

Complaint

Miss B and Mr P complain that House & Home Care Limited (HHC) misled them when they entered into a debt settlement agreement. They're unhappy with the fees, and that the agreement hasn't paid off all the debts in five years as it said it would.

Background

In May 2009 Miss B and Mr P were struggling with a number of debts. They initially applied for an Individual Voluntary Arrangement (IVA), but while that was being set up they were placed on a debt management plan. This plan came with fees totalling 17.63% per month as a distribution and management charge. But Miss B and Mr P were told they weren't eligible for the IVA so were moved from the debt management plan to a debt settlement with HHC – this carried fees of 20% of savings on any settled debt. They say HHC told them they'd be debt free in five years. And they say they were also told there were no fees for this.

Miss B and Mr P had been with HHC for around nine years at the point it stopped offering debt advice and support. This meant Miss B and Mr P had to manage their largest debt, of around £17,000, themselves as HHC hadn't resolved this one. And it was at this point they say they discovered HHC were changing their fees for each settled debt.

Because they disagreed with HHC charging fees and the largest debt hadn't been cleared, they asked us to look into things. Our investigator ultimately felt they'd been told about fees when they initially signed up with HHC. But felt it hadn't told Miss B and Mr P about a change in the amount of fees charged, when it switched them from the IVA to the debt settlement agreement. So he upheld the complaint and suggested HHC pay the difference between the 17.63% fee he could see HHC had told Miss B and Mr P about – and the 20% fee they ended up paying. He said HHC should also pay 8% simple interest on this amount, or offset it against anything Miss B and Mr P still have owing.

HHC said it'd be near impossible to calculate the difference, and while it didn't agree with the suggestion it had done anything wrong, it was prepared to try and settle the complaint. It said if they used a simple 3% difference from the total fee due of £8,054.69 this would mean a reduction from the fees of £1,238.03. HHC say £799.17 in unpaid fees are still owed, so the offer would be £483.86. But they were prepared to raise this to £750 to settle the case as a gesture of goodwill on a without prejudice basis.

Miss B and Mr P didn't agree with this. They did some of their own calculations, and came back with three separate solutions they felt were reasonable to resolve the complaint. HHC didn't agree with any of these, so the complaint's been passed to me to decide.

My findings

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

Based on the evidence I've got I can see that Miss B and Mr P were made aware, and agreed to, fees of 17.63% per month as a distribution and management charge. This was part of the signed terms and conditions provided when they took out the debt management plan in May 2009. But I've seen nothing in the notes or other evidence HHC or Miss B and Mr P have given me to show they agreed to fees of 20% of the savings on a debt on the debt settlement agreement. This is quite a significant change from the original agreed fees, so I'd expect to see sufficient records to demonstrate that was discussed and agreed to – which I haven't.

HHC have argued that there are new signed terms and conditions for when the fees were changed. There are signed documents from Miss B and Mr P when things changed, but I can't see that the new fee structure was sufficiently explained to them.

So I think it's more likely than not, based on what I've seen, Miss B and Mr P weren't made aware of the increase in charges. I think Miss B and Mr P were likely under the impression the fees they were paying on the debt settlement was the same as what they'd agreed to before. So – the next consideration is what the redress should be in this complaint.

Our investigator has recommended a relatively straightforward answer – which is calculate the difference in what Miss B and Mr P would have paid under the fee structure they agreed to – against the one they didn't.

In principle this does seem like the fairest answer. But HHC have explained it thinks it'll be near impossible to calculate this because of the different ways the fees would have been applied under the different agreements. So rather than attempting to calculate this in detail, it offered £750 to resolve this complaint.

Miss B and Mr P didn't accept this and offered their own three suggestions for resolving this issue. None of which HHC accepted, but it didn't explain its reasons why it didn't agree with any of these suggestions.

Ultimately my decision has to reflect the fairest outcome on a complaint – setting aside the potential difficulties in reaching that outcome. And in this case I think the fairest outcome is to calculate the difference in fees charged.

Miss B and Mr P have also said they think HHC have charged fees for debts they didn't settle. I've not considered this in detail, because by recalculating the relevant fees, any issues here should be resolved. This recalculation should also resolve HHC's concerns about fees it says Miss B and Mr P haven't paid.

My final decision

It follows that I uphold this complaint, and require House & Home Care Limited to:

- A. Calculate the total fees that would have been paid under the debt management plan (17.63% fee structure).
- B. Calculate the total fees paid under the debt settlement agreement (20% fee structure).
- C. Subtract the amount calculated under A from B, and pay Miss B and Mr P the difference if this results in a credit figure.
- D. If this results in a credit figure, then HHC should add simple interest on the difference. The interest rate should be 8%.[†]
- E. HHC should also provide a calculation showing what its done to Miss B and Mr P.

[†] HM Revenue & Customs requires HHC to take off tax from this interest. HCC must give Miss B and Mr P a certificate showing how much tax its taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr P to accept or reject my decision before 13 April 2020.

Jon Pearce
Ombudsman