

complaint

Mr and Mrs P complain that they were badly advised about their debts by Totemic Limited.

background

In 2009, Mr and Mrs P approached Totemic for help with managing their financial situation. After collecting information relating to their income and expenditure, Totemic recommended Mr and Mrs P enter into a Debt Management Plan ("DMP"). This meant a lower monthly payment was negotiated with their creditors. The arrangement was reviewed every year.

At the review in 2016 Totemic recommended Mr and Mrs P enter into an Individual Voluntary Arrangement ("IVA"). It proposed one to Mr and Mrs P's creditors – a majority of which voted to approve it in a creditors' meeting. Compared to a DMP, an IVA is a more formal arrangement. If one is approved, it binds all creditors even if they didn't approve it. It also allows the consumer to satisfy all of their unsecured debts, if they keep to the terms.

Shortly after an IVA was approved, the IVA supervisor passed Mr and Mrs P's details to a Claims Management Company (CMC) which complained on their behalf that they'd been mis-sold PPI on a number of their accounts. I understand that some of these complaints were upheld which meant that Mr and Mrs P were due compensation in the region of £60,000. But because they'd entered into an IVA, the bulk of this compensation was distributed to their creditors by the IVA supervisor.

Mr and Mrs P weren't happy with how things had been handled. They complained (via their representative) that an IVA should've been considered sooner than it was. They also complained that Totemic should've encouraged them to complain about potentially mis-sold PPI.

The complaint was looked at by an investigator who didn't think Totemic had done anything wrong in terms of providing debt advice services. It had carried out a detailed investigation of Mr and Mrs P's circumstances and advised them accordingly. The investigator also said that it wasn't Totemic's responsibility to advise Mr and Mrs P about any other complaints they may have had against other financial businesses. Mr and Mrs P didn't agree with the investigator's opinion so the complaint has been passed to me to issue a final decision.

They also mentioned that the business that sold them PPI took enforcement action against them in connection with a debt of around £45,000 a number of years ago. They think it was wrong for it to take them to court over that debt if, at the same time, it owed Mr and Mrs P a larger sum in compensation for mis-sold PPI. This doesn't relate to anything done by Totemic and so I can't comment on it in this decision. If Mr and Mrs P have any concerns about it, they should raise these directly with the business in question.

I issued a provisional decision on this complaint in February 2019. It said:

I've considered all the available evidence and arguments when looking at what's fair and reasonable in the circumstances of this complaint. And having done so, I don't currently intend to uphold this complaint.

When giving debt management advice, Totemic needed to ensure it met the relevant rules at the time. These were set out in the "Debt management (and credit repair services) guidance" published by the Office of Fair Trading (OFT).

These rules say (amongst other things):

3.2.1 *All advice given to consumers at any stage, and any action taken, should be appropriate to the consumer's individual circumstances. When advising consumers on how to deal with their debt problems and/or in considering taking a consumer on as a client, licensees should provide information and advice which is accurate, sufficiently clear and appropriate for the consumer.*

[...]

3.33 *Examples of unfair or improper business practices include:*

a. failing to provide a clear and balanced explanation of all the options available to the consumer, including the relevant advantages, disadvantages, eligibility criteria, the debts eligible for inclusion, the costs, and risk associated, with each debt solution option.

For example, the possible effects on the consumer's credit rating, employment status and home

[...]

e. failing to reasonably explain to the consumer why the licensee recommends a particular debt solution and why other options are not considered to be (as) suitable or viable

Mr and Mrs P were initially advised in 2009. Unfortunately the long period of time that has elapsed since then means there's only a limited amount of information available about how Totemic explained the options available. It's therefore difficult for me to know for sure that Totemic met its obligations at this stage. Mr and Mrs P's representative says Totemic should've considered the option of an IVA much sooner than it did and perhaps from the outset. Totemic says that in 2009, it's likely an IVA would've been rejected. Mr and Mrs P had a significant amount of equity in their home and it says that, at the time, most creditors wouldn't accept significantly lower payments from a customer with money tied up in the home.

I have listened to the recording of the annual review that was carried out in 2015 over the phone. From listening to this recording, it's clear that Mr and Mrs P were reluctant to consider any option that might result in them losing their home or losing control of their home (for example, by having to borrow against the equity they held in it). At the end of the call, the adviser said that the only real alternative option available was bankruptcy but points out that it would place their home at risk. Mrs P ruled out this option immediately.

Further on in the discussion, the adviser said "the IVA could potentially be an option but it would link to the property in the 5th year ... before I could recommend it to you, I would need a valuation of the property." In response, Mrs P said: "No, we've kept our property out of all this ... you can't risk your home so no, we won't look at bankruptcy."

I don't think the adviser did enough to make clear to Mr and Mrs P what the differences between the options of bankruptcy and an IVA were. And I think they might have been led to believe that the impact of these options on their home was indistinguishable.

I think it's possible that this prevented Mr and Mrs P from entering into an IVA a year sooner than they did. However, I'm not convinced Mr and Mrs P lost out financially as a result of this. The DMP was free, but the IVAs required the payment of significant fees (at the time the IVA was proposed, these were predicted to be around £15,000). Any financial benefit that they might've gained by entering into an IVA one year earlier would've been wiped out by the significant fees that the IVA supervisor required that they pay.

other issues

Finally, Mr and Mrs P are unhappy that Totemic didn't explore the possibility that they may be able to make a claim for mis-sold PPI. The compensation that later became available would've enabled them to avoid entering into an IVA.

Although Mr and Mrs P's details were eventually passed on to a CMC, it didn't exist at the time they first approached Totemic for debt advice. And in any event, it isn't one of the expectations imposed on it by the guidance on debt management so I don't think it did anything wrong by not exploring this possibility sooner than it did.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint – including the responses to the provisional decision I received from Mr and Mrs P and Totemic. Having done so, I'm not persuaded to depart from the findings I set out in provisional decision.

Mr and Mrs P responded to my provisional findings to say that the quality of service they received was poor. They say that whenever they contacted Totemic by phone, they weren't able to help. They also don't think they were given all of the options that were available to them. They struggled with these debts for approximately ten years when they could've been cleared much sooner.

As I referred to above, there is only limited information available about how Totemic handled things. But I'm afraid I've not seen any evidence to suggest it was difficult for Mr and Mrs P to make contact with Totemic or that its representatives were unhelpful. I can understand why Mr and Mrs P must have found it incredibly frustrating to discover that these debts could've been paid off sooner. But for the reasons I explained, I think they'd have been reluctant to consider an IVA at the time they initially sought advice from Totemic. And although the PPI compensation could've enabled them to pay off the debt, that doesn't mean Totemic did anything wrong by not exploring this possibility.

Finally, I agree that Totemic could've been clearer with Mr and Mrs P about the range of options available to them and the merits of each. But as I set out above, I don't find its failure to do so caused Mr and Mrs P to suffer a financial loss.

Overall, whilst I'm sorry to have to disappoint Mr and Mrs P, I've not seen enough evidence to suggest Totemic did anything wrong when advising them in connection with their debts.

final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 9 May 2019.

James Kimmitt
ombudsman