

complaint

Mr and Mrs H complain that Butler-Do Ltd (then trading as Kensington Finance) mis-sold a debt management plan (DMP) to them, and that it was not the appropriate solution for their situation.

background

Mr and Mrs H took out the plan in 2013. Their representative argues that they would have been better served if they had been advised to seek a debt relief order, rather than a DMP. They say they weren't advised that free services similar to the paid one offered by Kensington were available, or that there would be an initial set up fee for the plan. They say they weren't aware of the damage the DMP would do to their credit records, or that interest could continue to accumulate. They say no reviews of the DMP were carried out to ensure its suitability.

Our adjudicator did not recommend that the complaint was upheld. She said that there had been no obligation on Kensington to inform Mr and Mrs H about similar free services. They had been sent terms and conditions of the service and a fee schedule, so were made aware what they would be paying for it. The plan was reviewed in January and November 2014: on the latter occasion the possibility of bankruptcy was listed as an alternative. Their credit file would have been affected by their debts in any event. She didn't think it was the business's role to persuade Mr and Mrs H to take a formal debt solution.

Through their representative, Mr and Mrs H asked for their complaint to be passed to an ombudsman. They argued that guidance in 2012 obliged debt management companies to tell consumers about free services. They also referred to a compliance review in 2010, which they said showed that the Office of Fair Trading had the same expectation then. They quoted new guidance from 2014 about informing consumers about free services, which they said applied when the DMP was still operating at that point. They said they weren't suggesting that Kensington should have persuaded Mr and Mrs H in any direction, but that they should have been given the chance to make an informed decision.

Kensington did not comment.

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 2010 review simply refers to having found that some companies were not volunteering information about free services – it does not impose any requirement that that must happen in future. The 2012 guidance does refer to consumers being told about the availability of free advice "where appropriate". Later the guidance gives some examples of situations where it might be inappropriate not to refer consumers for free advice eg where a consumer does not have enough disposable income to pay a fee, or in an emergency situation. But I don't think Mr and Mrs H were in a situation of that sort. And when the guidance gives examples where referral *should* take place, it seems clear to me that it was not intended to impose a general obligation in all cases.

The 2014 guidance does impose a requirement to tell consumers about free services: but only in the first communication. Mr and Mrs H's first communication with Kensington was back in 2013 - when that did not apply.

Kensington says that other options were discussed from the start, but Mr and Mrs H did not want a formal solution (such as a debt relief order, individual voluntary arrangement or bankruptcy) at the relevant time. While the available documentation from 2013 doesn't show what other options (if any) were discussed with Mr and Mrs H, the later reviews do provide evidence of that and that bankruptcy had been considered and rejected by Mr and Mrs H. The second review shows specifically that a debt relief order (suggested initially by their representative as what would have served them best) was not something they were eligible for. I understand that following other advice in 2015 Mr and Mrs H entered an individual voluntary arrangement instead of the DMP: but still did not seek a debt relief order.

I can't be certain how well informed Mr and Mrs H were about other options at the start. But from what happened when the DMP was reviewed, it doesn't seem likely that they would have wanted to use a more formal option, such as a debt relief order (if that was even possible), initially in any event.

The documentation from 2013 shows that Mr and Mrs H were told about all the costs of the plan and that some creditors might still charge interest. Given their debts, their credit rating would have been poor whether or not they had the DMP.

On balance, in all the circumstances, I don't think Mr and Mrs H took a DMP they would not otherwise have taken, because of inadequate information about other options, or the cost and implications of the plan.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 14 November 2016.

Hilary Bainbridge
ombudsman