

The complaint

Mrs W has complained that Gregory Pennington Limited failed to include one of her debts in a settlement offer after she gave them the required lump sum.

What happened

Mrs W was in a debt management plan with Gregory Pennington. In January 2020, Mrs W arranged for Gregory Pennington to settle her debts on her behalf, as her partner was gifting her a lump sum of at least £12,400.

During the call, the Gregory Pennington adviser explained that one debt collector – who I'll call "P" – was unlikely to accept a reduced settlement. Mrs W had two debts with P, and the adviser explained that with a lump sum of £12,400 they'd likely be able to settle all of Mrs W's debts except for the larger P one. So they recommended using the lump sum to clear all the debts except the larger P one, then for Mrs W to carry on paying P directly for that last account – which would save her the monthly debt management plan fees.

Mrs W said she wanted to clear all the debts, and repeatedly asked the adviser how much she'd need to give them to do that. The adviser told Mrs W they'd need £14,000 to clear all of Mrs W's debts including that larger P one. Mrs W said her partner would most likely be willing to pay that if it would clear all the debts, and she'd speak to them about it. The adviser said that once they received Mrs W's paperwork, they'd speak to her about whether she could get those additional funds and what she'd like to do. They also said that if there was money left over they'd call her and ask her what she wanted to do with it.

Mrs W paid Gregory Pennington £14,000. They used this to settle her debts – except for the larger P one. They sent her updates about the accounts they were settling, which included the smaller P debt, but did not mention the larger P debt in any way. In the end, they told Mrs W they had completed her settlements with her lenders, and her plan would now close. They then returned the remainder of the money to Mrs W once that was done.

Mrs W says she thought Gregory Pennington had settled all her accounts, since she'd specifically paid them the £14,000 they asked for. So she was shocked to then get calls saying the larger P debt was still outstanding.

Gregory Pennington said they'd told Mrs W clearly on the phone that they wouldn't include the larger P debt, which she'd appeared to understand. They said their updates never explicitly said they'd settled the larger P debt.

I sent Mrs W and Gregory Pennington a provisional decision on 11 August 2021, to explain why I thought the complaint should be upheld. In that decision, I said:

Based on what I've seen so far, I don't think Gregory Pennington communicated with Mrs W clearly enough or handled her settlement in the way I'd expect. I'll explain why.

I agree with Gregory Pennington that their adviser was clear in what she was recommending – if Mrs W paid them £12,400. But Mrs W paid them £14,000.

This is important, as Mrs W and the adviser repeatedly discussed how much it would cost to settle all the accounts, and the adviser also made it very clear to Mrs W that if she paid them £14,000 then they would include the larger P debt. Similarly, Mrs W was quite clear that she and her partner were keen to clear all the debts involved, and that it was most likely her partner would be willing to pay £14,000 to have it all done with.

So Gregory Pennington told Mrs W that if she paid them £14,000 they'd try to settle all the accounts involved. Mrs W said she probably would be able to send them £14,000 in order to settle all the accounts involved. And Mrs W did then send them £14,000. At that point, Gregory Pennington should probably have realised that Mrs W was intending for them to pay off all the accounts involved. And if they weren't sure, they needed to speak to Mrs W and clarify why she'd paid them £14,000 and not the £12,400 the recommendation was based on. But Gregory Pennington did not query why Mrs W had sent them £14,000 and not £12,400, nor tell her that they needed less since they weren't going to settle the larger P debt. I think they got things wrong there.

Further, Gregory Pennington's adviser said that once they got the paperwork back, they'd have a further conversation with Mrs W about whether her partner could give her the extra funds to include the larger P debt, or whether she was happy to deal with P separately. They said they'd check how Mrs W wanted to deal with that. But as far as I can see, that conversation didn't happen.

The adviser also said that if there were funds left over afterwards, they'd call Mrs W and discuss what to do with them. But that doesn't appear to have happened either.

I think those were further errors on Gregory Pennington's part. And I think that if they had called Mrs W as they said they would, or if they'd taken reasonable action to find out why she'd paid them enough to clear all the debts instead of the smaller amount they'd asked for, then I think it would've become clear to them that Mrs W wanted the P debt included, and I think it would have avoided the situation we're in now.

Gregory Pennington did send Mrs W update emails about how the settlements were going. And I acknowledge that they didn't explicitly say they were settling the larger P debt. But they also didn't explicitly say they'd left it out. And since there was another P account involved, the updates did say Gregory Pennington were actively settling things with P – and I can see how that could've confused things further. Gregory Pennington argue that Mrs W should've noticed the larger P debt wasn't listed in the updates and concluded that must have meant they hadn't included it. But I don't agree. The onus was on Gregory Pennington to explicitly tell Mrs W what was happening with the larger P debt, especially after their conversation about how Mrs W would ideally like it included, and especially after she specifically paid them the amount they asked for in order to include it. It wasn't good enough for Gregory Pennington to simply leave the larger P account out of its updates and hope both that Mrs W would notice this – despite the other P account being present to potentially confuse things – and that she would correctly guess what its absence meant.

Looking at Gregory Pennington's follow-up emails, I can really see how Mrs W might have thought her larger P debt had been cleared. They specifically told her that there were enough funds to pay P in full, not specifying this didn't include the larger account. After this, they said there was "just one debt left to settle" – which was with a different company, implying there was not a remaining debt with P. And once that was done, they sent an email saying "Congratulations, I am delighted to inform you that we have completed your Settlements with your lenders!". There was no mention in any of these emails that the larger P debt had not been paid.

It is understandable, then, that Mrs W got a rather large shock when she found out Gregory Pennington had not cleared her P debts in full, despite her paying them exactly what they'd asked for in order to do just that.

In terms of putting things right, I can understand why Mrs W would like Gregory Pennington to now pay off the remaining P debt with their own money. But I don't think that would be fair – ultimately, this is a debt which Mrs W genuinely owes, not Gregory Pennington. And I can't see that Mrs W has lost out financially, since Gregory Pennington returned the money to her that was left over after they didn't pay for the larger P debt. And it should cost the same amount to settle things with P now as it would have done if Gregory Pennington had done it – indeed, it may cost less now, since Gregory Pennington won't be taking a fee from that.

With that said, I can see that Mrs W has suffered some serious distress from what Gregory Pennington got wrong. And she's now left with the trouble of sorting things out with P herself. What's more, this has all come during an exceptionally difficult time for Mrs W – which Gregory Pennington were aware of. She was already going through a truly tough situation, and unfortunately they've now added to that.

We can't undo the distress that's been caused. But when a business gets things wrong, we often tell them to pay compensation – to acknowledge their error and the impact it had.

In terms of the amount of compensation, it's worth bearing in mind that we're not here to fine or punish businesses. And we have guidelines about what levels of compensation to award, which I need to be consistent with. After considering the circumstances of this case and our approach to compensation, I think it would be fair for Gregory Pennington to pay Mrs W £300 compensation for the trouble and upset they caused her.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 8 September 2021. Mrs W didn't add anything further. Gregory Pennington agreed to pay the compensation but asked for a point of clarification, which I'll talk about below.

What I've decided – and why

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

Gregory Pennington asked for clarification that I did not think they had caused Mrs W a concrete financial loss; that I accepted they had made a clear recommendation on the basis that Mrs W paid them £12,400 and had then followed that recommendation; and that the issue was that they didn't then adjust things or discuss things with Mrs W after she paid the higher amount, leading her to believe all her debts had been included.

That is a good summary. Per the provisional decision, I understand that they returned the unused funds to Mrs W and that it will ultimately cost the same – or less – for her to settle things with P herself. So she would not have lost out financially. The compensation surrounds the issues in communication where Gregory Pennington's adviser had asked for £14,000 to include all the debts, and Mrs W had then paid that, but they did not then clarify the situation or have the follow-up discussions they said they would.

I'm glad to hear that Gregory Pennington agree to the compensation. Neither side have sent in any other new evidence or arguments – so having reconsidered the case, I've come to the same conclusion as before.

Putting things right

I direct Gregory Pennington Limited to pay Mrs W £300 compensation in total.

My final decision

I uphold Mrs W's complaint, and direct Gregory Pennington Limited to pay her £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 7 October 2021.

Adam Charles
Ombudsman