

## **complaint**

Mr R complains that he wasn't provided with satisfactory advice about his debt management plan ("DMP") by a debt management company ("D") which has since been acquired by Butler-Do Limited ("BL"). The complaint is brought to this service on Mr R's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mr R unless stated otherwise.

## **background**

Mr R entered into a DMP in early 2012 with D. Mr R said that he:

- wasn't made aware that a DMP could have been provided by the free sector and, had he been told, he wouldn't have used a fee paying service;
- was unaware that interest and charges might continue to accrue;
- was unaware that his credit rating would be damaged for a substantial period as a result of entering into the DMP;
- wasn't satisfied all payments were made on time to his creditors.

The adjudicator didn't recommend that the complaint should be upheld. He noted that D had sent a detailed information pack ("Info Pack") to Mr R with a covering introduction letter dated 24 January 2012. A welcome call was also made which was followed by a letter on 29 February 2012. The terms and conditions of the agreement between Mr R and D were also sent to Mr R along with a compliance statement that would have been read out to Mr R.

With regard to Mr R not being told about an alternative free service, the adjudicator said that based on the Office of Fair Trading's ("OFT") guidance at the time Mr R entered into his DMP, D had no obligation to advise him of the availability of free debt advice. The adjudicator also said that the set-up fee and any additional charges were clearly set out in the agreement which D had provided to Mr R. The adjudicator also noted that the compliance statement said that D would attempt to agree with Mr R's creditors, where appropriate, that they freeze or reduce their interest charges. He also thought that Mr R's inability to pay all debts due - and prompting the need for a debt solution - would already have impacted adversely on his credit file long beforehand.

The CMC responded to say, in summary, that it disagreed with the adjudicator's view on Mr R not being told about a free service. It referred to the OFT's Debt Management Guidance compliance review in 2010 and said that this made it clear that debt management companies should provide full information about the debt free sector. It also referred to the provisions of the OFT's Debt Management (and credit repair services) Guidance from March 2012 ("the 2012 Guidance"). In particular it said that D had an obligation to make Mr R aware of fee-free services. The CMC also referred to the Consumer Protection from Unfair Trading Regulations ("the CPRs") of 2008, under which it thought that D's failure to refer to fee-free services was a "misleading omission".

## **my findings**

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

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

I note that the OFT's debt management guidance of 2008 ("the 2008 guidance") applied at the time that Mr R entered into the DMP. There were no obligations within this for D to tell Mr R about fee-free debt advice. The 2008 guidance said that the OFT had no objection to firms charging for debt management services.

The CMC has also referred to the CPRs, the OFT's 2010 Compliance Review and the 2012 Guidance. I think that the reference to the 2012 Guidance is the most relevant, although it wasn't applicable at the time Mr R entered into the DMP. I note that the 2012 Guidance revised the 2008 guidance following the 2010 Compliance Review.

I can see that the 2012 Guidance said that a referral to free debt advice should be made where appropriate to do so (Clauses 2.5d and 3.23g). The 2012 Guidance said that this would be the case if there were priority debts and/or an immediate emergency, or if Mr R didn't have enough disposable income to afford the fees and his monthly plan payments. This might be the case if Mr R was on benefits. But I can see that this doesn't appear to be the case in Mr R's circumstances. I can see that he had a monthly disposable income of £100 and his debts consisted of two credit cards. These weren't priority debts. He said that he was able to make around 36 payments of £100 to D before he terminated his DMP with it. Because of this, it appears to me that even if the 2012 Guidance had applied to Mr R's DMP, it wouldn't have been appropriate under the 2012 Guidance to refer Mr R to free debt advice under it.

So, it follows that I don't find that BL has done anything wrong in rejecting Mr R's complaint.

### **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 R to accept or reject my decision before 28 October 2016.

Roslyn Rawson  
**ombudsman**