

complaint

Mr C complains, in summary, that DFH Limited, trading as DFH Financial Solutions, ("DFH"), 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 C's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mr C unless stated otherwise.

background

Mr C entered into a DMP with DFH in January 2012. He complains that he wasn't told that a DMP could have been provided by the free sector. He said that he was pressured into signing up to a DMP which didn't suit his needs and it wasn't the product he'd applied for. Mr C also said that he was charged a set-up fee and monthly fees which he hadn't been told about at the time of the sale. In addition, he said that the DMP caused damage to his credit file and affected his ability to obtain a mortgage. Mr C also raised concerns about the affordability of the repayments he was making through the DMP.

The investigator didn't recommend that the complaint should be upheld. She noted that DFH no longer had a copy of the initial sales call. But, she'd seen a copy of its sales script which would have been used at the time. She was satisfied that DFH would have discussed all the fees applicable to the agreement with Mr C. She was also satisfied that DFH would've discussed the various options to help Mr C manage his debts. She couldn't agree that Mr C was pressured into signing up to the DMP. The investigator also didn't think that the damage to Mr C's credit file was a direct result of Mr C entering into the DMP. As Mr C already had existing debts, his credit file would have already been affected by this. With regard to affordability, the investigator noted that Mr C's contractual payments to his creditors before the DMP were over £350. After entering into the DMP, his monthly payments were £200. So, she didn't think that the DMP was unaffordable.

The CMC disagreed and responded to say that the investigator had failed to mention that DFH hadn't advised Mr C that he could receive the same service for free elsewhere. The CMC said that DFH was expected to make Mr C aware of the free sector under the provisions of:-

- the Office of Fair Trading's ("OFT") Debt management guidance dated September 2008 ("the 2008 Guidance");
- the OFT's Debt Management Guidance compliance review dated September 2010 ("2010 Review");
- the OFT's Debt management (and credit repair services) guidance from March 2012 ("the 2012 Guidance"); and
- the Consumer Protection from Unfair Trading Regulations ("the CPRs") of 2008 under which it thought that D's failure to refer to fee-free services was a "misleading omission".

The investigator responded to say that she'd seen DFH's sales script which would've been read out to Mr C. This included a statement that there were providers of free debt advice available.

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 propose to only refer to the issues raised by the CMC in its response to the investigator's view in my decision.

I note that the 2008 Guidance applied at the time that Mr C entered into the DMP. There were no obligations within this for DFH to tell Mr C about fee-free debt advice. The 2008 Guidance specifically said that the OFT had no objection to firms charging for debt management services.

The CMC has also referred to the 2010 Review and the 2012 Guidance. The recommendations in the 2010 Review were included in the 2012 Guidance. But, the 2012 Guidance was published after Mr C had approached DFH and so wasn't applicable at the time the DMP was sold to Mr C.

The CPRs were in force at the time of the sale. But as the 2008 Guidance issued by DFH's regulator didn't specify a failure to refer to fee-free services as a "misleading omission", I don't think that DFH acted inappropriately in failing to refer Mr C to these. I also believe the specific industry guidance on debt management is more relevant here than the CPRs.

Notwithstanding that the 2008 Guidance didn't contain an obligation for DFH to tell Mr C about fee-free debt advice, I note from DFH's sales script that it tells consumers that there are providers of free debt advice. And it goes on to tell consumers that details of these providers can be found on the back of the Frequently Asked Questions booklet included in the pack which DFH would send to consumers. I note that the CMC wanted to see a copy of DFH's sales script, but I can understand that DFH didn't want this released to third parties due to its commercial sensitivity.

So, overall, I don't think that DFH has done anything wrong in rejecting Mr C'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 C to accept or reject my decision before 20 February 2017.

Roslyn Rawson
ombudsman