

complaint

Mr R has complained about a financial management plan (the 'plan') he entered into with Harrington Brooks (Accountants) Limited.

Mr R has been represented in bringing his complaint. But for clarity, I'll refer to all submissions made on his behalf as having been made by him directly.

background

Mr R entered into the plan with Harrington Brooks. But he feels it was mis-sold to him, as an IVA would've been more appropriate, and he wasn't told interest and charges wouldn't be frozen. He was told his credit file would be 'ok' as long as he continued to meet his payments under the plan. He also explained he continued to be contacted by his creditors. Further, he wasn't advised about free alternative services, where he wouldn't be charged the fees he had to pay to Harrington Brooks.

He later left the plan, as he didn't feel it was helping his situation.

Our adjudicator didn't recommend that the complaint should be upheld. This was because she didn't agree that the plan had been mis-sold, or that Harrington Brooks had been obliged to signpost Mr R to free services under the guidance at the time.

Mr R responded to say the IVA element of his complaint had been withdrawn. But he disagreed regarding whether he should have been directed to free alternative services. He referred to Office of Fair Trading guidance from 2008 and 2012, then later to the Financial Conduct Authority's Handbook, specifically CONC 8.2.4(1). This states that a debt management company must tell the consumer of free services in its first written or oral communication. Although Mr R's plan was entered into before 1 April 2014, when this guidance was issued, he feels he should have been told by Harrington Brooks, at the first opportunity after this, that free services were available instead. But it failed to do so.

The complaint's now been passed to me for my final decision.

my findings

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

As the part of the complaint relating to the IVA has been withdrawn, I've only considered the issue regarding whether or not Mr R should've been told about the availability of free services.

CONC 8.2.4 states:

"A debt management firm must prominently include:

(1) in its first written or oral communication with the customer a statement that free debt counselling, debt adjusting and providing of credit information services is

available to *customers* and that the *customer* can find out more by contacting the *Money Advice Service...*"

Mr R's plan was taken out before 1 April 2014, when this guidance came into effect. I agree that a debt management company should, after that date, tell consumers that a free service was available. But this is "in its first written or oral communication". Whereas Mr R had taken out his plan in September 2011, so he'd had his first communication prior to 1 April 2014. I'm afraid I don't agree with Mr R's interpretation that the phrase "first written or oral communication" means the first after 1 April 2014. This is because the plan was entered into before that, and there'd already been the first communication.

When he took his plan out, the relevant guidance, which was the OFT guidance, said consumers should be told - where appropriate to do so – specifically, where there were priority debts and/or an immediate emergency, or if the consumer didn't have enough disposable income to afford the fees. I'm not aware any of these circumstances applied. But even if they did, Harrington Brooks wasn't involved when the plan was sold – it only took over it later.

my final decision

For the reasons given above, and despite my sympathy for Mr R's position, it's my final decision not to uphold this complaint. I make no award against Harrington Brooks (Accountants) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 January 2017.

Elspeth Wood
ombudsman