

## **complaint**

Mr H complains, in summary, that 123 Debt Solutions Limited (“DSL”) didn’t advise him appropriately on all the debt management solutions available to him, and he feels that a debt management plan (“DPM”) wasn’t the best option for him. The complaint is brought to this service 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 DSL in around April 2013. He had previously had a DMP with another debt manager. He now complains that he would have been better served entering bankruptcy at the time as he would have been debt free much quicker at less cost.

The adjudicator didn’t recommend that the complaint should be upheld. He noticed a number of discrepancies with the information provided by the CMC compared to that provided by DSL. The adjudicator didn’t think that the DMP was the wrong option for Mr H based on the information that was available when the DMP was taken, and he didn’t think that DSL’s advice was unreasonable. He explained that there were several options for a person with debt that is unmanageable, but they all have benefits and drawbacks. He also explained that to be eligible for a Debt Relief Order (DRO), Mr H would have needed to have less than £50 disposable income per month. When Mr H entered the DMP, Mr H agreed that his disposable income was £220 per month, so he wouldn’t have been eligible for a DRO. The adjudicator also noted that bankruptcy had been discussed with Mr H in his initial assessment with DSL and he declined this option. The adjudicator also noted that the £705 bankruptcy fee had to be paid in one lump sum to the court, and that DSL said that Mr H wasn’t in a position to pay this.

The CMC disagreed. It said that Mr H believed that had he been given the option of bankruptcy, he would have opted for this. Mr H said that he would have been able to save and borrow enough to pay the bankruptcy fee of around £705 in order to relieve himself of all debt. The CMC also referred to the Office of Fair Trading’s (“OFT”) Guidance Review in 2010. This referred to a mystery shopping exercise, and noted that debt advisers failed to refer consumers to the Insolvency Service’s booklet “In Debt? – dealing with your creditors” which set out the full range of options. The CMC said that there was a requirement on debt advisers to provide a full range of solutions at the time that Mr H took out the DMP.

## **my findings**

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

Where things are not clear, or in dispute, I make my findings on what I think is most likely to be the case. I take into account the evidence which is available to me and the wider surrounding circumstances.

I only propose to deal with the issues raised by the CMC in its response to the adjudicator’s view in my decision.

I can see that at the time Mr H approached DSL, the OFT’s 2012 Debt management (and credit repair services) guidance was in force. I note that this said that debt management providers should be transparent about the full range of options available and the existence of

impartial advice. The advice provided should be appropriate to the individual's circumstances. I asked the adjudicator to ask DSL how it dealt with this at the time. DSL said that it read Mr H a statement about alternative solutions. This said:-

*"After reviewing your financial situation, I will now discuss all available solutions. I will make you aware of the arrangements that are viable and the ones that are not. I will also advise of the criteria, pros, cons/risk and costs for each. This will enable you to make an informed decision."*

DSL also said it had sent Mr H a copy of the "In Debt" guide. But it also commented that this was only guidance and not a regulatory requirement at the time.

I also note that the CMC said that if Mr H had been told that bankruptcy was an option he would have chosen this. I note that DSL's Brief History form dated 27 March 2013 said that DSL discussed bankruptcy and an IVA with Mr H, and that Mr H was not interested in insolvency. DSL also commented that Mr H would have had to pay a bankruptcy fee of £705 in one lump sum, but he only had disposable monthly income of £220. So, he couldn't afford bankruptcy.

DSL also said that Mr H was unlikely to choose bankruptcy due to the nature of his employment. In addition, in May 2015, Mr H had said that bankruptcy couldn't be pursued because of his employment.

I can also see from the questionnaire, which the CMC asked Mr H to complete in 2015, that his recollection of events differed from the information shown in DSL's Brief History Form which he completed in 2013. I can see that Mr H said that he approached DSL in October 2012, but the first conversation between the parties appears to have happened in March 2013. DSL's form shows that Mr H had a monthly disposable income of £220. He was then asked by DSL by letter in early April 2013 to tell it if this wasn't accurate, which he didn't then do. The later information provided by the CMC only refers to a disposable income of £160. Mr H said that he paid a monthly amount of £150 for three years. But, DSL's account shows that Mr H paid monthly repayment amounts ranging from £100 to £170. So, it seems that Mr H's recollection of events isn't entirely accurate, and it may be that he has forgotten any discussions about other options.

For the reasons set out above, overall and on balance, I think it was more likely than not that DSL did provide Mr H with a range of options including bankruptcy.

But, I can see that DSL took over seven months to provide a response letter to the CMC's initial complaint. I can see that Mr H might have suffered inconvenience due to this delay, and I thought that he should receive £50 compensation for this. I asked the adjudicator to ask DSL if it had any comments on this and it said it only became aware of the complaint when it received correspondence from this service. But, I have seen copies of the letters written by the CMC to DSL on 27 November 2015, 25 December 2015, 22 January 2016 and 19 February 2016. These all appear to have been addressed to DSL's correct address. So, I think, on balance, that at least one of the letters ought to have come to DSL's attention, and it should have responded earlier. I think that DSL should pay Mr H £50 compensation for his inconvenience due to its failure to respond to the CMC's complaint letters.

**my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order 123 Debt Solutions Limited to pay to Mr H £50 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 November 2016.

Roslyn Rawson  
**ombudsman**