

complaint

Mr W complains that 123 Debt Solutions Limited, (“DSL”), 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 W’s behalf by a claims management company (“CMC”). But for ease, I shall refer below to all actions being taken by Mr W unless stated otherwise.

background

Mr W agreed to the terms and conditions for a DMP with DSL in December 2013. He then paid it £99 in January 2014 and £30.50 in May 2014. Mr W then paid no further amounts to DSL and said he wanted to cancel the DMP in August 2014. He is unhappy that he wasn’t told about free debt management services, that his credit rating would be impacted, and that no reviews of the DMP took place.

The adjudicator didn’t recommend that the complaint should be upheld. She said that DSL wasn’t required to tell Mr W about free services. She also explained that Mr W had already been in a DMP with another company so that his credit rating was already likely to be adversely affected. She also noted that the DMP was cancelled before the annual review could take place.

The CMC disagreed and responded to say that the Office of Fair Trading’s Debt management (and credit repair services) guidance from March 2012 (“the 2012 Guidance”) applied to the DMP. Under this Mr W should have been told about free services. It also referred to the Financial Conduct Authority’s (“FCA”) Handbook which applies to agreements entered into after 1 April 2014. Within this, the Consumer Credit Sourcebook explains the requirements on businesses signposting consumers to sources of free debt counselling etc. The CMC referred to CONC 8.2.4 which 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, debt adjusting and providing of credit information services is available to customers and that the customer can find out more by contacting the Money Advice Service; and

(2) on its web-site the following link to the Money Advice Service web-site

(<https://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator>).”

The adjudicator responded to say that the requirements in the 2012 Guidance to advise about free services applied “where appropriate”. She also said that CONC 8.2.4 came into force on 1 April 2014, and cannot be retrospectively applied. CONC 8.2.4 (1) cannot be applied where the first written or oral communication had taken place prior to 1 April 2014 (as in this case). CONC 8.2.4 (2) applied from 1 April 2014 onwards. She noted that the CMC had supplied evidence which appeared to demonstrate that CONC 8.2.4 (2) wasn’t complied with by DSL on 1 April 2014. But she said that even if that were the case, this in itself wouldn’t lead her to automatically uphold this complaint. She would need to be persuaded that the absence of this information on DSL’s website had a material effect on the actions taken by Mr W.

my findings

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

As the CMC has only referred in its responses to the adjudicator's view to the referral to the free debt counselling sector, I propose to only deal with this aspect of Mr W's complaint in my decision.

I have seen a copy of DSL's Personal Details Form. I note that this shows the statements read to Mr W on the initial assessment for the DMP in November 2013. These include a statement about free services. So, it appears that Mr W may have been told about free services at that time.

But, even if this wasn't the case, I can see that when Mr W was sold the DMP, that DSL was obliged to comply with the requirements of the 2012 Guidance. The 2012 Guidance specifically said that a referral to free debt advice should be made where appropriate to do so (Clauses 2.5d and 3.23g of the 2012 Guidance). The 2012 Guidance said that this would be the case if there were priority debts and/or an immediate emergency, or if Mr W didn't have enough disposable income to afford the fees and his monthly plan payments. But I can see that this didn't appear to be the case in Mr W's circumstances. I can see that his debts weren't priority debts and there didn't appear to be an immediate emergency. And his monthly disposable income was calculated to amount to £99. Because of this, it appears to me that the fees and monthly plan payments weren't unaffordable.

I accept that after 1 April 2014, FCA guidance said that debt management companies have a duty to tell consumers that a free service is available. But that is "*in its first written or oral communication*", whereas Mr W had already entered into the DMP with DSL prior to this and DSL had already sent its first written and had its first oral communication with Mr W prior to 1 April 2014.

I also note the CMC's concerns about CONC 8.2.4 (2). DSL said that it had placed a link to the Money Advice Service on its website from 1 April 2014. But, after it was discovered that inaccurate text had been used, the link came down. The link was then replaced a few weeks later.

I note that Mr W only made two payments to DSL totalling £129.50. The first payment of £99 was made in January 2014, and the second payment of £30.50 was made in mid-May 2014, even though Mr W had told DSL in April 2014 that he'd written to them to cancel the DMP. No letter was received. But, Mr W then made no further payments and cancelled the DMP in August 2014. So, in these circumstances, I don't think that the absence of a link to the Money Advice Service on DSL's website for a few weeks after 1 April 2014 would have had a material effect on Mr W's actions.

So, overall, I don't think that DSL has done anything wrong in rejecting Mr W'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 W to accept or reject my decision before 22 December 2016.

Roslyn Rawson
ombudsman