

complaint

Mr B complains that Baines & Ernst Limited didn't advise him about the free advice that was available to him when he entered into his debt management plan. He is being helped with his complaint by a representative.

background

Mr B entered into a debt management plan with Baines & Ernst in June 2010. The plan ended in November 2012 when Mr B moved to a company which charged a lower fee. A complaint was made to Baines & Ernst in April 2016 that Mr B hadn't been made aware that the same or similar service could've been provided for him free of charge or of the availability of free and impartial advice. Mr B wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He concluded that there was no requirement for Baines & Ernst to signpost Mr B to free services when he entered into his debt management plan - so he said that it'd done nothing wrong in not doing so. And he noted that, after Mr B ended his plan, he moved to another fee charging company, rather than a free alternative.

Mr B's representative – on his behalf - has asked for this complaint to be considered by an ombudsman. The representative says, in summary, that the Office of Fair Trading's 2010 review of the guidance on debt management shows that it had an expectation that debt management companies would signpost customers to free advice and those that didn't do so weren't acting in the customers' best interest. The representative says that all advice should be in the customers' best interests and provide them with clear information to allow them to make an informed decision about how to proceed. And by failing to signpost customers to the free sector this ability is taken away.

my findings

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

Mr B entered into the plan in June 2010 - before the Office of Fair Trading's 2010 review of debt management guidance had been published. The Office of Fair Trading's debt management guidance which was applicable in June 2010 says:

"The OFT has no objection to DMCs charging for, or consumers choosing to pay for, debt management services. The consumers using these services will, however, often be vulnerable because of the nature of their financial problems and, almost by definition, have the least available financial resources. It is, therefore, particularly important that the services provided by DMCs are carried out with due care, skill and fairness.

Some of the practices highlighted here are clearly unfair or improper, and in those cases DMCs should have been aware, even before the issue of this Guidance, of the risk of licensing action if they engaged in such practices or allowed their employees, agents or associates to do so. In other cases the position might have been less clear, and this Guidance is intended to be helpful in outlining the kinds of business practice to which the OFT is likely to object."

Although that guidance does refer to the free sector – I don't consider that it required a debt management company to provide a customer with advice about the free sector. And I'm not persuaded that Baines & Ernst was obliged to inform Mr B about free providers of advice concerning his debt problems under that guidance or any later guidance that was issued before Mr B's plan ended in November 2012.

So I find that it wouldn't be fair or reasonable for me to require Baines & Ernst to refund any money to Mr B – or to take any other action in response to his complaint.

my final decision

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

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

Jarrold Hastings
ombudsman