

complaint

Mr H complains that Debt Correct Limited mis-sold him a debt management plan (DMP) as it didn't advise him that he could get free debt advice elsewhere and he'd like a refund of the fees he paid.

Mr H is represented by a claims management company - but I'll refer to any representations made on his behalf as if they were made by Mr H, for simplicity's sake.

background

Debt Correct says Mr H would have been told about free advice during its first phone call and the same information was available on its website. It couldn't provide a copy of the actual call recording, but produced the statement it says phone advisers had to read to customers at the time.

That says "before I pass you over to an advisor, I must read you a small statement. Under FCA guidelines I am obliged to inform you that you can obtain free advice by contacting organisations such as the... Money Advice Service".

On balance, our adjudicator thinks Mr H probably was told free advice was available and he doesn't recommend this complaint should be upheld.

Mr H says

- the statement Debt Correct provided doesn't comply with industry guidance in place at the time, which goes a step beyond ensuring free advice is signposted. Customers must be told they can receive the exact same service elsewhere free – which is different to signposting;
- the statement wasn't part of the advice session – so Mr H hadn't been told what his options were at that point and couldn't make an informed decision as to whether he'd prefer free services;
- all advice in the debt management industry is free at this point - Debt Correct wouldn't have charged Mr H then if he'd decided not to go ahead; and
- Mr H only had one credit account and Debt Correct was going to keep £25 out of each monthly payment prolonging his DMP from 19 to 26 months and costing more. So it's unlikely Mr H would have opted to use Debt Correct if he'd been told the advice was available free elsewhere.

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 much the same reasons.

Mr H contacted Debt Correct about his money problems in 2015. The relevant industry regulations may be found in the Financial Conduct Authority (FCA) handbook at CONC 8.2.4. I note that is headed "*signposting to sources of free debt counselling etc*" and it says:-

"A debt management firm must prominently include

(1) in its first written or oral communication with the customer a statement that free debt

counselling adjusting, debt and providing of credit information services is available to customers and that the customer can find out more by contacting the Money Advice Service.”

I think the script Debt Correct supplied provides enough information to comply with the relevant FCA requirements. I'm not persuaded customers had to be given that information *after* discussing their options. I'm satisfied it could be provided in the way Debt Correct says it was here.

I appreciate it's frustrating that Debt Correct can't provide the relevant call recording now. Where evidence is incomplete, inconclusive or contradictory - as some of it is in this case - I look at available evidence and the wider circumstances. And I reach my decision based on what I consider is most likely to have happened, on the balance of probabilities.

Debt Correct has supplied the details of its staff induction for this sort of call. I can see the script about free advice is highlighted in a separate box, which says staff “must” read it before the caller can be transferred. I think it's more likely than not that the phone adviser Mr H spoke to would have read him that script during his phone call. I can't safely find he wasn't told that free advice was available. And I don't think the fact that Mr H went on to pay Debt Correct - when other organisations provided the same service free - means I can reasonably find that information wasn't provided.

On balance overall, I am not persuaded there are sufficient grounds here for me to uphold this complaint. I realise this decision is likely to disappoint Mr H. But he doesn't have to accept it, in which case he remains free to pursue the matter by any other means that may be available.

my final decision

My decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 November 2016.

Claire Jackson
ombudsman