

complaint

Miss D complains that Gregory Pennington Limited mis-sold her a debt management plan. She says she didn't know about its set up fee or that she could get free advice elsewhere. Her creditors continued to take collections action, including recording defaults on her credit file. She thinks this is because the creditors didn't receive regular payments from Gregory Pennington. The complaint is brought on her behalf by a claims management company.

background

Miss D contacted Gregory Pennington in 2012 wanting to set up a debt management plan ("DMP"). When Gregory Pennington told her it couldn't include her council tax arrears, she said she would ask a member of her family to help her pay that debt. Gregory Pennington then recommended the DMP for her other debts.

Our adjudicator recommended that the complaint should be upheld. He concluded that it was clear Miss D had other priority debts, so Gregory Pennington should have referred her to a fee-free service.

Gregory Pennington didn't agree. It said, in summary, that said her council tax arrears would be cleared – so she didn't have any priority debts and didn't needed to be referred to a free service provider. It said that during its regular reviews with Miss D, she didn't mention the council tax arrears again, so it was reasonable to assume the debt had been cleared as she'd originally said.

my findings

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

When Miss D contacted Gregory Pennington, she wanted the same arrangement as a friend – a DMP. But when she told it about her council tax arrears, Gregory Pennington explained these couldn't be included in a DMP, so she would be better to negotiate with her creditors herself and make token payments. Miss D asked if she could go ahead with the DMP without the council tax, because she thought a family member might help her pay the arrears. On this basis, Gregory Pennington recommended the DMP.

But I agree with the adjudicator that the Office of Fair Trading's guidance of March 2012 is clear that it is appropriate to refer a consumer to a not-for-profit organisation if they have priority debts. The OFT considered it "unfair or improper" not to do so. So even though Miss D was hoping a family member would pay this debt for her – and it seems that this is what did happen – I find that Gregory Pennington should have referred her to a not-for-profit organisation so that she could make a fully informed decision about the best way to manage her debts.

The DMP did enable Miss D to clear her outstanding unsecured debts but, in the circumstances, I conclude that Gregory Pennington should refund its fees, plus 8% simple interest from the date they were applied.

my final decision

My final decision is that I uphold this complaint. In full and final settlement, I order Gregory Pennington Limited to refund all fees charged in relation to Miss D's DMP. Gregory Pennington Limited must also pay interest on this amount at the simple rate of 8% per year from the date they were charged to the date it makes the payment.

HM Revenue & Customs requires Gregory Pennington to take off tax from this interest. Gregory Pennington must give Miss D a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 28 October 2016.

Elizabeth Dawes
ombudsman