

complaint

Miss H complains that Debt Free Direct Limited (DFD) wrongly told her to enter into an Individual Voluntary Arrangement (IVA).

background

Miss H was put in touch with DFD because she had been struggling with her debts. Following an initial call Miss H agreed to consider an IVA. After the IVA was approved Miss H still found it difficult to meet the repayments and the IVA failed. Miss H says DFD should have properly explained all the options including bankruptcy as this would have been better for her.

The adjudicator recommended that the complaint should be upheld. She considered that DFD had not explained all of the options properly to Miss H including bankruptcy. DFD did not agree and responded to say in summary that Miss H did not want to consider bankruptcy and everything was made clear in the documents signed by Miss H.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator for broadly similar reasons.

I have listened to the call recordings between Miss H and DFD. Miss H was introduced to DFD by a third party because she was struggling to meet her repayments which were in the region of £110 per month. I agree with the adjudicator that the advisor did not do enough during the calls to explain to Miss H about the bankruptcy option. Although DFD has said that Miss H wanted to avoid bankruptcy the call recordings do not reflect that. Overall, I think that DFD assumed that Miss H did not want to consider bankruptcy and so didn't explore this in enough detail with her.

During the initial call the IVA was estimated to cost £107.73. A proposal was prepared at a cost of £131. I haven't seen anything which clearly explained the increase to Miss H. Although she has accepted that she should have read the documents in more detail Miss H has explained that she was very upset at the time and struggling with her debt. It seems that the agreed figure for the IVA was more than she was currently struggling to pay. I don't think that DFD did enough to ensure that the IVA was the best option for Miss H given what she had told them about her circumstances.

Although the paperwork provided to Miss H explains in detail the nature and effect of the IVA I don't think DFD gave her enough information to enable her to decide if it was the most suitable option. Overall, I think Miss H agreed to the IVA without the benefit of having any detailed information about the suitability of bankruptcy in her particular circumstances. If she had been properly informed I don't think she would have agreed to the IVA.

fair compensation

So, Debt Free Direct Limited should put Miss H in the position she'd be in now if she hadn't taken out the IVA. Debt Free Direct should:

- (A) pay the amount Miss H paid each month for the IVA;

- (B) pay interest on each amount paid at 8% simple per year[†] – from the date of each payment until she gets it back;
- (C) if any payments went to reduce Miss H's outstanding debt, Debt Free Direct can take this off the amount it owes her;

[†]If DFD considers that tax should be deducted from the interest element of my award it should provide Miss H with a tax deduction certificate so she can reclaim the tax if she is eligible to do so.

my final decision

For the reasons I have given above I uphold this complaint. In full and final settlement of it Debt Free Direct Limited should repay Miss H the redress as outlined above. Under the rules of the Financial Ombudsman Service, I am required to ask Miss H to accept or reject my decision before 11 March 2015.

Emma Boothroyd
ombudsman