

complaint

Mr B complains that Debt Correct Limited, trading as Debt Correct, ("DC"), 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 B's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mr B unless stated otherwise.

background

Mr B entered into a DMP with DC in February 2014. He complains, in summary, that he wasn't made aware of the fee-free services available. He also said that payments weren't being made to his creditors as he continued to receive letters from them, and his account wasn't regularly reviewed by DC.

The adjudicator didn't recommend that the complaint should be upheld. He noted that DC had said that during its initial call with Mr B, that Mr B had been told that he could obtain free advice elsewhere. But, DC no longer had a copy of the initial call recording. The adjudicator also noted that this information was shown on DC's website. He also noted that Mr B had signed DC's authority form on 3 March 2014, so it's reasonable that he would've received some letters from creditors up to and around this point. The introduction letter from DC also clarified that regular payments would be taken from Mr B from 1 April 2014. The letters sent in from creditors were from around this time. But the adjudicator also said that if the CMC could send him further evidence from creditors where they've confirmed they weren't receiving any payments from DC, then he could look into this point further. He also noted that there was a review of the DMP in March 2015.

The CMC disagreed and responded to say, in summary, that there was no mention of fee free services on DC's website at the time of the sale of the DMP. It also said that Mr B could not reasonably have been aware that free services were available elsewhere. In addition it said that the Financial Conduct Authority's ("FCA") Handbook, and specifically CONC 8.2.4 (1), applied to the DMP. Whilst this requirement came into effect on 1 April 2014, given that the sale of the DMP was sufficiently near to this date, DC should have signposted Mr B to a free service.

The adjudicator responded to say that CONC 8.2.4 (1) only applied after 1 April 2014. He also explained that at the time of the sale of the DMP in February 2014, the Office of Fair Trading's ("OFT") guidelines said that a business would be expected to refer a consumer to free services in cases of extreme hardship. As Mr B was able to settle most of his debts within a year of taking out the DMP, he didn't think that this applied.

my findings

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

As the CMC has only referred in its response to the adjudicator's view to the lack of a referral to the free debt counselling sector, I propose to only deal with this aspect of Mr B's complaint in my decision.

When Mr B was sold the DMP, the OFT's Debt management (and credit repair services) guidance from March 2012 ("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 Mr B didn't have enough disposable income to afford the fees and his monthly plan payments. I can see that Mr B's monthly disposable income was assessed at £169.00, that he was employed and had no priority debts. Because of this, it appears to me that the fees and monthly plan payments weren't unaffordable.

I also note that the CMC has referred to the FCA's Handbook, and specifically CONC 8.2.4 (1). But I don't think it applies to Mr B's DMP as it only applies to agreements entered into after 1 April 2014. And Mr B's DMP was set up prior to 1 April 2014. So I don't think that DC has done anything wrong here.

The CMC has also referred to the OFT's Debt Management Guidance compliance review dated September 2010 ("2010 Review"). The recommendations in the 2010 Review were taken into account in the 2012 Guidance. But, as shown above, in Mr B's circumstances, I don't think that DC was obliged under the 2012 Guidance to refer him to fee-free services.

I also note that the CMC said that Mr B couldn't reasonably have known that free services were available elsewhere. But I note that one of Mr B's creditors had sent him a copy of the FCA's information sheet on arrears in early April 2014. I note that this sets out details of not-for-profit organisations providing free advice. So, notwithstanding that I would have reasonably expected Mr B to have known about these from this information, I note that Mr B continued with his DMP after that date.

So, overall, I don't think that DC has done anything wrong in rejecting Mr B'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 B to accept or reject my decision before 19 January 2017.

Roslyn Rawson
ombudsman