complaint

Mr A and Mrs B complain that the debt repayment plan they took with House & Home Care Limited (trading as Immediate Financial) has extended for far longer than they had expected and has left them unable to afford it.

background

Mr A and Mrs B took a debt management plan with Immediate Financial in August 2010, to enable them to repay outstanding debts. They say that, on the basis of what Immediate Financial told them, they understood that the debts would be repaid within about five years – and that this was important to them as they wanted to be sure all their debts were dealt with before Mr A's retirement. Mr A and Mrs B say that they have maintained their repayments since the plan began, and had no idea that the term could extend in this way.

Immediate Financial has told Mr A and Mrs B that there are still some 44-49 months remaining to pay on their plan. It accepts that it made a typographical error on a letter that wrongly quoted 14 months instead 37 months, but said that the extension to the term had been because of the level of reductions creditors had been prepared to agree in practice, and fluctuations in payments. It accepted that Mr A and Mrs B had been upset by its error and offered to pay £305 into their settlement account to compensate.

As things were not settled, Mr A and Mrs B brought their complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator was not persuaded that the explanation Immediate Financial had given for the significant difference in term was correct. The adjudicator did not consider that Immediate Financial had properly explained the charging structure, and how it affected repayment of the debts, to Mr A and Mrs B.

The adjudicator was also concerned that Immediate Financial had not made it clear to Mr A and Mrs B that the 61-month repayment plan could be extended so considerably, or explained what other options they had.

Overall, the adjudicator concluded that Immediate Financial had misrepresented the plan to Mr A and Mrs B. The adjudicator recommended that Immediate Financial should either:

- discharge the remaining debts to make Mr A and Mrs B debt-free and cancel the plan without further charge; or
- refund all the fees it had taken during the life of the plan, together with interest, and cancel the plan with immediate effect.

The adjudicator also considered that Immediate Financial should pay Mr A and Mrs B £250.

Immediate Financial did not agree and said, in summary:

- Is advisers are trained to explore all available options with clients, and a call script is enclosed to show what would have been said.
- Mr A and Mrs B joined the plan on the basis that the given timescale was an estimate based on Immediate Financial's performance to date in settling clients' debts.

- Because Immediate Financial achieved reductions from creditors, the plan has been cheaper overall than a free voluntary debt plan would have been. So the advice the were given to enter into the debt plan was undoubtedly better advice.

- Immediate Financial guarantees that its fees will never exceed the amount it is able to get creditors to write off. So Mr A and Mrs B cannot have been caused any detriment from entering into the plan.

- When the actual debt figures were received from Mr A and Mrs B, the total debt turned out to be over £4,000 more than their estimate. So this would always have increased the cost of the plan and probably extended the term by about a year.

- Mr A and Mrs B were sent paperwork each year after the annual review. The paperwork sent to them in August 2014 shows a remaining term of 61 months.

- It could jeopardise Mr A and Mrs B's repayment arrangements with their creditors, particularly with one that is on course to end in February 2016, if they switch to a free plan now or terminate the plan with Immediate Financial. A change of that type could be very detrimental to them.

- It does not believe it failed Mr A and Mrs B but, in view of their ages, it is willing to reduce its fees by half. Its fixed fee on the account was £8,090.73 so it will reduce that to £4,045.37, return £2,624.47 to the clients' account and complete the plan taking no further fees.

Following that, Immediate Financial wrote to say that on reflection it was prepared to offer the option of refunding fees with interest, but considered that £400 of the refund should be used to discharge the remaining balance on the debt scheduled to be repaid in February 2016 – to avoid losing the benefit to Mr A and Mrs B of that settlement.

The adjudicator felt that, in the circumstances, Immediate Financial should repay the £400 itself rather than from any refund of fees. Immediate Financial said it was not prepared to do that and was withdrawing all offers in their entirely.

my findings

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

When Mr A and Mrs B approached Immediate Financial in 2010 their intention was to repay all their debts by the year before Mr A's retirement date. I accept that this was very important to them, because the years leading up to retirement were their last chance to get rid of these debts and any mistake would mean they were left without any way of making up for lost time – because their income was set to drop significantly after retirement.

They had found themselves in a situation where, following some unexpected setbacks, their debts had become unmanageable. So they contacted Immediate Financial to talk about what they might do.

I have very carefully considered what Immediate Financial has said about the things it would have told Mr A and Mrs B during the sales call, and what was given to them in writing at the time. The evidence about what was said is quite thin, but Immediate Financial appears to accept (in its recent representations) that it advised Mr A and Mrs B to enter into the plan with it.

So I need to be satisfied that this was right for Mr A and Mrs B, and that:

- the charges that would be levied for the plan;
- the effect that those charges would have on the repayment of their debts; and
- the potential for repayment to take a substantially longer than the initial estimate

were all fairly and properly drawn to their attention before they entered into the plan.

Immediate Financial has said that the reason for the term of the plan extending from an initial estimate of 61 months to a current estimate of some 110 months is because the reductions that it was able to get from Mr A's and Mrs B's creditors were less than the illustration allowed for.

It says that the only area in which it can reasonably be criticised is in being over-optimistic in the percentage settlement it could obtain for them – and that this had always only been an estimate.

But in that case, taken in the context of Mr A's and Mrs B's financial position as Immediate Financial knew it and given the trust they had placed in Immediate Financial to come up with the best solution for them, I consider that this was a very serious failing.

Taking everything into account, I find that Immediate Financial has not provided sufficient evidence to show that it made clear to Mr A and Mrs B that the plan illustration was based on optimistic estimates that could not be relied on, how the charges would work and that the plan was essentially open-ended in terms of how long it would take before their repayments would end.

I have noted Immediate Financial's observations about how much money Mr A's and Mrs B's creditors have allowed for reduced settlements on debts. It has compared that with what it says Mr A and Mrs B would have paid if they had taken a free debt repayment plan with another agency.

That comparison has been made using an underlying assumption that any free debt repayment plan would have required Mr A and Mrs B to repay all their debts in full – in other words, that none of the creditors would have agreed to any reduced settlement in that case.

Given that Mr A's and Mrs B's income, outgoings, assets and liabilities would still have been the same if they had taken a free debt repayment plan, and that debt advisers who do not charge fees are still motivated to obtain reduced settlements with creditors to take account of their clients' financial situation, I do not consider that this was a reasonable assumption to make.

So I do not accept Immediate Financial's argument that, however difficult the situation Mr A and Mrs B are now in and regardless of the plan fees that they have paid since 2010, they are still better off from taking the Immediate Financial plan rather than another type of arrangement.

The annual paperwork sent by Immediate Financial gave a term at the end of the information, but I am not persuaded that this did enough to make the implications clear for Mr A and Mrs B. For example, the term shown in the summer 2014 papers is 61 months – which looks at first glance like simply a restatement of the original term, rather than a new remaining term.

Mr A and Mrs B had, by then, been making their repayments for four years. I do not consider that Immediate Financial made sufficient efforts to make clear to them that they were, in essence, right back where they started in terms of how long it would still take them to repay their debts.

What Immediate Financial has characterised as over-optimism on its part has meant that the final window Mr A and Mrs B had to repay their debts has now passed, and they are still faced with having to make some four more years of repayments. This will not be possible, because their post-retirement income will not support the payments – and matters have come to a head with recent serious health problems and redundancy.

So, the whole debt repayment plan and all the work Mr A and Mrs B have put into making repayments for over five years are now at risk. I take Immediate Financial's point about cancellation of the plan meaning that some creditor arrangements may fail, and I can see that this would leave Mr A and Mrs B in a difficult and messy financial situation that they are ill-equipped to deal with at this point.

I have given very careful thought to what would be the fairest way to resolve this dispute, in all the specific circumstances of this case. I find that the first option recommended by the adjudicator – which will place Mr A and Mrs B in the position they would now be in if the debt repayment plan was completed – is the fair settlement.

Mr A and Mrs B have been caused worry and upset by what happened, and have also been on something of a roller-coaster in terms of offers being made and then withdrawn again by Immediate Financial. So I consider they should also receive the £250 compensation included in the adjudicator's original recommendation.

my final decision

My final decision is that I uphold this complaint and I direct House & Home Care Limited (trading as Immediate Financial) to do the following:

- pay Mr A and Mrs B £250; and
- within four weeks of the date of Mr A's and Mrs B's acceptance of this final decision, repay all the debts remaining in Mr A's and Mrs B's debt repayment plan so that they are debt-free; and
- close the debt repayment plan without applying any fees or charges; and
- within eight weeks of the date of Mr A's and Mrs B's acceptance of this final decision, provide them with written confirmation from all their plan creditors that their debts are repaid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs B to accept or reject my decision before 10 March 2016.

Jane Hingston
ombudsman