

## **The complaint**

Mr and Mrs N complain about the advice given to them by Totemic Limited, trading as PayPlan during their debt management plan ("DMP").

## **What happened**

Mr and Mrs N entered a DMP with PayPlan in 2005 and 2006 respectively.

Between 2005 and 2020, Mr and Mrs N were making payments to PayPlan – which PayPlan distributed to Mr and Mrs N's creditors. In 2020, Mr and Mrs N discovered that some of their debts were unenforceable and so felt they'd been making payments unnecessarily. So they complained that PayPlan hadn't told them aware of this. They were also concerned about some discrepancies in the payment history.

PayPlan responded to Mr and Mrs N's complaint. They said they had provided the correct advice to Mr and Mrs N about their debts, including when they suggested bankruptcy to them.

Mr and Mrs N weren't happy with this response. An Investigator considered their complaint. He said, in summary, under the agreement for the DMP, PayPlan do not deal with accounts in dispute and, apart from one occasion in 2009, Mr and Mrs N hadn't raised the issue of any of their debts being unenforceable.

As Mr and Mrs N didn't agree, the complaint's been passed to me to decide. I previously explained why I didn't think the Financial Ombudsman Service had the power to consider anything that happened before 6 April 2007. I won't be considering the setting up and advice given about the DMP at the outset as this didn't become regulated until April 2007.

Both parties accepted my findings on the jurisdiction matter. So, the complaint's been passed back to me to consider the merits.

## **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.

While I've considered everything the parties have provided, I've only commented in my decision on the points I consider most relevant to the outcome of the complaint.

Mr and Mrs N entered a DMP with PayPlan. This means Mr and Mrs N had entered into an informal agreement with their creditors to repay their debts. They made a monthly payment to PayPlan, which was then distributed to their creditors.

The terms and conditions set out the service PayPlan offer- which is to help people repay their debts. There's nothing in the terms and conditions to suggest that it is PayPlan's role to seek debt solutions for Mr and Mrs N. Which, based on their submissions, appears to be the suggestion they are making.

Mr and Mrs N are also concerned that PayPlan have breached their duty of care to them, by not advising them that some of these accounts were unenforceable. Unenforceable here means, the time limits under the Limitation Act 1980 for a creditor to pursue the debt in court have expired. Mr and Mrs N say this means they've been paying their debts for a number of years unnecessarily. So I've considered what PayPlan told Mr and Mrs N about this.

In 2009, Mr and Mrs N sent an email to PayPlan saying they'd heard there were companies specialising in helping people in reviewing unenforceable debts. PayPlan explained in reply, that it was up to Mr and Mrs N whether they wanted to explore this (and that they had no objection to Mr and Mrs N contacting their creditors to request agreements in order to explore this) but that if they did, any accounts they were disputing would need to be removed from the DMP.

I've seen a copy of Mr and Mrs N's reply to PayPlan. In it they said they were simply enquiring about this and since the companies concerned charged for their services – they did not have the money to pursue this. The email went on to say Mr and Mrs N were *“more than happy with PayPlan's management of our debts”*.

At the time, it seems Mr and Mrs N made the decision not to explore any further whether any of their debts would be unenforceable. That was their choice. And based on the content of the email replies from PayPlan, I'm satisfied Mr and Mrs N were given the correct information by PayPlan in 2009; namely it was up to them to decide if they wanted to pursue this avenue and that if they did, any debts they disputed would be removed from their DMP.

There was a similar email exchange in 2016. Again, PayPlan gave Mr and Mrs N the same information. And if Mr and Mrs N decided not pursue this any further, that again was their choice.

Mr and Mrs N are also concerned that there are discrepancies relating to payments and the list of their creditors. I can see one of these issues stemmed from the name of a business having changed over the years the account was with PayPlan and they had initially set the dates of the changes out incorrectly to Mr and Mrs N. But I also see PayPlan corrected the information when asked about this and explained this to Mr and Mrs N what changes had taken place and when. And I've not seen anything to suggest that Mr and Mrs N's payments were affected by this – as it seems this was only recorded incorrectly in the information sent to Mr and Mrs N.

Finally, Mr and Mrs N were concerned about the payment history, but I haven't been provided with anything to suggest there were payments Mr and Mrs N made that were not credited to their account.

### **My final decision**

For the reasons I've explained, I don't uphold Mr and Mrs N's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 18 August 2022.

Eleanor Rippengale  
**Ombudsman**