

complaint

Mrs R complains that a debt management plan was mis-sold to her by Harrington Brooks (Accountants) Limited. She is being helped with her complaint by a representative.

background

Mrs R entered into a debt management plan with Harrington Brooks in July 2009. Her representative complained to Harrington Brooks in January 2016 that the plan had been mis-sold to Mrs R. Mrs R wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She concluded that:

- Mrs R was asked to check, sign and return a letter of application with her initial payment and a direct debit for her monthly payments;
- she was provided with information about the charges and was aware of the charges (and she contacted Harrington Brooks in June 2013 because her fee had been collected twice that month);
- she was told that it was at the creditors' discretion to pursue her, issue default notices or take recovery action and that her credit rating would be affected by making reduced payments to her creditors;
- the system notes show that the plan was reviewed regularly;
- there wasn't enough information to show that payments weren't frequently distributed to creditors;
- the Office of Fair Trading's debt management guidance issued in 2008 says that: *"consumers have to be provided with adequate information about the service to be provided, and the consequences and cost of it prior to entering into an agreement"*;
- Harrington Brooks gave Mrs R enough information that she could see the basis on which it would operate and there was nothing to suggest that it hid material information from her;
- Mrs R had enough information about the plan to allow her to make an informed choice about whether or not to enter the plan; and
- there was no obligation on it in 2009 to tell Mrs R about free options from other providers.

Mrs R's representative – on her behalf – has asked for this complaint to be considered by an ombudsman. The representative says, in summary, that it believes that Harrington Brooks did have an obligation to tell Mrs R about the free sector. It refers to the Consumer Protection From Unfair Trading Regulations 2008 and the Office of Fair Trading's debt management guidance compliance review of 2010 – which it says clearly show that there was an expectation that companies would make customers aware of the free sector and those not doing so wouldn't be seen to be acting in the customer's best interests.

my findings

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

The Office of Fair Trading's debt management guidance issued in 2008 – which was applicable to Harrington Brooks in July 2009 – says:

“The OFT has no objection to DMCs charging for, or consumers choosing to pay for, debt management services. The consumers using these services will, however, often be vulnerable because of the nature of their financial problems and, almost by definition, have the least available financial resources. It is, therefore, particularly important that the services provided by DMCs are carried out with due care, skill and fairness.

Some of the practices highlighted here are clearly unfair or improper, and in those cases DMCs should have been aware, even before the issue of this Guidance, of the risk of licensing action if they engaged in such practices or allowed their employees, agents or associates to do so. In other cases the position might have been less clear, and this Guidance is intended to be helpful in outlining the kinds of business practice to which the OFT is likely to object.”

Although the guidance does refer to the free sector – I don’t consider that it requires a debt management company to provide a customer with advice about the free sector. And I’m not persuaded that Harrington Brooks was obliged to inform Mrs R about free providers of advice concerning her debt problems.

I consider that a debt management plan was a suitable recommendation for Mrs R in July 2009 and I’m not persuaded that there’s enough evidence to show that Harrington Brooks has acted incorrectly in its dealings with Mrs R. So I find that the debt management plan wasn’t mis-sold to her. And I find that it wouldn’t be fair or reasonable for me to require Harrington Brooks to pay any compensation to Mrs R or to take any other action in response to her complaint.

my final decision

For these reasons, my decision is that I don’t uphold Mrs R’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs R to accept or reject my decision before 5 December 2016.

Jarrold Hastings
ombudsman