

complaint

Mrs G complains that she wasn't provided with satisfactory advice 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 managed. The complaint is brought to this service on Mrs G's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mrs G unless stated otherwise.

background

Mrs G entered into a DMP in October 2013 with T. As T later ceased to trade, the DMP was transferred to HBDM to manage in March 2014. Mrs G'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.

The adjudicator didn't recommend that the complaint should be upheld. She said that as HBDM wasn't involved in the initial sale of the DMP, she could only look at what happened after the plan was transferred to HBDM. But, she noted that the Office of Fair Trading's ("OFT") guidance, which applied at the time of the sale, suggested that in situations where the consumer doesn't have enough disposable income to pay the fees, they should be told about free alternatives. Based on the evidence she'd seen, she didn't agree that the guidance should apply to Mrs G's situation. She thought that Mrs G's disposable income was sufficient to cover the monthly management fee.

The CMC disagreed and responded to say, in summary, that HBDM didn't signpost Mrs G to free services in its welcome call with her which took place after the introduction of the Financial Conduct Authority's ("FCA") regulations on 1 April 2014. It referred to CONC 8.2.4 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"*

It also said that there should be a link to the Money Advice Service on HBDM's website.

The CMC said that the obligation in CONC 8.2.4 applied to the transfer of Mrs G's DMP to HBDM.

The adjudicator responded to say that she noted the requirements for all new DMPs set up from April 2014 onwards. But she said that HBDM didn't set up a brand new DMP for Mrs G. So she didn't agree that HBDM was required to advise Mrs G of fee-free services. She also noted that HBDM had written to Mrs G in March 2014 to direct her to an online portal where she could monitor her DMP. Within this letter there was a link to HBDM's website, which signposted all customers to the Money Advice Service.

The CMC disagreed and responded to say that HBDM had an obligation to ensure that T's advice was compliant and to discuss the availability of free services with Mrs G. It also said that each time there was a change of circumstances, this was a point of sale when the appropriate guidance or regulations should be applied.

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 HBDM said that the DMP was sold by another business which has since ceased trading. So, HBDM doesn't have a recording of the phone call in which the DMP was sold. But, I can see that Mrs G entered into the DMP in October 2013, and the DMP was transferred to HBDM in around March 2014. I note that HBDM received a management fee from Mrs G in March 2014, and it also wrote to her in March 2014 about a fee increase and its new portal.

I can see that when the DMP was sold by T and then transferred to HBDM, that T and HBDM were obliged to comply with the requirements of the OFT's Debt management (and credit repair services) guidance from March 2012 ("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 there were priority debts and/or an immediate emergency, or if Mrs G didn't have enough disposable income to afford the fees and her monthly plan payments. But I can see that this didn't appear to be the case in Mrs G's circumstances. I can see that her debts weren't priority debts and there didn't appear to be an immediate emergency. And she was able to pay weekly payments of almost £18.50 in most weeks. Because of this, it appears to me that the fees and plan payments weren't unaffordable. So, in Mrs G's circumstances, I don't think that T or HBDM acted inappropriately in not referring her to fee-free services under the 2012 Guidance.

I also note that the CMC has referred to the FCA's Handbook, and specifically CONC 8.2.4 (1). But I don't think it applies to Mrs G's DMP as it only applies to agreements entered into after 1 April 2014.

I've also considered what the CMC has said about changes in circumstances and reviews being points of sales. But I don't agree with the way the CMC tries to interpret the guidance and regulations in relation to these.

The CMC also referred to the Consumer Protection from Unfair Trading Regulations ("the CPRs") of 2008, under which it suggested that the failure to refer to fee-free services was an unfair omission. But I believe the specific industry guidance on debt management is more relevant here than the CPRs.

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

So, overall, I don't think that HBDM has done anything wrong in rejecting Mrs G'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 Mrs G to accept or reject my decision before 9 January 2017.

Roslyn Rawson
ombudsman