

complaint

Mr S represented by a claims management company (CMC); says that Debt Advisory Line Limited (DAL) failed to tell him about free debt advice services.

background

Mr S entered into a debt management plan with DAL in 2009. He says DAL should have made him aware that he could have arranged a DMP without paying fees. He says he wouldn't have agreed to the DMP with DAL if he had been aware of this.

In addition Mr S says he wasn't made aware that interest and charges wouldn't be frozen and that creditors could still take recovery action. DAL didn't uphold the complaint. Mr S remained unhappy and the CMC bought his complaint to us.

Our adjudicator didn't recommend the complaint should be upheld. She didn't think that DAL had a duty to tell Mr S about free alternative advice when it set up the plan in 2009. She also thought that the terms and conditions of the DMP made it clear that creditor recovery action could continue and interest and charges could continue to accrue.

The CMC disagreed; in summary it says that DAL had an obligation under Office of Fair Trading's (OFT) debt management guidance to make Mr S aware of free debt services and its review in 2010 made it quite clear that it expected debt management companies to provide full information regarding the free sector.

my findings

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

The CMC has provided detailed submissions to support Mr S' complaint in respect of DAL's duty to make him aware of alternative free services. But my findings are expressed in considerably less detail. I've focused on what I think are the main issues.

I can see that the terms of the DMP clearly set out that DAL would ask for creditors to freeze interest and charges, but this couldn't be guaranteed and creditors might still seek recovery action. So I don't think DAL has done anything wrong in this respect.

I have considered the comments made by the CMC in regards to guidance about making customers aware of the free sector. However, Mr S entered his DMP in 2009; at the time there was no requirement to tell customers about the free sector. So I don't think it would be fair to retrospectively apply the OFT 2010 guidance.

The OFT guidance 2012 says that unfair and improper practices include; *"failing to refer the consumer, where appropriate, to a not for profit advice organisation for further help"*.

The guidance suggests that this may include where a consumer has priority debt problems or doesn't have enough disposable income to pay the fees. I've not seen anything to show that Mr S had priority debt problems or that he couldn't pay DAL's fees. I can also see that DAL sent a letter to Mr S in April 2014 which gave Mr S information about free alternative organisations. So I don't think DAL used unfair business practices in its dealings with Mr S.

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 January 2017.

Karen Dennis-Barry
ombudsman