

complaint

Mr and Mrs A complain that an Individual Voluntary Arrangement ("IVA") they entered into in November 2010 was mis-sold. They say Unique Debt Solutions Limited did not take into account that they were receiving Support for Mortgage Interest ("SMI"), which reduced their total monthly mortgage repayments.

Mr and Mrs A are represented in this complaint by their local advice centre.

background

Mr and Mrs A say they contacted Unique Debt Solutions to help them with their debts after seeing an advert on TV. Shortly afterwards, in October 2010, they also approached their local advice centre, which began negotiating reduced payment arrangements of £1 per month with their creditors, to enable Mr and Mrs A to keep up with their mortgage repayments following changes to SMI. It advised them that they would not qualify for an IVA because of their circumstances.

Mr and Mrs A say they were surprised when Unique Debt Solutions contacted them to say they had been accepted for an IVA. They say they were keen to pay their creditors and did not know whether their creditors would accept £1 a month. Therefore, they signed the IVA agreement.

Unique Debt Solutions says it obtained relevant information from Mr and Mrs A over the telephone and, after considering a range of options, it advised them to enter into an IVA. It says it checked the information in accordance with the requirements of the IVA Protocol applicable at the time of Mr and Mrs A's proposal. It says it also made further enquiries of Mr and Mrs A to ensure their income had been accurately stated. Unique Debt Solutions says it was as a result of these additional questions that Mr and Mrs A confirmed they were receiving council tax benefit, which they had previously omitted to mention. Unique Debt Solutions says Mr and Mrs A did not mention any other benefits at this stage and the monthly mortgage repayment amount was supported by their bank statements.

Mr and Mrs A say they included a 2009 letter from their mortgage provider with their paperwork to Unique Debt Solutions. This letter confirms their total contractual repayment liability. Mr and Mrs A also say they contacted Unique Debt Solutions when they realised they were in mortgage arrears because of changes to SMI. They say they were told to sign the forms and return them, and that Unique Debt Solutions would make the necessary amendments.

Unique Debt Solutions has no record of this conversation and does not accept that it took place, as it is not recorded in its file notes. It has also been unable to speak to the employee who dealt with Mr and Mrs A at the time, as he has since left the company.

Mr and Mrs A stopped payments to the IVA when they were advised that they would be unable to meet their mortgage repayments.

my provisional findings

In my provisional decision issued in April 2013, I explained why I intended to uphold Mr and Mrs A's complaint and the redress I was proposing to award.

I invited both parties to let me have their further comments by 20 May 2013. Mr and Mrs A have accepted my provisional findings. Unique Debt Solutions has not responded.

my findings

I have considered all the available evidence to decide what is fair and reasonable in all the circumstances of this complaint. As Mr and Mrs A have confirmed their acceptance and Unique Debt Solutions has made no comments in response to my provisional findings, I will not change them. I set out my findings below.

Unique Debt Solutions says it has complied with the terms of the Straightforward Consumer IVA Protocol (2010 version). The protocol says:

“Income should be verified by means of 3 months of payslips, or a suitable equivalent for the self-employed, and bank statements (in the case of weekly pay slips, it is sufficient to check a selection to cover the 3-month period).”

It also says:

“The expenditure elements that require formal verification are:

- *Secured loan payments – verification by sight of relevant mortgage or bank statements...”*

Mr and Mrs A’s representatives have disputed whether this is the correct protocol for their circumstances because it is not clear that it applies to persons whose only source of income is from benefits, rather than from regular employment or pension income. An earlier protocol did not rule out debtors with more than 20 to 25% of their income coming from benefits, but stated that this should be specifically highlighted in the proposal.

Nevertheless, Unique Debt Solutions is required to have regard to the Office of Fair Trading’s debt management guidance. The relevant guidance at the time of the agreement was issued in September 2008.

Paragraph 2.28 of the guidance requires providers of debt management services to carry out a realistic assessment of the financial circumstances of the consumer, including both income and outgoings, before advice is given. Income must be verified by appropriate means, such as pay slips. Reasonable steps must also be taken to verify regular outgoings.

In my view, this is the overriding obligation. Therefore, Unique Debt Solutions must demonstrate that it carried out a realistic assessment of Mr and Mrs A’s financial circumstances before it was ready to give them advice. It was also required to verify their income and expenditure by appropriate means.

What amounts to a realistic assessment will differ from one consumer to another, and will depend on the individual circumstances of the consumer(s). Mr and Mrs A’s only source of income was from benefits. Therefore, Unique Debt Solutions could not discharge its responsibilities by adhering to the strict wording of the IVA protocol set out above. It was required to take steps to ensure that all of Mr and Mrs A’s benefits had been taken into account and verified against appropriate documentation.

Unique Debt Solutions has not suggested at any stage that it expressly asked Mr and Mrs A whether they were receiving assistance with their mortgage repayments, despite the fact that all of their income came from benefits. I find this surprising given that it says it remembered to ask them about council tax benefit, which Mr and Mrs A also appear to have forgotten to mention at the time. I think Unique Debt Solutions should have been alert to the possibility that Mr and Mrs A might also be receiving assistance with their mortgage payments given their financial situation.

I also think it would have been reasonable to check mortgage statements rather than take the information from bank statements alone. Mr and Mrs A's bank statements only show how much they were paying. However, what they were paying did not equate to their contractual liability. Had mortgage statements also been checked, Unique Debt Solutions would have identified the shortfall and should have realised that the balance was being covered by SMI.

Even if Unique Debt Solutions disputes that Mr and Mrs A included a mortgage letter with their paperwork, or simply did not see it, it does not alter the fact that it should, in my view, have asked to see evidence in the form of a mortgage statement. If this information had been requested and checked, it is clear that Unique Debt Solutions would have advised that Mr and Mrs A were not suitable candidates for an IVA.

I accept that Mr and Mrs A signed the documentation without checking the details. However, this does not negate Unique Debt Solutions' obligation to ensure that it had enough information in the first place to enable it to give accurate advice.

I have also taken into account the suggestion that Mr and Mrs A might have corrected the date they bought their home on the proposal without amending other details. Even if this is true, I do not think the other details were necessarily incorrect because of the way SMI is paid, direct to the lender. The monthly mortgage cost stated reflects what they were actually paying. Similarly, it appears Mr and Mrs A also did not give a figure for how much they paid in council tax either, presumably because their liability is covered by council tax benefit.

Unique Debt Solutions accepts that it would not have recommended an IVA to Mr and Mrs A had it known that their contractual mortgage repayments were substantially higher than the amount they were paying after benefits. For the reasons given above, my view is that responsibility for this lies with Unique Debt Solutions for simply checking bank statements and not carrying out an appropriate assessment of Mr and Mrs A's financial circumstances, including asking about SMI, when it knew that 100% of their income came from benefits.

Therefore, I find that the IVA was mis-sold to Mr and Mrs A.

my final decision

For these reasons, my final decision is that I uphold Mr and Mrs A's complaint. I direct Unique Debt Solutions Limited to return all moneys paid by Mr and Mrs A, apart from any sums paid to creditors only. Unique Debt Solutions must also add simple interest calculated at 8% per year from the date of each payment made by Mr and Mrs A until the date the money is refunded.

Athena Pavlou
ombudsman