

## **complaint**

Mr W and Miss M complain that Harrington Brooks (Accountants) Limited mis-sold them a debt management plan. The complaint is brought on their behalf by a claims management company. It says it would've been more suitable for each of them to enter into a debt relief order.

## **background**

The background to this complaint is summarised in my provisional decision dated 15 March 2017, a copy of which is attached.

I was minded to conclude that the complaint should be upheld. I thought Mr W and Miss M had been sold a plan that wasn't affordable for them and that they were provided with misleading information which led them to understand a debt management plan was the only suitable solution for them. I thought Harrington Brooks should refund all its fees, plus interest.

Harrington Brooks agreed with my provisional decision.

Mr W and Miss M's representative did not agree with my suggested compensation. It said that if Mr W and Miss M hadn't been mis-advised, they would've entered into debt relief orders ("DRO's") and the fact that they did do this after they cancelled the DMP shows this is the action they would've taken. So it thinks Harrington Brooks should return all the payments made to Mr W and Miss M's creditors.

## **my findings**

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

Both parties agreed with my conclusion that the DMP had been mis-sold. So it only remains for me to re-consider the compensation payment.

Mr W and Miss M's representative says they would've entered into DRO's so, to put them back in the position they would've been in if they hadn't been mis-sold the DMP, Harrington Brooks should repay them all the money paid to their creditors. I have considered this very carefully and I've taken into account that Mr W and Miss M *did* choose to enter into DROs in 2016. So I accept there's a possibility they would've entered into DROs in 2009. But, when they cancelled the DMP in 2012, they chose to manage their debts themselves. And I conclude this is most likely what they'd have chosen to do in 2009 if they hadn't been sold the DMP. So I don't find any reason to depart from the compensation suggested in my provisional decision.

### **my final decision**

My final decision is that I uphold this complaint. In full and final settlement, Harrington Brooks (Accountants) Limited should:

1. Refund all fees charged for the duration of the plan.
2. Pay interest on this amount at the simple rate of 8% per year from the date the fee was charged to the date it makes the payment. †

† HM Revenue & Customs requires Harrington Brooks to take off tax from this interest. Harrington Brooks must give Mr W and Miss M a certificate showing how much tax it's taken off if they ask for one.

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

Elizabeth Dawes  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr W and Miss M complain that Harrington Brooks (Accountants) Limited mis-sold them a debt management plan. The complaint is brought on their behalf by a claims management company. It says it would've been more suitable for each of them to enter into a debt relief order.

### **background**

The joint debt management plan was set up in September 2009 following a phone conversation with Mr W. Having discussed Mr W and Miss M's current debts, income and expenditure, it was agreed that they could afford to pay £100 a month. The plan was cancelled in 2012 when Miss M decided she would rather deal with the creditors herself.

Our adjudicator didn't recommend that the complaint should be upheld. He concluded that a debt management plan wasn't unsuitable for Mr W and Miss M and that they didn't meet the criteria for a debt relief order so there was no obligation on Harrington Brooks to discuss this.

Mr W and Miss M's representative didn't agree saying, in summary, that:

- Harrington Brooks mis-advised Mr W when it said if he only had one creditor it could apply an attachment of earnings against his benefits leaving him with no money.
- The income and expenditure figures weren't completed accurately and items were missed off.
- Harrington Brooks wrongly told Mr W interest and charges were guaranteed to be frozen and his credit file would be clear after six years.
- No information was given about the length of the plan, or the fees.

And it explained why it thought Mr W and Miss M were eligible to enter into debt relief orders and why this was the more suitable option for them to deal with their debt.

### **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 am minded to uphold the complaint because I think the debt management plan was mis-sold for the following reasons.

Mr W phoned Harrington Brooks because he wanted help with his debts. When he told it he only had one debt – a bank loan – Harrington Brooks said it couldn't help him. It told him if it set up a debt management plan, the bank could apply an attachment of earnings leaving Mr W without any income. But Mr W's only source of income at the time was benefits, so an attachment of earnings wouldn't have been possible. Harrington Brooks didn't discuss any alternative solutions. Instead it asked Mr W if his partner, Miss M, had any debts. As soon as he indicated that she did, a joint debt management plan was recommended.

The income and expenditure figures weren't completed with enough accuracy. For example, in its final response letter Harrington Brooks says, "*during [the] plan terms they were also paying £120 directly to their water company to cover arrears*". But this wasn't included in the expenditure figures.

Mr W was asked what he thought he could afford and the expenditure figures were adjusted to fit this.

Mr W and Miss M agreed to pay £100 each month under the terms of the plan. But I don't think this was affordable. I say this because, as I said above, some items of expenditure hadn't been included and some weren't accurately recorded. During September 2009 to December 2010, there were only two months when Mr W and Miss M were able to make the full payment. There were nine months when no payment was made at all and a reduced payment was made in the remaining months, as follows:

|                |      |
|----------------|------|
| September 2009 | £100 |
| December 2009  | £40  |
| February 2010  | £20  |
| May 2010       | £100 |
| July 2010      | £50  |
| August 2010    | £50  |
| December 2010  | £50  |

In February 2010, five months after the plan had started, Mr W told Harrington Brooks that he was "*really struggling*" to make the payments.

During the initial phone call, Harrington Brooks said that it would arrange for all interest and charges to be frozen on all of the debts. But this wasn't guaranteed and was mis-leading.

So, for the reasons I've outlined, I am minded to conclude that Mr W and Miss M were sold a plan that wasn't affordable for them and they were provided with mis-leading information which led them to understand a debt management plan was the only suitable solution for them.

I think Mr W and Miss M should be put back in the position they would've been in if they hadn't entered into the debt management plan, so the fees they paid for the management of the plan should be refunded, plus interest. Mr W and Miss M's representative says they entered into a DRO around seven years after they first contacted Harrington Brookes and that if they'd been recommended to do this in 2009 they would have been debt free much earlier. Whilst I'm minded to conclude the debt management plan was mis-sold, I can't conclude with enough certainty what Mr W and Miss M would have done if they hadn't been sold the plan. I think it's equally possible they would have continued to try to manage the debts themselves – as they chose to do in 2012. So I don't think it would be fair or reasonable to ask Harrington Brooks to compensate them for not being debt-free at an earlier date.

### **my provisional decision**

For the reasons I have explained, my provisional decision is that I am minded to uphold this complaint. Harrington Brooks (Accountants) Limited should refund all fees charged for the duration of the plan, plus interest at 8% simple from the date the fee was charged to the date of settlement.

HM Revenue & Customs requires Harrington Brooks to take off tax from this interest. Harrington Brooks must give Mr W and Miss M a certificate showing how much tax it's taken off if they ask for one.

Elizabeth Dawes  
**ombudsman**