

## **complaint**

Mr E and his representative are unhappy about the advice he was given by Harrington Brooks (Accountants) Limited (trading as Harrington Brooks Debt Management) to enter into a debt management plan. They say it was mis-sold to him and wasn't the appropriate solution for his situation. He should've been offered a debt relief order. They want compensation and for Mr E to be put back in the position he would've been in if he hadn't entered into the plan.

## **background**

### *our investigator's view*

Our investigator felt that this complaint should be upheld. In summary she said that Mr E's disability living allowance ("DLA") shouldn't have been counted towards his disposable income. And a debt relief order would've been suitable for him. But it wasn't offered. If it'd been he would've likely opted to take it rather than continue with the debt management plan. An IVA was discussed but wasn't suitable for him. So, Harrington Brooks should refund the debt management plan fees from August 2011 plus pay interest on them.

Mr E's representative agreed but said Mr E should be put back in the position he would've been in if the debt management plan hadn't been mis-sold. The proposed redress didn't do that. He should be repaid all monies paid to the plan less the £90 debt relief order entry fee. His outstanding debt should also be paid off.

Harrington Brooks didn't agree. It said the DLA was included in Mr E's income as it would be offset in his expenditure. If it didn't do so it would've had to reduce the expenditure to reflect what DLA was spent on. Either way Mr E's disposable income was too high for a debt relief order.

### *my provisional decision*

I issued a provisional decision in this complaint on 8 March 2017. In summary, subject to any further evidence and submissions from the parties, I was minded not to uphold the complaint.

Mr E's representative doesn't agree. In summary it says DLA shouldn't be treated as income. It's an award to people with a disability and the money is used specifically for additional expenditure incurred in having the disability. In assessing an insolvency the Insolvency Service would include DLA as income but make a contra entry of the expenses it pays for. In this case Harrington Brooks failed to make a contra entry which would've taken Mr E's disposable income below the eligibility limit for a debt relief order. It incorrectly assessed Mr E's income and expenditure.

Harrington Brooks is happy with my provisional decision and says it has nothing more to add.

## **my findings**

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

Our investigator said that DLA shouldn't be considered as income when assessing Mr E's disposable income. In this case I don't agree.

In this case DLA made up a reasonable proportion of Mr E's total income. He disclosed details of his expenditure but it isn't immediately apparent from this information exactly what the DLA was spent on.

DLA may not always be counted as income. But once it's paid to the consumer they can do what they want with the money. And I'd expect to see the costs it should've paid for reflected in the consumer's expenditure figure, thereby effectively cancelling out the DLA.

So, on balance in this case I think it's fair and reasonable for Harrington Brooks to have considered DLA as part of Mr E's income and to have set against it all the items of expenditure he told it of.

I note Harrington Brooks says it considered Mr E's income and expenditure before recommending the debt management plan. It says it also conducted several later financial reviews with him. On each occasion Mr E completed a full income and expenditure assessment. It confirmed he could afford the debt management plan and Mr E said on the reviews that he was happy to continue with it.

I think Harrington Brooks was entitled to rely on what Mr E said and all the information it had at the time the plan was taken out and on each review.

Taking everything into account I think it's more likely Mr E's disposable income was too high for him to have qualified to take out a debt relief order, than not. And this was the case whether or not Harrington Brooks discussed a debt relief order with him. On balance I don't think the debt management plan was mis-sold to Mr E as is suggested.

Overall I don't think I can fairly or reasonably require Harrington Brooks to make a payment of compensation to Mr E as his representative would like.

### **my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 April 2017.

Stephen Cooper  
**ombudsman**