

complaint

Mrs G, represented by a complaints management company (CMC), complains that Baines & Ernst Limited (the business) mis-sold her a debt management plan (DMP).

background

Mrs G set up a DMP in 2011. She says that she was not made aware of the set up fees before she entered into her DMP and that she was not told that recovery action could continue while her DMP was in place. Mrs G also says she was not made aware that there were free debt advice services available. She says that had she been told of the free debt services she would have used them instead.

Mrs G's DMP started in February 2011 and the business says that at that time the regulations did not require it to inform her of the free debt services available. It says that following a call with Mrs G she was sent a comprehensive welcome pack and the written terms and conditions. It says this included information about how the DMP worked including that lender recovery action could continue and it also contained information detailing all of the fees.

The adjudicator did not uphold this complaint. She said that Mrs G took out her DMP in 2011 and at that time the business was not required to advise clients of a free alternative. She said that Mrs G was provided with a welcome brochure and this made it clear that default notices could still be issued whilst the DMP was in place. The terms and conditions also set out that recovery action could continue. The set up fee was mentioned in both the terms and conditions and the welcome brochure.

Based on this the adjudicator did not find that the DMP had been mis-sold.

The CMC said that as Mrs G's DMP was still in place after April 2014 she should have been made aware at that time that there were free debt services available. It says this did not happen.

my findings

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

Mrs G complains that she was not told that recovery action could continue while her DMP was in place and she was not told about the initial set up fee. I have looked at the welcome brochure and the terms and conditions that were provided to Mrs G when she was setting up the DMP. These both include information about the fees that will be charged and that lenders can continue with recovery action.

Mrs G signed a client form stating she had read the terms and conditions in 2011. Based on this I find it reasonable to find that Mrs G should have been reasonably aware of the actions lenders could continue to take and the fees charged.

The other part of Mrs G's complaint is that she was not made aware of the free debt services available. As the adjudicator has noted, Mrs G's DMP was set up in 2011 and at this time the business was not required to inform Mrs G of the free debt services available. The CMC has

raised the point that Mrs G's DMP continued beyond April 2014 when business was required to inform clients of the free debt services available.

I note the comments made by the CMC about the requirements introduced in April 2014. These do require a business to let customers know about free debt services available in the first written or oral communication. However, Ms G's DMP was in place before April 2014 and so the first communication had happened prior to that date.

Overall, I find that the information provided shows that Mrs G was made aware of the features of the DMP and its cost. Based on this I do not find that the business has done anything wrong.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 18 May 2017.

Jane Archer
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