

## **complaint**

Mr D complains about the actions of Debts Solved Limited (trading as X-debt) when advising him about his options before he entered into an Individual Voluntary Arrangement (IVA).

## **background**

Mr D entered into the IVA in 2009, when he had debts of nearly £60,000 which he had previously been dealing with under a debt management plan. He feels that he was misled by the information he was given before seeking the IVA and would have been in a better position now if he had declared bankruptcy. He is particularly concerned about terms in the IVA about the house he owns, as he says he had always disagreed with selling it.

I am considering the advice he was given before entering into the IVA: I cannot consider issues he raised about the management of the IVA by the insolvency practitioner as those are not within our jurisdiction.

Our adjudicator did not recommend that the complaint was upheld. She said that although Mr D was given advice over the phone, X-debt had set out various options (including bankruptcy) in a letter to him. He had been given the chance to discuss matters again before he signed any agreement.

Mr D disagreed. He said he had not agreed to the use of his home as equity. He had been in a vulnerable situation and found legal documents difficult to understand. If he had signed to say his home could be included, that would be because he did not understand what the document meant. He had specifically discussed not using his home in the agreement. He also referred to his difficult personal circumstances.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I appreciate that the documents sent to Mr D at the time he agreed to the IVA were quite long and complex. Unfortunately that was unavoidable as the issues were quite complex. As the adjudicator said, he was encouraged to discuss any queries.

However the initial letter does explain in fairly simple terms that bankruptcy was an option, and the implications of that for Mr D's house (which was in negative equity at the time). But it notes that he wished to avoid the stigma of bankruptcy. So bankruptcy clearly was discussed, but dismissed as an option for that reason.

The final page of the letter – the same page Mr D signed – says that X-debt understood 'that you wish to exclude the property by way of sale in month 54 but will consider a re-mortgage of the whole of the available equity in the final year'. X-debt says that the creditors would never have agreed to the IVA, if equity release from the property was not considered at some stage.

The formal IVA proposal which Mr D also signed contains a whole section which is clearly headed as being about the property. I can see that, particularly at a time of stress, he might not have fully understood absolutely every detail. But I find it hard to see how he could *not* have understood from that that the IVA contained terms about the property. For instance it

says 'When the property market improves, it is my intention to sell the property' and 'In the event that a sale of the property is not achieved by month 54 of my Arrangement, a valuation will be carried out on the property.' It goes on to say that depending on the value, he would then seek to re-mortgage the property, subject to various conditions.

So the IVA does not require Mr D to sell the property, though it does require him (in certain circumstances) to release equity from it.

While I accept that Mr D is giving an honest recollection of events back in 2009, clearly a lot has happened to him since then. From the documents I have seen, it seems to me more likely than not that back in 2009 he was advised about various options (including bankruptcy) and chose the IVA, aware that he might need to contribute some equity from his property towards that.

**my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 21 May 2015.

Hilary Bainbridge  
**ombudsman**