

complaint

Mr C complains that a debt management plan was mis-sold to him by Harrington Brooks (Accountants) Limited. He is being helped with his complaint by a representative.

background

Mr C entered into a debt management plan in April 2010 with another debt management company. That company has stopped trading and Mr C's plan has been transferred to Harrington Brooks. A complaint was made to Harrington Brooks in June 2016 that the plan had been mis-sold to Mr C. It said that Mr C wasn't made aware: of the impact on his credit rating by reducing payments to his debts; of the monthly fees deducted from his payments which weren't being paid to his creditors; that the same or similar service could've been provided for him free of charge or of the availability of free and impartial advice; or of the setup fee. Mr C wasn't satisfied with Harrington Brooks' response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She said that Mr C entered into the plan with another debt management company so Harrington Brooks wasn't responsible for selling the plan to him. And she could see that Harrington Brooks provided Mr C with a welcome pack which explained that his credit rating would be affected in the short term, and possibly longer, and which detailed the fees that would be charged for the plan. She said that Harrington Brooks was under no obligation to tell its existing consumers that free advice was available. She noted that the guidance issued in April 2014 states that debt management companies have a duty to tell consumers that a free service is available *"in its first written or oral communication"*. But she considered that, because Mr C had already been in the plan since April 2010, he'd already received his first written and oral communication before April 2014. So she was unable to conclude that Harrington Brooks had made an error.

Mr B's representative – on his behalf - has asked for this complaint to be considered by an ombudsman. The representative says, in summary, that there was an absolute regulatory obligation to bring existing plans up to Financial Conduct Authority standards by April 2014 and, at the absolute latest, at the first point of contact after that date. And it says that debt management companies had to signpost customers to free debt counselling and debt adjusting services.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so – I agree with the adjudicator – and for largely the same reasons.

Mr C entered into the debt management plan with another debt management company. So Harrington Brooks wasn't responsible for selling the plan to him. It provided him with a welcome pack when it took over the plan. It told him that the plan would affect his credit rating and set out the fees that it would charge. So I consider that Mr C was given enough information to make him aware of both the impact of the plan on his credit rating and the fees that would be charged.

Mr C entered into the plan in April 2010. The Office of Fair Trading's debt management guidance which was applicable at that time 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 that 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 Mr C about free providers of advice concerning his debt problems under that guidance or any later guidance. And any such obligation when the plan was entered into would’ve been the responsibility of the original debt management company – not Harrington Brooks – so Harrington Brooks would have no liability for it.

And I agree with the adjudicator that the Financial Conduct Authority’s Consumer Credit Sourcebook requirement to give advice about the free sector applies when initial advice is given to a consumer to enter into a debt management plan – so Harrington Brooks wasn’t required to advise Mr C about the free sector in 2014.

I’m not persuaded that there’s enough evidence to show that Harrington Brooks has acted incorrectly in its dealings with Mr C’s debt management plan since it took over the plan. So I find that it wouldn’t be fair or reasonable for me to require Harrington Brooks to refund any money to Mr C – or to take any other action in response to his complaint.

my final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 23 January 2017.

Jarrold Hastings
ombudsman