

## **complaint**

Mrs M has complained Harrington Brooks (Accountants) Limited, trading as Harrington Brooks Debt Management, didn't manage her debt management plan properly. She also doesn't believe she was given the right advice when it started in 2009.

Mrs M is represented by a claims management company. I'll call them D.

## **background**

Mrs M got in touch with Harrington Brooks Debt Management (HB) in 2015. She was concerned about how her debt management plan (DMP) had been managed as she still owed her three creditors money despite paying £75 a month for nearly six years. HB told her they'd not set up her original DMP so couldn't be held responsible for that aspect. However they accepted they'd not handled her plan correctly since April 2014 when the Financial Conduct Authority took over regulation. They offered to refund the fees she'd paid since then, along with 8% simple interest. Mrs M accepted this offer.

After discussing her potential debt management options after that, D brought her complaint to the ombudsman service about the advice she'd been given and how her plan had been managed.

Our adjudicator initially felt there was no evidence HB had carried out sufficient reviews between July 2009 and March 2012. He asked HB to refund management fees Mrs M had paid them for that period. HB didn't believe this was fair and provided further information showing telephone calls they'd made to Mrs M which she hadn't answered. Our adjudicator changed his mind and decided not to ask HB to do anything further.

D didn't believe HB's logs showed what our adjudicator said they did. They asked an ombudsman to make a decision on Mrs M's complaint.

I issued a provisional decision on 13 September 2016. I didn't agree with our adjudicator's conclusion. I felt there was limited evidence to show HB managed Mrs M's plan effectively. I also could see no difference to how the plan was managed after April 2014 to the period before that. I also didn't believe HB had arranged the original plan. Both D and HB disagreed.

D felt the evidence provided to our adjudicator showed HB had been involved in Mrs M's plan from the beginning. And therefore they were responsible for the wrong advice given to her. They argued the best way to put things right was to act as if Mrs M had taken out a Debt Relief Order in 2009. HB should refund all the monies Mrs M paid to the plan, settle her debts and give the remainder to her, less the money she'd have paid to go into a DRO. HB's comments included:

- Their concern the ombudsman service had investigated this case on different issues to Mrs M's original complaint to them. They felt this unfairly impacted them.
- As they were able to show they called Mrs M to carry out reviews, they'd been led to believe this was enough.
- *"There has to be a careful line drawn between the number of attempts and harassment"*.
- Reminding the service they could not guarantee Mrs M's creditors would stop charging interest.

I now have enough information to complete a final decision on Mrs M's complaint.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This includes the additional information provided by both D and HB.

There are two main aspects to Mrs M's complaint:

- how her DMP was set up and whether she was properly advised in early 2009;
- how it was managed from then onwards until she stopped making payments into it.

HB is concerned we've widened the focus of Mrs M's complaint and this isn't what she originally complained to them about. I don't agree. I'm covering very similar ground to their final response to Mrs M's daughter in September 2015. And in any case they know we have an investigative remit.

The business that first advised and set up Mrs M's DMP was not HB. This other company was a separate legal entity. Based on this evidence I am not able to hold HB responsible for how Mrs M's DMP was set up and the advice given at that time. I know D disagrees with this view and feels employees advising Mrs M led her to believe they worked for HB. But I don't feel this is enough to make me hold HB responsible.

However HB did take over the management of Mrs M's DMP in 2009 and are responsible for how it's been managed since. So what are the regulatory requirements around debt management?

There are two key pieces of guidance issued by the former Office of Fair Trading on debt management. The guidance of September 2008 would have been known to HB as they managed Mrs M's plan. This was updated by guidance issued in March 2012. HB is concerned I'm applying the OFT guidance as if they were rules. In fact I'm obliged to consider any relevant rules, guidance or best practice in place at the time. And I take those into account when I make a decision about what I believe is fair and reasonable. And this is what I've done here.

The OFT guidance states:

*"Repayment plans should in any event be re-assessed on at least an annual basis"*

Early in 2009 Mrs M was told reviews would be carried out on a 6-12 month basis to check she was on the right plan. I'm aware our adjudicator felt the evidence provided by HB showed they'd attempted to carry out annual reviews with Mrs M. It wasn't their fault their attempts were unsuccessful.

I interpret the evidence differently. The evidence provided by HB only shows single isolated calls to Mrs M without any record, for the most part, to show this was followed up by a letter or email. I appreciate HB wanted to make sure they didn't contact Mrs M overly but I don't think they need to worry from what I've seen. For the period December 2009 to January 2012 there is no attempt to arrange an annual review at all. I can see what our adjudicator

noted. No annual review was ever carried out. I don't believe HB did enough to try and carry out Mrs M's annual reviews.

Three years after Mrs M took out her DMP, HB sent her a statement. She still owed £4,715.69 to her three creditors. This is £400 more than her original debt in January 2009. There is a requirement under the guidance that customers shouldn't end up paying at a rate less than covers interest and charges being added to the debt. I don't believe there's any evidence HB advised Mrs M about this. I note Mrs M's original income and expenditure report showed she could only afford just over £20 a month. Mrs M said she'd cut back on her expenditure to make sure she was paying enough. I agree with D's point that Mrs M more than likely followed advice about the right level of money to try and repay.

Whilst there is no guarantee creditors will agree to stop adding interest to debts under a DMP, I would have expected to see evidence of HB's negotiation with Mrs M's creditors on this point. I can see letters were sent to one of her creditors roughly quarterly from November 2012 and there was also one or two letters in 2009. I can't see any other contact with her creditors being made.

The guidance also requires annual statements to be sent to Mrs M. The evidence HB sent to us shows a statement for the period May 2011-May 2012, and then (again roughly) monthly statements from October 2014 showing the previous year's payments in and out. They've told me Mrs M was able to go online and see her account. I'm happy to accept this.

HB admits they didn't handle Mrs M's plan correctly or ensure proper advice was given to her from April 2014. However I can't see there is any difference to how they acted then to how they handled her plan in the period before. The Financial Conduct Authority took over consumer credit regulation in April 2014 but there weren't many changes to the regulatory regime straight off the bat. And anyway I'm able to look at the period before then as HB were licensed under the OFT's regime. I'm not satisfied Mrs M's plan was handled properly or she was advised as required under the guidance at the time. And this is the main reason why I've decided to uphold her complaint.

D felt appropriate compensation was to treat Mrs M as if she'd agreed a DRO much earlier. Her debt would now be paid. However I can't know for certain what Mrs M would have agreed. What I do know is HB didn't treat her as they should have.

On that basis I think it's fair to get HB to repay the management fees they charged Mrs M from July 2009 – when her first payments were made – to March 2014 inclusive. I can see HB already offered compensation for the period after April 2014 which I think is fair.

I considered HB's point that Mrs M accepted their offer of compensation in "*full and final settlement*" of her complaint. It appears Mrs M accepted this at first and then changed her mind. Certainly HB knew Mrs M, through her daughter, changed her mind. HB has confirmed Mrs M has received this money but that doesn't change my view we can still look at the remainder of her complaint.

### **my final decision**

For the reasons I've given, my final decision is I instruct Harrington Brooks (Accountants) Limited, trading as Harrington Brooks Debt Management, to:

- Refund all the management fees Mrs M paid for the period July 2009 to March 2014 inclusive; and
- Add 8% simple interest to those amounts from the date Mrs M paid them until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 31 October 2016.

Sandra Quinn  
**ombudsman**