

complaint

Mr and Mrs C complain about the advice that they received from Freeman Jones Limited in connection with their individual voluntary arrangement.

background

Mr and Mrs C contacted Freeman Jones in early August 2011 about their financial circumstances and later that month they signed a proposal for an individual voluntary arrangement. They complained to Freeman Jones in May 2017 and they said that they wasn't made aware of the additional monies or equity rulings and understood that if they paid the required amount for five years the arrangement would be over. They weren't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. He said that this service can only consider the advice that was given when the arrangement was set up (and he explained what they could do if they were unhappy about anything that happened after it was set up). He'd listened to Mrs C phone conversation with Freeman Jones in early August 2011 – and he said that it was explained that: after 54 months their property would be valued and any equity released into the arrangement (and if that wasn't possible then the arrangement may be extended for twelve months; and that any additional income under 10% could be kept, but anything over that would be spilt equally with the fund. And he said that both of those points were confirmed in the proposal from that Mr and Mrs C both signed. So he thought that Freeman Jones was clear about the additional monies and equity rulings when the arrangement was set up.

Mrs C has asked for their complaint to be considered by an ombudsman. She says, in summary, that they were told that if they kept up with payments the arrangement would probably be finished in 60 months – and that she contacted Freeman Jones after 60 months and was told that the payments had finished and it had stopped taking the direct debits. But she says that she's since been told that they still owe about £12,000 from their equity and £12,000 from their wages. And she says that they're being threatened with bankruptcy.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This service can only consider the advice that was given to Mr and Mrs C about the arrangement when it was set up. We have no jurisdiction to consider issues that arise from the way the arrangements has been administered or events that happened after the arrangement was set up. Any such issues can be considered by the Insolvency Service – and the investigator has provided its contact details to Mr and Mrs C.

Mrs C signed the proposal for an individual voluntary arrangement in August 2011. And the proposal was signed jointly by Mr C. Immediately above their signatures, the proposal says:

"We confirm that we have read and understood the attached proposal including the statement of truth, together with the appendices, and confirm that the contents reflect the state of our financial affairs and are true to the best of our knowledge. We have read the following documents and have discussed them with a Freeman Jones Advisor: the "Your IVA Proposal Documents Explained"; the booklet "Is a Voluntary Arrangement Right For Me?"; the "Comparison between IVA and Bankruptcy"; and "the Equity Release Provisions Explained"."

The proposal explained the arrangements for dealing with additional money that was received by Mr and Mrs C and the equity release. Freeman Jones also explained those arrangements to Mrs C in the call in early August 2011. So I consider that Mr and Mrs C were aware – or ought reasonably to have been aware - of those arrangements. And I'm not persuaded that there's enough evidence to show that Freeman Jones acted incorrectly in the advice that it gave to Mr and Mrs C about their individual voluntary arrangement.

This service can't consider what's happened since the arrangement was set up. But Freeman Jones says that the individual voluntary arrangement failed because of a breach in January 2018 when Mr and Mrs C refused to pay additional monies into the arrangement. It says that a variation meeting was held with the creditors but they weren't prepared to complete it. It also that Mr and Mrs C each owes more than £6,000 for their additional earnings in excess of the 10% allowance.

I sympathise with Mr and Mrs C for the financial difficulties that they continue to experience and the threat of bankruptcy that they're facing. And I suggest that they contact the Insolvency Service for help with those issues (if they haven't already done so). But I'm not persuaded that it would be fair or reasonable in these circumstances for me to require Freeman Jones to pay any compensation to Mr and Mrs C – or to take any other action in response to their complaint.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 26 March 2018.

Jarrold Hastings
ombudsman