

complaint

Mrs M complains that a debt management plan was mis-sold to her by Debt Correct. She is being helped with her complaint by a representative.

background

Mrs M entered into a debt management plan with Debt Correct in April 2013. A complaint was made to Debt Correct in September 2016 that Mrs M hadn't been made aware that: the same or similar service could've been provided for her free of charge or of the availability of free and impartial advice; any creditor's recovery action could continue; or of the impact on her credit rating by reducing payments to her debts. Mrs M wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. Debt Correct said that it would've made Mrs M aware during the initial phone call that she could contact Money Advice Service. And he didn't think that Debt Correct had an obligation to advise Mrs M about the free sector throughout her plan. Mrs M was already in the plan when the guidance changed in April 2014 - so Debt Correct had already provided her with its first oral and written communication in 2013. He concluded that Debt Correct's terms and conditions (which were agreed to by Mrs M) told her about the effect of the plan on her credit file.

Mrs M's representative – on her behalf - has asked for this complaint to be considered by an ombudsman. The representative says, in summary, that:

- it's hard to believe that Debt Correct would've been so "over-compliant" and ahead of its time that it was complying with as yet unwritten guidance at the time that Mrs M entered the plan; and
- there's a distinction between telling someone that there's free advice available and telling someone that free debt adjusting was available; and
- the Financial Conduct Authority had an expectation that plans were brought up to their standard (and that CONC 8.2.4 was complied with) by April 2014 or, at the absolute latest, in the first communication after that date.

my findings

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

Mrs M returned a signed authority to Debt Correct to confirm that she had read and understood its terms and conditions. Those terms and conditions said that creditor's recovery action could continue and the plan may affect her credit file. So I find it to be more likely than not that Mrs M was made aware that creditor's recovery action could continue and of the impact of the plan on her credit rating.

The Office of Fair Trading's debt management guidance issued in 2012 – which was applicable to Debt Correct when Mrs M entered into the plan in April 2013 – does refer to the free sector. It says that it would be an *"improper business practice"* not to: *"refer the consumer, where appropriate, to a not-for profit advice organisation for further help"*. And it says that this may include where the consumer has *"priority debt problems"*, *"an immediate emergency"* or is unable to pay the fees.

I've not seen enough evidence to persuade me that Mrs M had priority debt problems, an immediate emergency or was unable to pay Debt Correct's fees. And I'm not persuaded that there was any requirement for Debt Correct to refer Mrs M to the free-sector when she entered into the plan. But it says that Mrs M was read a closing statement in her initial call which said: *"Before I pass you over to an adviser, I must read you a small statement under FCA guidelines. I am obliged to inform you that you can obtain free advice by contacting organisations such as the CAB or the Money Advice Service"*. Whether or not it did read such a statement to Mrs M doesn't affect my decision because, at that time, I consider that there was no requirement for it to provide that information.

The Financial Conduct Authority's Consumer Credit Sourcebook imposed a requirement on debt management companies from April 2014 to give advice about the free sector when initial advice is given to a consumer to enter into a debt management plan. But I don't consider that it imposes a requirement on debt management companies to advise a customer who is on an existing debt management plan about the free sector. So I consider that there was no requirement under those rules for Debt Correct to give Mrs M advice about the free sector after April 2014.

So I'm not persuaded that there's enough evidence to show that Debt Correct has acted incorrectly in connection with Mrs M's debt management plan. And I find that it wouldn't be fair or reasonable for me to require Debt Correct to refund any money to Mrs M – or to take any other action in response to her complaint.

my final decision

For these reasons, my decision is that I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 16 January 2017.

Jarrold Hastings
ombudsman