

complaint

Miss H complains that she wasn't provided with satisfactory advice about her debt management plan ("DMP") by a debt management company, ("D"), which has since been acquired by Butler-Do Limited ("BL"). The complaint is brought to this service on Miss H's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Miss H unless stated otherwise.

background

Miss H entered into a DMP in July 2010 with D. Miss H said, in summary, that she:

- wasn't made aware that a DMP could have been provided by the free sector and, had she been told, she wouldn't have used a fee paying service;
- was unaware that interest and charges might continue to accrue.

The investigator didn't recommend that the complaint should be upheld. He explained that when Miss H entered into her DMP, there was no requirement for D to advise her of a free service. He had also seen D's compliance statement which outlined the set up fee payable to it and the fact that creditors could still apply interest and charges. Overall, he didn't think that D had done anything wrong in the way it arranged the DMP.

The CMC responded to say, in summary, that it disagreed with the investigator's view on Miss H not being told about a free service. It understood that the Office of Fair Trading's ("OFT") Debt management guidance dated September 2008 ("the 2008 guidance") didn't specify that a debt management company must advise a consumer about the free sector. But, the CMC referred to the OFT's Debt Management Guidance compliance review in September 2010 and said that this made it clear that there was an expectation that debt management companies should provide full information about the free sector. It also referred to the provisions of the OFT's Debt Management (and credit repair services) Guidance from March 2012 ("the 2012 Guidance"). In particular this said that D had an obligation to make Miss H aware of fee-free services. The CMC also referred to 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". It also said that D should have told Miss H about the free sector after 1 April 2014 under the Financial Conduct Authority's ("FCA's") regulations.

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 only propose to deal with the issues raised by the CMC in its response to the adjudicator's view in my decision.

I note that the 2008 guidance applied at the time that Miss H entered into the DMP. There were no obligations within this for D to tell Miss H 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 CPRs, the OFT's 2010 Compliance Review and the

2012 Guidance. But, the 2012 Guidance and the OFT's 2010 Compliance Review were published after Miss H had approached D and so were not applicable at the time. The CPRs were in force at the time. But as the 2008 guidance issued by D's regulator didn't specify a failure to refer to fee-free services as a "misleading omission", I don't think that D acted inappropriately in failing to refer Miss H to these.

The CMC has also referred to the FCA's regulations. I understand that after 1 April 2014, D's scripts were amended and its clients were advised of free services in their next review call. D said that Miss H received information about the free sector in her review call.

So, overall, I don't think that BL has done anything wrong in rejecting Miss H'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 Miss H to accept or reject my decision before 7 November 2016.

Roslyn Rawson
ombudsman