Guidance"). This said that a debt management company should refer the customer *"where appropriate, to not-for-profit advice organisations for further help"*. The adjudicator explained that an appropriate scenario would be if Mrs H was unable to afford the fees for the DMP. The adjudicator had listened to GPL's initial call with Mrs H. During this call, GPL reviewed Mrs H's income and expenditure, and Mrs H confirmed she was able to afford monthly payments to GPL of £100. The adjudicator also looked at Mrs H's subsequent payment history and she could see Mrs H was able to keep up with the monthly payments. Based on all of this, she was satisfied Mrs H had enough disposable income to afford GPL's fees.

The CMC disagreed and responded to say, in summary, that under the 2012 Guidance, Mrs H should have been referred to not-for-profit organisations. There was also an expectation in the 2012 Guidance that debt management companies should signpost consumers to free alternatives. The CMC also said that GPL was expected to make Mrs H aware of the free sector under the provisions of the OFT's Debt Management Guidance compliance review dated September 2010 ("2010 Review").

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 have listened to a recording of GPL's initial call with Mrs H in June 2013. I can see that GPL referred her to an impartial guide on debt help written by the Insolvency Service which was available on GPL's website. I also have seen a copy letter from one of Mrs H's creditors written in September 2013 which refers to the availability of free services, including a phone number for one of those services. So, I can see that Mrs H was signposted to free debt advice by GPL in its initial call, and I think she should also have been aware of the availability of free services a few months later from her creditor's letter.

When Mrs H was sold the DMP, the 2012 Guidance applied. The 2012 Guidance specifically said that a referral to free debt advice should be made where appropriate to do so (Clauses 2.5d and 3.23g of the 2012 Guidance). The 2012 Guidance said that this would be the case if there were priority debts and/or an immediate emergency, or if Mrs H didn't have enough disposable income to afford the fees and her monthly plan payments. GPL said that Mrs H didn't fall into this category. I note that Mrs H didn't have priority debts. I can also see that

when the DMP was sold to Mrs H, her monthly disposable income was assessed at £100. In her initial call with GPL, I note that Mrs H confirmed that she could afford monthly payments of £100. I also note that Mrs H was able to make monthly payments of at least £100 in most months from July 2013 until January 2016. So, it appears to me that the fees and monthly plan payments weren't unaffordable.

The CMC also referred to the 2010 Review. I note that the recommendations in the 2010 Review were included in the 2012 Guidance. But, as shown above, in Mrs H's circumstances, I don't think that GPL was obliged under the 2012 Guidance to refer her to fee-free services.

The CMC had also previously referred to the Financial Conduct Authority's Handbook, and specifically CONC 8.2.4 (1) which applied from 1 April 2014. Under this, 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 Mrs H had already entered into the DMP with GPL prior to 1 April 2014. And GPL had already sent its first written and had its first oral communication with Mrs H prior to that date.

So, overall, I don't think that GPL has done anything wrong in rejecting Mrs H'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 Mrs H to accept or reject my decision before 28 December 2016.

Roslyn Rawson
ombudsman