

complaint

Mr H complains that Clark Richards Limited, trading as Clark Richards Financial Management, ("CRL"), didn't provide him with appropriate information about a debt management plan ("DMP") with it. The complaint is brought to this service on Mr H's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mr H unless stated otherwise.

background

Mr H entered into a DMP with CRL in December 2013. It ended in December 2015 after he had paid off his debts. Mr H complains, in the main, that he wasn't advised that he could obtain the same or similar services elsewhere without the necessity to pay any fees.

The adjudicator didn't recommend that the complaint should be upheld. She referred to the Office of Fair Trading's guidance which was in place when the DMP was sold to Mr H. She explained that this said that consumers should be made aware of the availability of help and debt advice from not-for-profit advice organisations, but that this was where appropriate and wasn't mandatory. Based on the information available, she couldn't say that Mr H didn't have enough disposable income to enter into or make his monthly payments to the DMP. So she wouldn't have expected CRL to have referred Mr H to the free debt advice sector. She also noted that the CMC had referred to the Financial Conduct Authority's, ("FCA"), Handbook, and specifically CONC 8.2.4 (1). She accepted that after 1 April 2014, a debt management company has a duty to tell consumers that a free service is available. But that is *"in its first written or oral communication"*, whereas Mr H had already been in a DMP since December 2013 and had received his first written and oral communications before 1 April 2014. So she couldn't say that CRL had acted inappropriately.

The CMC disagreed and responded to say that the FCA's expectations were that DMPs which began before their regulation started had to be brought up to standard in all aspects, and in relation to this complaint, specifically CONC 8.2.4.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I find that I have come to the same conclusions as the adjudicator did, for much the same reasons.

As the CMC has referred in its response to the adjudicator's view mainly to the lack of a referral to free services under CONC 8.2.4, I propose to only deal with this aspect of Mr H's complaint in my decision.

I note the provisions of CONC 8.2.4 which came into effect on 1 April 2014. These say the availability of free debt advice services should be made in a debt management firm's *"first written or oral communication with the customer"*. But in this case Mr H's DMP was set up and CRL had its first communication with Mr H before the obligations in CONC 8.2.4 were introduced. So I don't think that CRL has done anything wrong here.

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 Mr H to accept or reject my decision before 13 February 2017.

Roslyn Rawson
ombudsman