

complaint

Mrs A complains that PDHL Limited mis-sold her a debt management plan.

background

Mrs A was in financial difficulties and took a debt management plan through PDHL. She says that PDHL did not do enough to make her aware of alternatives (including free debt services), and that she should have been advised to declare herself bankrupt.

Mrs A also says that PDHL has not administered the debt management plan properly.

PDHL said that all options had been discussed with Mrs A during the application process, and that the plan was a suitable product for her. It said it had administered the plan properly, with regular distributions to her creditors. It considered that the plan had worked well for Mrs A and did not accept that it was liable to compensate her.

As things were not settled, Mrs A brought her complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator was not persuaded that the debt management plan had been mis-sold to Mrs A, or that a bankruptcy application would have succeeded.

The adjudicator had also checked with creditors, and was satisfied that they had received the expected payments from PDHL during the debt management plan. Given this, the adjudicator did not recommend that the complaint should succeed.

Mrs A did not agree and responded through her representatives. The response was detailed and included extracts from regulations, websites and other material. I have considered this material in full and I summarise the main points that were made:

- They believe that PDHL is suppressing call recordings to avoid incriminating itself.
- PDHL emailed Mrs A listing its range of services, but that list did not include mention of bankruptcy or debt relief orders.
- The letter PDHL says it sent was not sufficient; it was sent nearly six months after the plan had been taken and did not highlight the availability of free and impartial advice about insolvency.
- PDHL has not proved that it sent the terms of business to Mrs A, or that she was given a proper explanation of the difference between free and fee-charging debt plans. It has not discharged its regulatory obligations in that regard.
- PDHL gave Mrs A a list of debt charities she could approach if she was unsure about which debt solution was right for her. But if PDHL did not advise her properly, Mrs A could not know whether that situation applied to her.
- PDHL did not direct Mrs A to, for example, the Insolvency Service's relevant guide. PDHL had a duty to signpost Mrs A to sources of free and impartial debt advice and this was not optional. It wilfully concealed this information, which would have caused Mrs A to choose a different and better debt option.

- Later correspondence during the duration of the plan, in which a fee increase is made, does not seem to have been fairly worded and it is not clear whether PDHL acted in accordance with the contract.
- One of the creditors wrote to say there were arrears. PDHL has not proved that it dealt correctly with this creditor.
- When Mrs A filled out her income and expenditure report, she did not know what sorts of expenditure would be allowable under a debt management plan. It would have been open to her to include contingency allowances for other expenditure, which could have made bankruptcy or a debt relief order possible.
- Given Mrs A's age and circumstances when she took the plan, it is clear that bankruptcy would have led to her becoming debt-free earlier and at less cost than the debt management plan.
- They would like to have a personal conversation with the ombudsman, prior to a final decision being made on the case. That is so they can discuss the relevant guidance/regulation.

my findings

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

The relevant regulator for debt management activity at the time Mrs A took her plan with PDHL was the Office of Fair Trading, and my consideration of this case has included the OFT regulatory guidance in force at the relevant time.

The regulation and guidance for the relevant period, together with the various material that Mrs A's representatives have cited in their representations, are all publicly available and I have access to them. Mrs A's representatives have also provided their full written arguments about what they consider the effect of these to be. Given that, I am not persuaded that a personal conversation with Mrs A's representatives is necessary to the fair decision of this complaint.

When Mrs A first began dealing with PDHL she was already maintaining a debt management plan with a different company, which she had set up about three years before. The available evidence about what was discussed and decided at that time is limited. PDHL accepts that its contemporaneous note does not specifically state that insolvency was discussed and rejected by Mrs A, but says this was in fact done.

Mrs A's representatives say that no discussion was made of insolvency options before Mrs A entered into the agreement with PDHL. The representatives argue that bankruptcy would have been the best option for Mrs A, because she would have been debt-free quicker and without having to make ongoing monthly payments to creditors. They say that PDHL should have recommended this to Mrs A, rather than selling her a debt management plan.

The representatives also say that Mrs A would have managed to borrow or save up the necessary money to apply to the courts to be made bankrupt. They say that such an application would almost certainly have succeeded, if Mrs A had also been advised about how best to construct her income and expenditure figures for the court.

Mrs A's representatives have described the financial advantages of bankruptcy, though that is not of course the whole picture. Even where a court accepts that a debtor cannot afford to repay their debts by any other means and bankruptcy is granted, there are also some significant financial disadvantages and consequences from becoming bankrupt.

Looking at the evidence as a whole, the debt management plan appears to have been affordable and was maintained. Mrs A's creditors were willing to accept payment of her debts by instalments and her total indebtedness reduced by a significant proportion during the two and a half years she was with PDHL.

Overall, I am not persuaded either that PDHL should have recommended bankruptcy to Mrs A as the best debt solution for her, or that the debt management plan was mis-sold.

The evidence from creditors does not support Mrs A's representatives' complaint that PDHL did not administer the plan correctly, or that arrears of payments were left outstanding. I have seen no evidence that the charges made under the plan exceeded the relevant contractual provisions – the total that Mrs A paid to PDHL was comfortably below the maximum percentage cap provided for in the contract.

PDHL told Mrs A about the availability of free advice, even if not to the level of detail that her representatives argue it should have. Mrs A's representative has said that if PDHL had made Mrs A properly aware, before signing her up to the plan, of the free advice and help available to her she would never have opted to take a fee-charging plan.

But, before Mrs A came to PDHL, she was already on a fee-charging plan with another provider. Following a change to the management fee, she opted to leave PDHL and went to a fresh fee-charging provider who offered a lower management charge. Mrs A had been made aware during that time of the availability of free debt help, but did not act on it.

In all the circumstances, I am not persuaded that greater effort by PDHL to direct Mrs A towards specific free organisations or services would have resulted in her choosing not to take up (or deciding to discontinue) the plan with PDHL.

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 A to accept or reject my decision before 11 April 2016.

Jane Hingston
ombudsman