

complaint

Mr L complains that Debt In Control Limited, trading as Clear View Finance ("DICL") provided him with inaccurate information about the duration of his debt management plan on two occasions before he entered into a contract with it.

background

Mr L was cold called by DICL in February 2013. It offered to set up a debt management plan for him to clear his four payday loans. He said that he was told in the initial sales call that the plan would last for six months. But when he received the contract to sign, it referred to the plan lasting for nine months. So Mr L called DICL to query this and was told that the plan would last eight months which consisted of two monthly payments of DICL's fees and six monthly payments of £215 to repay his creditors. Then in April 2013, Mr L called DICL again to query the finish date of the plan and was told that he had another ten and a half months to pay. He complained to DICL as he said that if he had initially been told the actual duration of the plan, he would have looked at other options.

DICL said that the plan duration had increased as the loan balances provided by Mr L had increased. This was covered by Condition 3.3 of its terms and conditions. It also said that its sales script made this clear.

The adjudicator was satisfied that Mr L thought that the debt management plan was based on the amounts of his debts as they stood at the start of the plan, and that he did not know that his creditors could apply interest and charges which would increase his debts. DICL had told Mr L not to make his next payments. But the adjudicator said he did not consider that Mr L realised that by doing this, it would have a negative impact on his balances. He also said that it had not been made sufficiently clear to Mr L that the plan duration was variable. He noted that Mr L had not been told when DICL received accurate balances, and that his plan had been extended to 13 months. He concluded that if DICL had clearly explained these points, then Mr L would not have entered into the plan. As he considered that Mr L had entered into the plan on the basis of incomplete information, he recommended that DICL refund to Mr L its two initial fees totalling £500 and pay interest at 8% simple per annum from the date of payment until the date of settlement.

DICL disagreed, and responded to say, in summary, that it was confident that its representative followed the sales script, and that its terms and conditions clearly set out the terms of engagement.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The Office of Fair Trading issued Debt Management Guidance in March 2012. This included provisions that:-

- *Prior to entering into the contract, the consumer should be provided with sufficiently adequate and material information about the nature of the service which is offered, its duration, and actual or likely total costs.*
- *The information should state clearly the implications (including potential benefits and key risks) of the option being offered.*
- *Failing to give sufficient information including advantages and disadvantages (including key risks) was an unfair and improper business practice.*
- *The debt management plan provider should keep the consumer informed of the outcome of any reassessment. Any proposed changes to the plan or service should be discussed at the earliest possible opportunity.*

I can see that the duration of the plan and the total amount paid under it was important to Mr L. There is no mention of plan duration in the sales script but I consider it more likely than not that this was discussed, and that Mr L understood from the discussion that the plan would last six months. I say this because when Mr L received a standing order form to complete, he was surprised that it did not have a fixed duration. So he looked at the terms and conditions, which he found hard to understand, and saw a reference in condition 5.7 to the plan lasting nine months, and not six months. He then rang DICL for clarification and was told that the plan would last eight months. He told DICL that he would not go ahead if the plan was any longer than eight months. But he said that he was assured by DICL that it would not last longer than this, which he accepted. Whilst DICL's contact notes referred to Mr L's call to complain about the nine month period, there is no indication of DICL's response in the notes.

DICL explained that the repayment plan was extended because the loan balances were higher than those provided to it by Mr L. But I can see that the actual balances were obtained between a week and three weeks after the initial sales call when the original balances were provided. As Mr L had been told not to make his February payments, it is not surprising that the balances were higher. But, I cannot see in the sales script that the implications and key risks, such as this, were sufficiently clearly explained. The sales script said:-

"Now I also want to mention that everything we have discussed today is based around the information you have provided me, if anything was to change regarding your income or balances we can adjust your plan to reflect your monthly budget. This would in most circumstances adjust the term of your plan which will either increase or decrease the total fee's you pay".

I am not persuaded that this information was sufficiently clear and that the key risks were explained. I consider that it would have been reasonable to explain at this stage that the stopping of the loan repayments would almost certainly increase the balances, and extend the estimated plan duration, perhaps by several months.

I also note that Mr L could have cancelled the plan within ten working days, which was by 21 February 2013. I also note that updated balances had been obtained from three of the four payday lenders by 19 February 2013. So, I consider that it would have been reasonable for DICL to have discussed the consequent change to Mr L's plan duration as soon as these balances were received. If it had done so, he would have been able to cancel the plan and obtain a refund of the fees paid to DICL.

DICL also said that the terms and conditions were clear, fair and reasonable. But Mr L said that he had difficulty understanding them. I can understand this. For example, I can see that

information about the plan duration and potential extension of the plan is set out in three different places over three pages of the agreement (in the definition of "Period" and conditions 3.3 and 5.7). It might have been easier for Mr L to understand this information if it had been set out all together.

So, on balance, and in the circumstances of this complaint, I consider that Mr L entered into the plan on the basis of unclear and incomplete information. He was also not given information about his updated balances and their effect on the plan's duration within the cancellation period which would have enabled him to obtain a fee refund. For these reasons, I agree with the adjudicator that it would be fair and reasonable for Mr L to receive a refund of the fees totalling £500 together with annual interest at 8% simple from the date of payment to the date of settlement. I am not suggesting a refund of the management fees as the plan otherwise appears to have been well run.

I also consider that Mr L has been inconvenienced in pursuing this matter, and I consider that DICL should pay him £50 compensation for this.

my final decision

My decision is that I uphold this complaint in part. In settlement of it, I order Debt In Control Limited, trading as Clear View Finance to:-

1. Pay (not credit) to Mr L £500;
2. Pay interest on £500 at an annual rate of 8% simple, from the date of payment to the date of settlement; and
3. Pay to Mr L £50 compensation for inconvenience.

If DICL considers it has to deduct tax from the interest element of my award, it should send Mr L a tax deduction certificate when it pays him. He can use that certificate to try to reclaim the tax, if he is entitled to do so.

Roslyn Rawson
ombudsman