

complaint

Mr E complains that he was misled by NEO Media Solutions Limited ("NEO"), trading as One Debt Solutions, about how long it would take to be debt free to persuade him to enter into its agreement. He says he has also incurred a county court judgement and defaults on his credit file because of the way NEO has managed his debts. He feels he is entitled to a full refund of fees from NEO.

background

Mr E entered into a debt reduction/debt management plan with NEO in 2009. By the time of his complaint in 2012, he had paid £12,900 to NEO, which is not in dispute. According to NEO, just over £4,000 has been distributed to his creditors and over £4200 has been taken in fees. Over £4,600 remains unaccounted for.

Our adjudicator recommended that the complaint be upheld because NEO had not complied with the relevant guidance issued by the Office of Fair Trading in a number of respects. He concluded that it would not be reasonable for NEO to keep any of the sums paid by Mr E that have not been distributed to his creditors. He recommended that these fees should be refunded together with interest. He also recommended that Mr E should receive compensation of £250 for the distress and inconvenience caused by NEO's actions.

NEO did not respond substantively to the adjudicator's assessment. Therefore, the complaint has been referred to an ombudsman for review.

my findings

I have considered all the available evidence to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I uphold Mr E's complaint.

NEO has sent a copy of the agreement it says was signed by Mr E. Under the terms of the agreement, NEO agreed, amongst other things, to:

- identify situations where Mr E may have grounds for challenging the liability for the debts and challenge where appropriate;
- negotiate a reduction in Mr E's monthly unsecured payments to a figure of not more than £300 per month;
- stop interest and charges;
- pay the relevant amount monthly on his behalf to the creditors except where the debt is in dispute;
- keep him informed ... by sending him monthly statements;
- advise him on matters relating to action commenced by creditors;
- defend any court action.

I am satisfied that the services to be provided by NEO included debt adjusting. As such, the agreement is subject to the Office of Fair Trading Debt Management Guidance (the 'guidance'), which, in summary, provides that -

- contract terms and conditions should be fair, written in plain, intelligible language and easily legible;
- the contract should set out the nature of the services that are being supplied and the total cost to the consumer of the service;

- consumers should be warned of the consequences of stopping contractual payments and that creditors are not obliged to accept reduced repayments or to freeze interest

The guidance issued in 2008 was updated in 2012, but the above provisions are also incorporated in the new edition of the guidance.

I do not consider that NEO's agreement complies with the guidance. In particular, it does not clearly differentiate between the debt reduction and debt management elements of the service. It does not set out the stages of each part of the service or over what timescales they will be completed. Consequently, it is not clear that NEO will not undertake any debt management activities until the enforceability of a debt has been established. Nor is there adequate warning that the effective stopping of payments (apart from nominal payments of £1) to all creditors while enforceability is tested could have adverse consequences for its customers.

I also find that the 'costs information' in the contract is confusing and does not explain how payments are applied during the currency of the agreement. It does not explain how the fee of just under £2,500 is calculated or what it will be used for. The information about administration and management fees is equally unclear and does not distinguish explicitly between the different services covered by the agreement.

In addition, whilst Mr E has signed a compliance form agreeing to a number of statements, it relates to advice about a debt management plan only. It is also not evidence, in my view, that Mr E was given the best advice possible before entering into the agreement with NEO.

NEO has provided no other evidence that it adequately explained to Mr E the type, duration and cost of the service it was providing.

It is apparent from Mr E's initial complaint to NEO that he does not feel he was given an accurate estimate of how long it would take him to repay his debts. Mr E says he was told he would be debt free within three years, but this has not happened. Neither is he happy that he was given adequate information about how much NEO's services would cost. He did not understand that only a small proportion of what he was paying NEO was to be distributed to his creditors.

In addition, contrary to NEO's contractual promises, Mr E does not appear to have been kept informed during the course of the agreement. Nor, given the nature of his enquiries, does he appear to have been aware that there are risks associated with entry into this sort of agreement. I accept that in signing the compliance form he agreed that he had been informed about the risk of default notices and of 'short-term' impact on his credit rating. However, this statement is misleading and clearly does not set out the full risks that Mr E was exposed to, especially legal action by his creditors.

I also acknowledge that Mr E initially accepted NEO's explanations in response to his complaint and, at that stage, did not challenge the amount NEO had retained in fees. Instead he told NEO that he wanted to close his account and to be refunded all undistributed funds. NEO did not agree to the refund because it said the funds would be used to cover ongoing claims.

Having considered NEO's responses, I do not find that they gave Mr E a clear and comprehensive explanation of the work it had carried out for him and how its fees had been calculated and apportioned. There is no explanation and breakdown from NEO about

precisely what action has been taken in relation to each of Mr E's debts (supported by evidence) and how much has been paid to each creditor. The table of payments provided by NEO does not tally with the amount NEO has told Mr E it distributed to his creditors. Moreover, neither figure corresponds with what NEO has told this service it distributed.

There is also no attempt to explain why Mr E has ended up with a judgement against him, or why he was not given prior warning about this. In addition, NEO's projection of when Mr E might become debt free still seems to be based on pure speculation about the success of various claims, despite the fact that Mr E was approximately three years into his contract with NEO at the time of these exchanges and had already paid NEO a substantial amount in fees.

Mr E has explained that he only agreed to leave his previous debt management plan and enter into the agreement with NEO based on its assurance that he would be debt free within three years. NEO has not sought to deny that it made such a statement to Mr E before he entered into the agreement. It has also not sought to provide any evidence of the advice it gave at the time of the contract. Whilst NEO says it provided Mr E with best advice and says it has achieved positive results on his behalf, it has not provided evidence in support of its claims. Mr E has provided a copy of his credit report which indicates otherwise.

I think it credible that Mr E is likely to have been told he would become debt free within three years to induce him to enter into an agreement with NEO, whereas he is still a considerable distance away from being debt free. I am also not satisfied that Mr E was given best advice before he entered into the agreement with NEO, or that he has benefitted from being in it. NEO's claims are not substantiated by any evidence and are contradicted by Mr E's credit report.

For these reasons, I agree that Mr E should be refunded all payments he has made to NEO under the agreement, less the amounts which NEO can demonstrate it has distributed to Mr E's creditors, together with interest.

I am also satisfied that Mr E has been caused distress and inconvenience as a result of NEO's actions. I see no reason to interfere with the recommendation of the adjudicator in this respect. I therefore award £250, which I consider to be fair in the circumstances.

my final decision

For the reasons given, my final decision is that I uphold Mr E's complaint and I direct NEO Media Solutions Limited (trading as One Debt Solution) to:

1. pay Mr E £12,900 less any payments made to his creditors, together with interest calculated at 8% simple per year from the date each payment was made to the date of settlement; and
2. pay him an additional sum of £250 to reflect the distress and inconvenience this matter has caused

For the purpose of calculating the settlement under 1. above, I require NEO Media Solutions Limited to provide evidence of the date each payment was made to a creditor so that Mr E can check that the sum refunded is accurate.

If NEO Media Solutions Limited considers that tax should be deducted from the interest

element of my award, it should provide Mr E with the appropriate tax deduction certificate so that he is able to claim a refund if appropriate.

I remind NEO Media Solutions Limited that my decision and award is enforceable through the courts.

Athena Pavlou
ombudsman