complaint

Ms F complains, in summary, that she wasn't provided with satisfactory information when she took out a debt management plan ("DMP"), with a third party ("T"). The DMP was then passed to Harrington Brooks (Accountants) Limited, trading as Harrington Brooks Debt Management, ("HBDM"), to be administered. Ms F also doesn't think that HBDM provided her with satisfactory information. The complaint is brought to this service on Ms F's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Ms F unless stated otherwise.

background

Ms F entered into a DMP in June 2012 with T. T is no longer trading. The DMP was then transferred to HBDM in November 2012 to be administered. Ms F is unhappy that she wasn't made aware that the same or a similar service could have been provided free of charge. The CMC acting for Ms F 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 Ms F about such free services after April 2014. It had several contacts with her after that date and failed to tell her about them during these.

Ms F also feels that bankruptcy would have been a better solution for her than a DMP. She also complains that her payments were not distributed in a regular and timely manner.

our investigator's view

The investigator didn't think that HBDM should be responsible for T's advice on the set up of the DMP, and he didn't think that HBDM had done anything wrong in failing to provide information to Ms F about fee free services. He also didn't think that HBDM should have advised Ms F about bankruptcy.

But, with regard to Ms F's payment queries, the investigator said that the payments which were held in November and December 2012, were only held for a short period of time before allocation to Ms F's creditors. He didn't think that HBDM needed to do anything to compensate Ms F for this incident. He also noted that HBDM said that the payments held between June 2013 and November 2013 were held because some of the payments hadn't been met. But, HBDM accepted that they didn't make Ms F aware of this when they carried out a review for her. And they'd offered to refund the fees back for this period of £163.22 plus 8% interest as compensation totalling £176.28. HBDM also said that Ms F's payments were held between December 2013 and June 2014 as Ms F had contacted them about potentially setting up an IVA, and the DMP had been suspended whilst they were waiting for paperwork to be returned from Ms F. HBDM had accepted that this wasn't made clear to Ms F at this point. Payment was later made to creditors in June 2014. HBDM had also offered to refund their fees back for this period of £87.22 plus 8% interest as compensation,

totalling £94.20.

The CMC disagreed and responded to say that Ms F should have been advised by HBDM to enter bankruptcy. It also said that HBDM had an obligation to discuss all debt solutions. With regards to signposting to the free sector post 1 April 2014, it noted from HBDM's system notes that HBDM had numerous opportunities to do this, but failed to do so.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms F and to HBDM on 4 May 2017. I summarise my findings:

As the evidence was incomplete, inconclusive, or contradictory, I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

With regard to the payment queries aspect of Ms F's complaint, I noted HBDM's offer to pay Ms F a total of £270.48 and I thought that this was reasonable.

I also noted that T was responsible for providing information about the DMP and other options to Ms F when it had sold her the DMP, and for providing information about fee free alternatives, if appropriate. I noted that T was no longer trading and I didn't think that I could fairly hold HBDM responsible for T's actions when the DMP was set up.

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 Ms F's DMP as it applied to agreements entered into after 1 April 2014. And Ms F's DMP was set up prior to 1 April 2014. So I didn't think that HBDM had done anything wrong here.

I also noted that Ms F believed that bankruptcy would have been more suitable for her than a DMP. I couldn't say whether T had provided complete information to Ms T about her debt solution options when the DMP was set up. But I noted that HBDM was aware of changes in Ms F's circumstances and it did carry out reviews of Ms F's DMP. It had said that reviews were held to ensure that the consumer had a suitable product. HBDM had also tried to arrange an IVA for Ms F.

In addition, the CMC had said that Ms F's monthly income was £962 (consisting entirely of benefits including disability living allowance) and her expenditure was £1,203. I could see that Ms F had initially paid £16.17 per week to her DMP, but after missing numerous payments between March and July 2013, she'd paid £11.55 per week from August 2013. I could see that in HBDM's contact note dated 28 June 2013, Ms F had said she was struggling with her payments and couldn't commit to them. HBDM's contact notes also showed a review was completed in June 2013 and that bankruptcy wasn't considered applicable. In September 2013, Ms F had said that she could afford £100 per month and that she wasn't interested in an IVA. In December 2013, Ms F discussed entering into an IVA with HBDM. I had listened to a recording of most of that call which appeared to be on the basis that Ms F could afford monthly payments of £90 for the IVA. I didn't hear the details of all of Ms F's income and expenditure, but part of the assessment was based on HBDM's agent's use of agreed industry allowances rather than Ms F's actual expenditure.

In view of Ms F's previous payment history and the CMC's information about Ms F's income and expenditure, it seemed to me doubtful that Ms F could have afforded to pay £90 per

month for five years. I also noted that HBDM's agent told Ms F that the *"payments will always be affordable as they are based on [her] income and expenditure…….this is clearly the best situation……I think we can both agree on that".*

I noted that Ms F didn't proceed with the IVA. But, there was nothing in the review in June 2013 or the call in December 2013 to indicate that bankruptcy had been discussed as an option with Ms F.

I also noted from HBDM's contact note on 23 June 2014 that Ms F's disposable monthly income was noted as £50 and that she was "passed for review". Ms F's last payment to HBDM was in October 2014.

On balance, I thought that if HBDM had better considered Ms F's circumstances in June 2013 when it first reviewed her situation, that it would have been reasonable for it to suggest to Ms F that bankruptcy would be a suitable option for her. I've considered whether Ms F would have acted differently if HBDM had explained all her options and the consequences of bankruptcy. On balance, I thought it was possible (although not definite) that Ms F would have agreed to become bankrupt at some point because of the relatively small total payment amount to be made, she would be debt free much sooner and she would cease to have contact with her numerous creditors. But, I also didn't know whether Ms F could have afforded the bankruptcy fees.

So, overall, I didn't think that Ms F was provided with appropriate information by HBDM on her reviews in June 2013 and June 2014 and, on the evidence of the call in December 2013, during the IVA sale process.

So, I thought it would be reasonable for HBDM to refund Ms F the fees she paid for the management of the DMP from July 2013 onwards and pay interest at 8% simple from the date the fees were charged to the date of settlement. But, I also didn't think it would be fair for Ms F to be refunded twice for the same period. So, I said that HBDM should deduct from the refund for this aspect of Ms F's complaint, the total amount of £270.48 it had already offered for the payments aspect of her complaint.

Subject to any further representations by Ms F or HBDM my provisional decision was that I was minded to uphold this complaint in part. I intended to order HBDM to pay Ms F a refund of the fees she paid for the management of the DMP from July 2013 onwards plus interest at 8% simple from the date the fees were charged to the date of settlement. But, as I thought that Ms F shouldn't get refunded twice for the same period, I said that HBDM should deduct from the refund, the amount of £270.48 it had already offered for the payments aspect of her complaint.

I also said that HBDM must pay the compensation within 28 days of the date on which we tell it Ms F accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

The CMC responded to say that as HBDM hadn't treated Ms F fairly, she should receive a total of around £13,675.48 which was made up of:

1. her debt level subsequent to the DMP;
2. the total amount paid to the DMP;
3. statutory interest of 8% per annum;
4. the amount that would have been paid to the correct solution.

The CMC also said that it would have taken 51 years for Ms F to repay her debts on the DMP, and that she would have preferred a more finite solution than paying her debts for the rest of her life.

The CMC had also queried why the refund of £270.48 would be subtracted from the fees paid plus interest, as Ms F hadn't yet received this amount. It agreed that it shouldn't be paid twice.

HBDM responded to say that it agreed with my decision.
I

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 CMC believes that Ms F should receive over £13,675 compensation. I don't think this would be reasonable. I note that HBDM wasn't responsible for the sale of the DMP to Ms F. I also don't know what she was told by T about the length of the plan, but I think she should have reasonably known from the amount of the repayments that it would take many years to repay her debts. I think the earliest I would have expected HBDM to have told Ms F about bankruptcy as an option would have been at the review of the DMP in June 2013, and I note that Ms F ended the plan just 16 months later. Ms F also reduced the amount of her debts whilst she had the DMP. And whilst I said above that on balance, I thought it was possible that Ms F would have agreed to become bankrupt at some time, it wasn't definite. And if the various disadvantages of bankruptcy had been explained to her, she may not have gone ahead with it. For these reasons, I still think the most appropriate compensation here is for HBDM to refund the fees paid by Ms F from July 2013 onwards and pay interest at 8% simple from the date the fees were paid to the date of settlement.

I also note what the CMC said about the refund of £270.48. As this hasn't yet been paid, I can see that to avoid a double refund being paid, this shouldn't be deducted from the compensation amount referred to above. But I also note that part of the compensation offered by HBDM in respect of the payments held by HBDM, was for June 2013. So, I think that HBDM should also refund the fees paid by Ms F for this month and pay interest at 8% simple from the date the fees were paid to the date of settlement.

I asked the adjudicator to ask the parties if they had any comments on the changes to my award above. Both parties agreed with the changes although the CMC still felt the award would not put Ms F back in the position she would have been. I still disagreed with this view for the reasons set out above.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it, I order Harrington Brooks (Accountants) Limited, trading as Harrington Brooks Debt Management, to pay Ms F a refund of fees paid to it by her from and including June 2013 onwards plus interest at 8% simple from the date the fees were paid to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 24 July 2017.

Roslyn Rawson
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