

complaint

Mr R complains that a debt management plan was mis-sold to him by Debt Advisory Line Limited. He is being helped with his complaint by a representative.

background

Mr R entered into a debt management plan with Debt Advisory Line in 2009. A complaint was made to Debt Advisory Line earlier this year that the plan had been mis-sold to Mr R. He wasn't satisfied with its response so complained to this service. The complaint included that Mr R wasn't made aware of the monthly fees which were deducted from his payments and that the same or similar service could've been provided to him free of charge.

The adjudicator didn't recommend that this complaint should be upheld. Debt Advisory Line had confirmed that it would've explained the monthly management fees to Mr R when the plan was set up and in its welcome call. And the adjudicator said that, by signing the letter of authority, Mr R agreed that he'd read and understood Debt Advisory Line's terms of business – including the requirement for him to pay a monthly fee. So she was satisfied that Debt Advisory Line did make Mr R aware of the monthly fees that he would pay to it for the plan. And she said that the Office of Fair Trading's debt management guidance issued in 2008 didn't place any obligation or expectation upon Debt Advisory Line to make Mr R aware of the free sector. Later guidance placed an obligation on debt management companies to advise consumers of the free sector in certain circumstances. And the Financial Conduct Authority's rules impose that obligation on a debt management company's first written or verbal contact with the consumer. But she concluded that, as this wasn't a requirement when the plan was sold to Mr R in 2009, it wasn't reasonable to apply the later guidance retrospectively.

Mr R's representative – on his behalf - has asked for this complaint to be considered by an ombudsman. The representative says, in summary, that it accepts the adjudicator's opinion with regards to the fees charged but believes the opinion with regards to free advice requires further comment. The representative believes that Debt Advisory Line did have an obligation to tell Mr R about the free sector. It refers to the Consumer Protection From Unfair Trading Regulations 2008 and the Office of Fair Trading's debt management guidance compliance review of 2010 – which it says clearly show that there was an expectation that companies would make customers aware of the free sector and those not doing so wouldn't be seen to be acting in the customer's best interests. And it says that Debt Advisory Line was obliged to review the plan's suitability and affordability on at least an annual basis and the current legislation should be applied at the review – so Mr R should've been advised about the free sector after April 2014.

my findings

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

Mr R's representative has accepted the adjudicator's conclusions about the fees that were charged under the plan. And I agree with the adjudicator's conclusions - so I'm not going to say anything further about the fees.

The Office of Fair Trading's debt management guidance issued in 2008 – which was applicable to Debt Advisory Line in 2009 – does refer to the free sector. But it doesn't require

a debt management company to provide a customer with advice about the free sector. And I'm not persuaded that Debt Advisory Line was obliged to inform Mr R about free providers of advice concerning his debt problems when he entered into the plan or during the period of his plan. The Financial Conduct Authority's Consumer Credit Sourcebook imposed a requirement on debt management companies from April 2014 to give advice about the free sector when initial advice is given to a consumer to enter into a debt management plan. But I don't consider that it imposes a requirement on debt management companies to advise a customer who is on an existing debt management plan about the free sector. So I consider that Debt Advisory Line wasn't required to advise Mr R about the free sector after April 2014. Debt Advisory Line says that it attempted to make contact with Mr R after April 2014 to conduct annual reviews and that it has sent confirmation letters to him which explain about free services.

I'm not persuaded that the debt management plan was mis-sold to Mr R or that Debt Advisory Line has acted incorrectly in dealing with Mr R's plan. So I find that it wouldn't be fair or reasonable for me to require Debt Advisory Line to pay any compensation to Mr R or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 December 2016.

Jarrold Hastings
ombudsman