

complaint

Miss F complains that she wasn't provided with satisfactory information about her debt management plan ("DMP"), which was sold to her 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 Miss F's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Miss F unless stated otherwise.

background

Miss F entered into a DMP in February 2014 with T. T is no longer trading. The DMP was then transferred to HBDM in October 2014 to be administered. Miss F's main complaint is that she wasn't made aware that the same or a similar service could have been provided free of charge or about the availability of free and impartial advice under the Office of Fair Trading's Debt management (and credit repair services) guidance from March 2012 ("the 2012 Guidance"). The CMC acting for Miss F also said that debt management companies had to comply with the Financial Conduct Authority's ("FCA") regulations which came into effect on 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"*

The CMC said that HBDM should have told Miss F about free services in its first written or oral communication after it had taken over the administration of the DMP in October 2014. And it hadn't done so.

Miss F also complained that she wasn't told about the DMP's set up fees and the monthly fees, that she wasn't aware that interest and charges and her creditors' actions would continue on her debts, and that she wasn't told about the impact on her credit file.

our adjudicator's view

The adjudicator said that Miss F had been sent a letter with details of the DMP's fees, and that the terms and conditions for the DMP said that creditors weren't obliged to agree to not charge interest and charges. The terms also said that it was in the creditors' discretion as to whether to pursue Miss F for her debts. The adjudicator was also satisfied that Miss F had been told that her credit rating could be affected. The adjudicator also noted that after 1 April 2014, there was an onus on a debt management company to tell its customers in its first written or oral communication that a free service was available. He thought that HBDM had failed to meet its obligations, as he couldn't see that it had told Miss F about fee free services. He also said that he couldn't fairly hold HBDM responsible for T's actions. He recommended that HBDM should refund Miss F all fees taken from October 2014 onwards, together with interest at 8% from the date of payment to the date of settlement.

HBDM disagreed and responded to say that the DMP was originally set up under the 2012 Guidance and not the Financial Conduct Authority's ("FCA") requirements. It appreciated that the FCA's guidelines applied from 1 April 2014, and that these said that debt management companies should inform their customers of free debt management advice

services in the first written or oral communication. But in Miss F's case, she had entered into her DMP in February 2014 and the first written or oral communication occurred before the new guidelines came into effect.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss F and to HBDM on 19 January 2017. I summarise my findings:

I could see that when the DMP was sold by T, that T was obliged to comply with the 2012 Guidance. The 2012 Guidance specifically said that a referral to free debt advice should be made where appropriate to do so (Clauses 2.5d and 3.23g of the 2012 Guidance). The 2012 Guidance said that this would be the case if Miss F didn't have enough disposable income to afford the fees and her monthly plan payments. But I could see that this didn't appear to be the case in Miss F's circumstances. She was able to pay most of her weekly payments of £24.38 from February 2014 until April 2014, and £18.48 from April 2014 until March 2015. Because of this, it appeared to me that the fees and plan payments weren't unaffordable. So, in Miss F's circumstances, I didn't think that T or HBDM had acted inappropriately in not referring her to fee-free services under the 2012 Guidance.

I also noted that the CMC had referred to the FCA's Handbook, and specifically CONC 8.2.4 (1). But I didn't think it applied to Miss F's DMP as it applied to agreements entered into after 1 April 2014. And Miss F's DMP was set up prior to 1 April 2014. So I didn't think that HBDM had done anything wrong here.

The CMC had also referred to the OFT's Debt Management Guidance compliance review dated September 2010 ("2010 Review"). It said that the recommendations in the 2010 Review were taken into account in the 2012 Guidance. But, as shown above, in Miss F's circumstances, I didn't think that T or HBDM were obliged under the 2012 Guidance to refer her to fee-free services.

So overall, I disagreed with the adjudicator's recommendations, and I didn't think that HBDM had done anything wrong in rejecting Miss F's complaint.

Subject to any further representations by Miss F or HBDM, my provisional decision was that I intended not to uphold this complaint.

HBDM said that it had no further information to submit in response to the provisional decision.

Miss F provided no response to the provisional 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 HBDM and Miss F haven't provided any fresh information or evidence in response to my provisional decision, I find no basis to depart from my earlier conclusions.

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 Miss F to accept or reject my decision before 28 March 2017.

Roslyn Rawson
ombudsman