

complaint

Mr P and Miss T, represented by a claims management company (CMC), complain that the debt management plan (DMP) they entered into with Baines & Ernst Limited (the business) in 2011 was mis-sold.

background

Mr P and Miss T entered into a DMP in 2011 with the business. This was completed in November 2014.

The CMC says that Mr P and Miss T have raised the following points in regard to their DMP:

1. distributions to their creditors were not made frequently;
2. they were not made aware of the impact on their credit rating of reducing payments to their debts;
3. reviews were not conducted to ensure that the plan and the payments were appropriate; and
4. they were not made aware that the same or similar service could have been provided for them free of charge.

The business says that Mr P and Miss T contacted it in February 2011 and that following this a welcome pack and the DMP terms and conditions were sent to them. It says that this information set out the impact the DMP would have on their credit file. It says Mr P and Miss T signed and returned the required documentation.

The business said that reviews were undertaken and distributions made within five working days of receiving payments from Mr P and Miss T.

In regard to the availability of free debt services, the business says that there was no obligation on it to tell Mr P and Miss T of the free debt services when they entered into the DMP in 2011. It says that it did make customers aware of these services when it did not believe a commercial solution would be viable or affordable. It says that this was not the case for Mr P and Miss T.

The adjudicator did not uphold this complaint. She said that the welcome pack sent when Mr P and Miss T entered into the DMP explained the impact the DMP would have on their credit rating. She said that evidence provided by the business showed that distributions were made to Mr P and Miss T's creditors and that reviews were undertaken.

The adjudicator said that when Mr P and Miss T entered into the DMP the relevant guidance in place did not require business to make customer's aware of alternative options.

The CMC said that the first three parts of Mr P and Miss T's complaint could be withdrawn but it said that Mr P and Miss T should have been made aware of the free services available. It said that in 2010, which was before the DMP was entered into, the Office of Fair Trading (OFT) made it clear that it expected debt management companies to signpost customers to the free debt services. It also said that the regulation that took effect on 1 April 2014 expected debt management companies to tell customer about the debt free services in its first contact after that date.

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 withdrew a number of the concerns raised by Mr P and Miss T in response to the adjudicator's view. I have looked at the information provided and can see that these items were addressed and support the adjudicator's comments in regard to these issues.

The outstanding issue relates to whether the business was required to make Mr P and Miss T aware of the free debt services available at the time they entered into the DMP.

Mr P and Miss T entered into the DMP in 2011. At this time the regulations in place did not require the business to make customers aware of the free services available. The regulations stated that the options should be fully explained. In regard to the availability of free advice from the not-for-profit organisations the regulations referred to customers being made aware of this '*where appropriate*'.

I understand the comments the CMC makes in regard to the review undertaken of the regulations and I also understand the comments made in regard to the more recent regulations. However this DMP was set up in 2011 and I do not find based on the information provided that the business did anything wrong at that time.

I have looked through the information included in the welcome pack and the terms and conditions and I find that this provided Mr P and Miss T with the information they needed to decide whether or not to enter into the DMP. I understand that Mr P and Miss T were able to complete their DMP in 2014.

Overall, I do not find that the business did anything wrong in regard to the set up or management of Mr P and Miss T's DMP.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss T to accept or reject my decision before 21 November 2016.

Jane Archer
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