

complaint

Mr and Mrs C, represented by a claims management company (CMC), complain that the debt management plan (DMP) Gregory Pennington Limited (the business) advised them to enter into was not the most suitable debt solution. They also complain that the business did not tell them about the free debt services available.

background

Mr and Mrs C entered into a DMP with the business in 2008 which they ended in 2011. They then entered into a second DMP with the business in August 2012.

The CMC says that when Mr and Mrs C discussed their options with the business the regulations in place required the business to be transparent and tell Mr and Mrs C about all the options available. It says this includes the availability of free debt services.

The CMC also says that based on an analysis of Mr and Mrs C's debt, bankruptcy would have been a better solution for them than a DMP.

The business says that the first DMP falls outside of our jurisdiction as it was set up in 2008 and closed in 2011. It says that the issues raised related to the set up of the DMP which took place more than six years ago and that Mr and Mrs C should have been reasonably aware of any issues more than three years ago.

In regard to the second DMP, the business says that when Mr and Mrs C approached it an income and expenditure assessment was carried out. It says that monthly payments of £180 were confirmed by Mr and Mrs C to be affordable. It says on the call Mr C said he had been satisfied with his previous DMP and this was the best option for him and Mrs C going forward. The business says that there was no evidence to say that Mr and Mrs C needed to file for bankruptcy or that bankruptcy would have been a more appropriate solution than a DMP. It also says that on the call in August 2012 Mr and Mrs C were directed to its website which contained free impartial guides on debt solutions.

The business says that it carried out regular reviews to ensure the DMP was still the most suitable solution for Mr and Mrs C.

In regard to the availability of free debt services, the business says that when the DMP was set up there was no requirement on it to inform all customers of these.

The adjudicator said that the first DMP fell outside of our jurisdiction. In regard to the second DMP, the adjudicator did not uphold Mr and Mrs C's complaint. He said that at the time they entered into the DMP the regulations did not require the business to inform all customers of the availability of free debt services. He said that Mr and Mrs C entered into the second DMP after they had received advice from a third party in regard to an individual voluntary arrangement (IVA) and that at that time they were told about bankruptcy. He said that the business carried out an assessment of Mr and Mrs C and he did not find it had done anything wrong by setting up the DMP.

The CMC said that when Mr and Mrs C approached the business in 2012 after their IVA had failed, they should have been informed of all the options available. It said this included bankruptcy and entering into another IVA. It said that Mr and Mrs C did not receive the advice they should have.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have looked at the comments in regard to the set up of the first DMP and can see that the business objected to this service considering this due to the time that has passed. This was not disputed by Mr and Mrs C. My decision therefore relates to the second DMP entered into by Mr and Mrs C in 2012.

Two issues have been raised in regard to the second DMP. The first is that Mr and Mrs C were not told about the availability of free debt services. The second is that they were not told of other options available to them and that bankruptcy would have been a better solution.

Mr and Mrs C entered into their second DMP in 2012. I have looked at the regulations in place at that time. These required customers to be referred to the free debt services available where appropriate. I have considered the information provided in regard to Mr and Mrs C and I do not find that the business was required to refer them.

I understand the CMC's comments in regard to the regulations and the need to be transparent but I do not find that the business did anything wrong in this regard. Mr and Mrs C were provided with the information they needed (including the fees) to decide whether or not to enter into the DMP and they decided to go ahead.

The second issue relates to whether it was reasonable that the business advised Mr and Mrs C to enter into the DMP. I appreciate the comments that have been made. However based on the assessment carried out on Mr and Mrs C, I find it reasonable that the business provided them with a DMP. Prior to this DMP being set up Mr and Mrs C had a failed IVA so I find it reasonable they were looking for an alternative solution to deal with their debt. I understand the comments made about bankruptcy but I do not find anything to suggest that the DMP was not as reasonable solution. Mr and Mrs C maintained payments under the DMP until it was terminated.

my final decision

My final decision is that I do not uphold this 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 6 January 2017.

Jane Archer
ombudsman