

## complaint

Mr C complains that he wasn't provided with satisfactory information about his debt management plan ("DMP"), which was sold to him by a third party ("T"). The DMP was then passed to Harrington Brooks (Accountants) Limited, trading as Harrington Brooks Debt Management, ("HBDM"), to be administered. The complaint is brought to this service on Mr C's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mr C unless stated otherwise.

## background

Mr C entered into a DMP in April 2011 with T. The DMP was then transferred to HBDM in July 2011 to be administered. Mr C's main complaint is that he wasn't told that the same or a similar service could have been provided free of charge or about the availability of free and impartial advice. T is no longer trading.

The adjudicator didn't recommend that the complaint should be upheld. He said that as HBDM wasn't involved in the initial sale of the DMP, HBDM hadn't done anything wrong regarding the sale of the DMP. He also said that even if HBDM did give the initial advice and set up the DMP, he still wouldn't be able to uphold the complaint. He noted that the CMC had accepted that the 2008 Office of Fair Trading (OFT) guidance didn't specify that a customer must be advised of the free sector. He also disagreed with the CMC that the Consumer Protection from Unfair Trading Regulations ("the CPRs") of 2008 suggested that not advising of free alternatives would be a *misleading omission*. The adjudicator also noted the CMC's referral to the 2012 OFT guidance and the Financial Conduct Authority's ("FCA") Consumer Credit Sourcebook in support of its argument. But the adjudicator said that neither was in place when Mr C took out his DMP.

The CMC disagreed and responded to say, in summary, that it understood that debt management companies had to comply with the FCA's regulations (which came into effect on 1 April 2014) in relation to plans sold prior to 1 April 2014. It referred to CONC 8.2.4 (1) which said that:

*"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"*

So, the CMC believed that HBDM should have signposted Mr C to free debt advice in its first written or oral communication after 1 April 2014. It also said that the failure to disclose the existence of a free service was an unfair trading practice. And in relation to the sale of the DMP by T, it said that the DMP was immediately transferred to HBDM, and that T was acting as HB's agent, and HBDM would be responsible for its advice.

The adjudicator responded to say that there was nothing in the CPRs that suggested that the failure to refer to fee-free services was a misleading omission. He also said that the specific industry guidance on debt management was considerably more relevant in this instance than the CPRs. He also disagreed that CONC 8.2.4 (1) applied to DMPs sold before 1 April 2014.

## **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 note that the DMP was sold by T and that HBDM was unable to obtain details of the initial sales call as T had ceased trading. I can see that when the DMP was sold by T, that T was obliged to comply with the requirements of the OFT's Debt management guidance dated September 2008 ("2008 Guidance"). There were no obligations within this for HBDM to tell Mr C about fee-free debt advice. I note that the CMC accepts this. The 2008 Guidance specifically said that the OFT had no objection to firms charging for debt management services. I note the CMC's comments about HBDM being responsible for T's advice. I have no information about HBDM's contractual arrangements with T. But even if HBDM was responsible for T's advice, HBDM would also have been bound to comply with the 2008 Guidance under which there was no requirement for a referral to fee-free advice to be made.

I also note that the CMC has referred to CONC 8.2.4 (1). But I don't think it applies to Mr C's DMP as it applies to agreements entered into after 1 April 2014. Mr C's DMP was set up long before 1 April 2014. And HBDM had already sent its first written and had its first oral communication with Mr C prior to that date. So I don't think that HBDM has done anything wrong here. But I do note that HBDM wrote to Mr C on 28 March 2014 setting out details of its online customer portal and referring to its website. HBDM said that both the website and the online portal contained details of fee-free services. I note from HBDM's contact notes that Mr C had used the online portal in early 2015, so presumably he would have had sight of such details. But I note that he didn't cancel his DMP until March 2016.

The CMC has also referred to the CPRs, under which it suggested that the failure to refer to fee-free services was an unfair omission. But, like the adjudicator, I believe the specific industry guidance on debt management is more relevant here than the CPRs.

So, overall, I don't think that HBDM has done anything wrong in rejecting Mr C'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 C to accept or reject my decision before 16 January 2017.

Roslyn Rawson  
**ombudsman**