

complaint

Mr and Mrs H complain that they weren't provided with satisfactory information about their debt management plan ("DMP"), which was sold to them by a third party ("T"). The DMP was then passed to Harrington Brooks (Accountants) Limited, trading as Harrington Brooks Debt Management, ("HBDM"), to be administered. The complaint is brought to this service on Mr and Mrs H's behalf by a claims management company ("CMC"). But for ease, I shall refer below to all actions being taken by Mr and Mrs H unless stated otherwise.

background

Mr and Mrs H entered into a DMP in November 2012 with T. The DMP was then transferred to HBDM two days later to be administered. Mr and Mrs H's main complaint is that they weren't told that the same or a similar service could have been provided free of charge or about the availability of free and impartial advice. They also said that they weren't informed of the potential impact of the DMP on their credit file.

The adjudicator didn't recommend that the complaint should be upheld. He noted that HBDM didn't give the initial advice or set up the DMP. But even if it had, under the Office of Fair Trading's ("OFT") guidance which was applicable at the time, it wasn't appropriate for HBDM to signpost free alternatives. He explained that Clause 3.23 of the guidance said:

Examples of unfair or improper business practices include:

g. failing to refer the consumer, where appropriate, to a not-for-profit advice organisation for further help. This may include under circumstances in which he:

- i. Has priority debt problems and/or an immediate 'emergency' that the licensee is unable or unwilling to assist with and/or*
- ii. Does not have enough disposable income to meet the cost of paying the fees charged by the licensee.*

The adjudicator hadn't seen any information which suggested this DMP included any priority debts, or that Mr and Mrs H had an immediate 'emergency' that T or HBDM wouldn't assist with, or that there was any indication that Mr and Mrs H couldn't afford the fees or this DMP when they entered into it.

With regard to the impact of the DMP on Mr and Mrs H's credit file, the adjudicator had listened to HBDM's welcome call with Mrs H. During this, she was informed that the DMP would likely lead to defaults due to the repayment amounts being lower than the contractual repayments. HBDM's representative also explained the effect this would have on Mr and Mrs H's credit file and their future ability to obtain credit.

The CMC disagreed and responded to say, in summary, that whatever the source of the initial advice, HBDM, as the company who was providing the service, had an obligation to ensure that the advice given by T was compliant. The CMC also referred to the OFT's Debt Management Guidance compliance review dated September 2010 ("2010 Review"), and the Financial Conduct Authority's regulations (which came into effect on 1 April 2014). It believed that these said that HBDM should have signposted Mr and Mrs H to fee-free debt advice in its first written or oral communication after 1 April 2014 (CONC 8.2.4).

The adjudicator disagreed that CONC 8.2.4 applied and said that HBDM's first communication with Mr and Mrs H was in 2012.

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 has asked to speak to the ombudsman dealing with this decision. I've considered its request but I think I have a good understanding of all the arguments raised by the CMC.

I note that the DMP was sold by T and transferred to HBDM to be administered two days later. HBDM was unable to obtain a recording of the initial sales call as T only keeps its calls for six months.

I can see that when the DMP was sold by T, that T was 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 Mr and Mrs H didn't have enough disposable income to afford the fees and their monthly plan payments. But I can see that this didn't appear to be the case in Mr and Mrs H's circumstances. I can see that their debts didn't appear to be priority debts and there didn't appear to be an immediate emergency. And from November 2012 until October 2013 they were able to make monthly payments of £500. They were then able to pay monthly payments of £300 from November 2013 until June 2014, £299.99 per month from July 2014 until November 2014, then £300 per month from December 2014 until February 2016. The payments then increased to £350 from March 2016 until June 2016 (Mr and Mrs H's last payment). I note that Mr and Mrs H were able to make these payments. Because of this, it appears to me that the fees and monthly plan payments weren't unaffordable. So, even if I accepted the CMC's claim that HBDM was responsible for ensuring that T's advice was compliant, I don't think that I could conclude that HBDM has done anything wrong here.

The CMC has also referred to the 2010 Review. The recommendations in the 2010 Review were taken into account in the 2012 Guidance. But, as shown above, in Mr and Mrs H's circumstances, I don't think that HBDM was obliged under the 2012 Guidance to refer them to fee-free services.

I also note that the CMC has referred to CONC 8.2.4 (1). But I don't think it applies to Mr and Mrs H's DMP as it applies to agreements entered into after 1 April 2014. Mr and Mrs H's DMP was set up long before 1 April 2014. And HBDM had already sent its first written and had its first oral communication with Mr and Mrs H prior to that date. So I don't think that HBDM has done anything wrong here. But I do note from HBDM's contact notes that in HBDM's reviews of the DMP in February 2015 and February 2016 that HBDM signposted Mr and Mrs H to the free sector. Notwithstanding this, I note that Mr and Mrs H didn't cancel their DMP until June 2016.

So, overall, I don't think that HBDM has done anything wrong in rejecting Mr and Mrs H'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 Mr and Mrs H to accept or reject my decision before 16 January 2017.

Roslyn Rawson
ombudsman