

complaint

Mr and Mrs B complain that Harrington Brooks (Accountants) Limited (trading as Harrington Brooks Debt Management) (HB) provided poor advice when they took out some debt management plans (DMPs).

Mr and Mrs B are represented by a claims management company (CMC), but generally I'll refer to any submissions made on their behalf as if Mr and Mrs B had made them for ease of reading.

background

Mr and Mrs B say HB should have told them they could get the same advice for free elsewhere. They don't think HB calculated their disposable income properly. And they believe debt relief orders (DROs) would have been a better solution for their financial problems - because a DRO only cost £90 and they would probably be debt free now. Mr and Mrs B want HB to pay about £6,000 to put things right.

HB says Mr and Mrs B agreed to five DMPs. But it didn't sell them all of those plans - some were set up with affiliates. It notes Mr and Mrs B didn't pay into most of the plans. And HB considers it assessed income and expenditure properly when Mr and Mrs B took out the last plan in 2014. It thinks a DMP was the best option because Mr and Mrs B didn't have enough debt for an individual voluntary arrangement and disposable income was too high for a DRO. And it told them about free sources of debt advice after regulations changed in 2014.

Our adjudicator isn't persuaded that there are any reasonable grounds to ask HB to provide a refund for the first four plans. She listened to the welcome call for the last DMP arranged by HB. And she is satisfied disposable income was assessed properly and Mr and Mrs B probably weren't eligible for a DRO. She considers HB made it clear that free debt advice was available elsewhere and she's not persuaded this complaint should be upheld.

The CMC considers HB failed to comply with its obligations under CONC¹ 8.2.4 and 8.3.7. And it shouldn't have included disability living allowance (DLA) paid to Mrs B when assessing disposable income - because that's a benefit paid for specific assistance due to disability. It says the Insolvency Service and a third party source say it doesn't have to be included - or an equal amount should be deducted under expenditure. And if DLA hadn't been taken into account Mr and Mrs B would have been eligible for a DRO, which was a better option. It asked for an ombudsman to review the matter.

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 have come to much the same conclusions as our adjudicator for broadly the same reasons.

Some of the evidence here is incomplete, inconclusive or contradictory so I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I've considered everything that Mr and Mrs B have said about this complaint and their comments on DLA and CONC 8.2.4 and 8.3.7 in particular. I've spoken to the CMC and

¹ Financial Conduct Authority Handbook Consumer Credit Sourcebook

explained that I think the crux of the complaint relates to the last DMP set up in 2014 and it agreed. I'm satisfied I only need to deal with that DMP in this decision. But, I should make it clear that I agree with our adjudicator's conclusions on the other aspects of this complaint, to avoid any doubt.

HB has supplied a recording of the welcome call between Mr B and HB in August 2014 when the last DMP was agreed. I have listened to that carefully. I am satisfied this was HB's first communication about this DMP. And the adviser pointed out free advice was available elsewhere and referred Mr B to the Money Advice Service.

I note Mr B was asked about previous debt solutions and why those hadn't succeeded. He said they were paid every fortnight so it had been difficult to manage monthly payments towards earlier plans. He thought this plan would work better as it allowed them to make payments every two weeks. I don't think that sounds unreasonable. And I'm satisfied the adviser checked that Mr and Mrs B understood the importance of paying any priority debts first – and made sure provision had been made for related payments in the couple's monthly outgoings.

At first, it looked as if the couple had about £500 a month joint disposable income. But, it was clear that some of the figures Mr B supplied were estimates. So the adviser asked Mr B to think again about various different expenses that might need to be included. And Mr B remembered several more reducing the disposable income figure to over £100 a month.

I appreciate the CMC thinks this figure was wrong because DLA shouldn't have been included. And I accept this benefit is paid for additional expenses related to disability and it may not always be counted towards income. But, it's up to a recipient of DLA to decide what the money is spent on once it's been paid.

I'm satisfied HB questioned Mr B quite closely about joint expenses and asked specifically if he was sure that all expenses, including any associated with Mrs B's disability, had been taken into account. The adviser prompted Mr B to think carefully about various potential costs, such as medication and Mr B confirmed everything was included. So I would have expected to see any related expenditure within the outgoings Mr and Mrs B provided.

On balance, I'm not persuaded it was unreasonable for HB to have taken DLA into account here. I'm satisfied Mr B was told any associated expenses should be deducted. And I can't see why any money left over couldn't be used to pay off debts, in these circumstances.

Overall, I consider HB took reasonable steps to assess Mr and Mrs B's disposable income. I'm satisfied that looked too high for a DRO so I don't think there was any need for HB to discuss that further. I note there were no upfront fees for this DMP and monthly fees were only applied in any month a payment was made into the plan. And I'm satisfied Mr and Mrs B seemed to have enough money spare each month to meet HB's fees.

On balance overall, I'm not persuaded there's enough evidence here for me to find that HB mis-sold this DMP or acted incorrectly. I'm sorry to disappoint Mr and Mrs B but that means I can't reasonably require HB to provide a refund or do anything further in response to this complaint.

my final decision

My decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 5 June 2017.

Claire Jackson
ombudsman