

complaint

Mr J complains that a debt management plan was mis-sold to him by Butler-Do Limited, trading as Kensington Financial Management. He also complains about the way that the plan has been administered. He is being helped with his complaint by a representative.

background

Mr J and his wife entered into a debt management plan with Kensington Financial Management in May 2013. A complaint was made to it last year that the plan had been mis-sold to them. The complaint said that:

- they weren't made aware:
 - that the same or similar service could've been provided for them free of charge;
 - of the setup fee; and
 - of the full range of solutions available and their representative believes that they should've been made aware of a debt arrangement scheme; and
- reviews of their account weren't conducted to ensure that the plan and the payments being made were appropriate.

Mr J wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She didn't consider that the applicable guidance required Kensington Financial Management to refer Mr J to not-for-profit organisations. She was satisfied that the set up fee was covered in the consultation call, welcome call and the terms and conditions. She noted that Kensington Financial Management says that it carried out annual plan reviews – and that Mr J's plan was reviewed in May after he said that he had lost his job. He had a negative disposable income and was advised to contact the money advice service or his local citizen advice bureau for further assistance. She concluded that Kensington Financial Management had made Mr J and his wife aware of debt management plans and debt arrangement schemes – as well as other solutions – and that they'd chosen a debt management plan.

Mr J's representative - on his behalf - has asked for this complaint to be considered by an ombudsman. The representative says, in summary, that the crux of the complaint is that Kensington Financial Management had an obligation to inform Mr J of the availability of free services elsewhere. 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 Kensington Financial Management was obliged to advise Mr J about the free sector after April 2014 under the Financial Conduct Authority's Consumer Credit Sourcebook. It says that the underlying ethos of the guidance is that the customer is treated fairly and any actions taken are done so in the customers best interest – so withholding information about the free sector wouldn't comply with that.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so – I agree with the adjudicator – and for the same reasons. Mr J's representative says that the crux of the complaint is whether Mr J should've been advised about the free sector. So I'm not going to

say anything further about the other aspects of his complaint as I agree with the adjudicator's conclusions on them.

Under the Office of Fair Trading's debt management guidance – issued in 2012 – a debt management company was expected to refer a consumer to a not-for-profit advice organisation for further help if they had priority debt problems, an immediate 'emergency' or they didn't have enough disposable income to meet the cost of paying the fees. And the Debt Managers Standards Association code of conduct says that if a consumer is unable to pay any management fees due to the severity of their financial position, they should be referred to non profit advice centres.

I've not seen evidence to show that Mr J had priority debt problems, an immediate emergency or that he couldn't pay Kensington Financial Management's fees. So I'm not persuaded that Kensington Financial Management was required to refer him to non profit advice centres in these circumstances.

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 there was no requirement under those rules for Kensington Financial Management to give Mr J advice about the free sector after April 2014.

I'm not persuaded that the debt management plan was mis-sold to Mr J or that Kensington Financial Management has acted incorrectly in dealing with Mr J's plan. So I find that it wouldn't be fair or reasonable for me to require Kensington Financial Management to pay any compensation to Mr J 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 J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 December 2016.

Jarrold Hastings
ombudsman