

complaint

Mrs B complains that Vincent Bond and Co. Limited was wrong to provide her with a debt management plan when she could have accessed the same service for free elsewhere.

Mrs B brings her complaint with the help of a claims management company (CMC). For ease of reading I'll refer to all representations made on her behalf as if they've been made by Mrs B.

background

In 2012 Mrs B entered into a DMP. Under that plan she paid about £600 set up fees and Vincent Bond charged a monthly fee of £45. Mrs B says Vincent Bond should have told her there were organisations that provided the same sort of service free of charge – and said the DMP might affect her credit standing. And she doesn't think the DMP was reviewed properly. Mrs B left the plan in 2015 and she'd like Vincent Bond to provide a refund.

Vincent Bond says

- the DMP was reviewed every year and Mrs B never notified any change in her circumstances;
- it told Mrs B the service was chargeable and explained the plan might affect her credit history at the initial consultation and in the debt management agreement;
- it wasn't obliged to tell customers about free sources of debt advice at the time; and
- Mrs B would have known free advice was available advice from other sources and she was free to leave the plan at any time.

Our adjudicator is satisfied that the DMP was reviewed annually. But she notes Mrs B was in receipt of benefits at the relevant time. She thinks Vincent Bond was wrong to include Mrs B's husband's income when it assessed what she could afford to pay – and it should have referred Mrs B for free debt advice. She recommends Vincent Bond should refund the fees Mrs B paid, along with interest.

Vincent Bond says it wasn't wrong to include Mr B's income as their finances were closely linked – and income and expenditure is generally assessed on a household basis.

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 reached the same conclusions as our adjudicator for broadly the same reasons.

Vincent Bond is unhappy with the way Mrs B's representative handled this matter. It suggests this service should investigate that, in the same way as we've looked into this complaint. So, I should explain that we are an informal dispute resolution service. Our role is to consider the circumstances of Mrs B's complaint about Vincent Bond, in order to reach a fair and reasonable outcome on the evidence available. And it's not within my remit here to examine the business practices of her CMC.

Mrs B had nearly £20,000 of debt and couldn't manage repayments when she took out this plan. Vincent Bond has provided copies of her financial statement and the debt management agreement. I think Vincent Bond's charges, and the fact the plan might impact on credit

standing, were made reasonably clear. But, I consider the crux of Mrs B's complaint is that Vincent Bond should have told her she could get the same advice for free elsewhere – in which case she wouldn't have agreed to pay for this DMP.

Vincent Bond says there was no obligation to provide that information under industry guidance at the time. I accept the relevant Office of Fair Trading (OFT) Debt Management (and credit repair services) Guidance didn't require businesses like Vincent Bond to tell every customer about free sources of debt advice. But, the guidance says consumers should be referred to not-for-profit organisations *"where appropriate"*. And that *may* include the situation where the consumer *"does not have enough disposable income to meet the cost of paying the fees charged"* which *"may be the case if the consumer is on a very low fixed income (pension/benefits)"*.

There's no dispute that Mrs B was in receipt of benefits when she took out this DMP. Vincent Bond says she had £300 a month disposable income – enough to meet its fees – so it didn't have to refer her to a not-for-profit organisation. But our adjudicator considers the fees only looked affordable because Vincent Bond included Mrs B's husband's income in the financial statement it prepared.

Vincent Bond says "this represented the most accurate description of [Mrs B's] actual financial situation" and Mr B signed the DMP agreement and the financial statement. It has referred me to a Money Advice Trust booklet which it considers supports the view that it's the "industry norm" to prepare a financial statement using household income. I accept it's often appropriate to do that. But, Mrs B says these debts were her sole responsibility, not joint household debts – and she feels it was wrong to take all of her husband's salary into account.

The Money Advice Trust says *"a financial statement can be prepared on the client's sole income even if they have a partner – the budget should show the client's contribution to the household expenses. This should be a fair amount of the actual household expenditure based on the client's income"*. And the OFT guidance says Vincent Bond had a responsibility to be transparent and fair in its dealings with Mrs B – and have regard to her best interests.

From the evidence I've seen, it looks as if she received monthly benefits of about £550 – and paid at least half of that towards household expenditure. On balance, I consider it unlikely that Mrs B could have met Vincent Bond's fees without using joint income. I think Vincent Bond should have realised that. And it would probably have been obliged to refer Mrs B for free advice if the financial statement was prepared using her sole income. So I consider it would have been fair to talk to Mrs B about that at the time.

Vincent Bond hasn't provided much evidence of what was discussed before Mrs B entered the DMP. But, I can see it estimated the DMP would take about six years to pay off the debts – and Mrs B was faced with the prospect of perhaps paying fees exceeding £3,000 over that time. Given her difficult financial situation, I think it more likely than not Mrs B would have chosen to seek free advice if the matter had been discussed and I'm satisfied it probably wasn't.

I understand Vincent Bond considers Mrs B should reasonably have been aware that she didn't have to pay for debt advice anyway. It has provided examples of the notices third party creditors probably sent at the time – which refer to free sources of advice. I can't be certain Mrs B received such notices. Even if she did, I'm not persuaded that's sufficient to relieve Vincent Bond from its referral obligations here. I don't think the notices make it clear that a

DMP can be arranged free of charge. And I can't fairly find Mrs B should have known she didn't have to pay for this service.

On balance overall, I think it probably would have been appropriate for Vincent Bond to refer Mrs B to a not-for-profit organisation for debt advice, given her individual circumstances. So I'm not persuaded the outcome recommended by our adjudicator is unreasonable.

my final decision

My decision is I uphold this complaint. In full and final settlement, I require Vincent Bond and Co. Limited to refund the fees Mrs B paid under her debt management plan, along with 8% simple interest a year from the date those payments were made until the date of settlement.

HM Revenue & Customs may require Vincent Bond to take off tax from the interest paid. It must give Mrs B a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 31 October 2016.

Claire Jackson
ombudsman