complaint

Mr and Mrs J are unhappy with the debt management advice they received from Gregory Pennington Limited (GPL).

background

Mr and Mrs J entered into a debt management plan (DMP) with GPL in 2007 in order to reduce their debts with a number of creditors and they added other debts to the arrangement in future years..

The DMP was subject to regular reviews and in 2014 GPL advised them to end it and enter into a linked individual voluntary arrangement (IVA) with their creditors. At this point, GPL passed their details to an insolvency practitioner to arrange and manage the IVA.

Mr and Mrs J are unhappy their debts have not been repaid despite the amount of time they've been under the DMP and IVA. They feel they should've been advised to enter the IVA sooner and that overall, they were misinformed and misled.

I've already corresponded informally with both parties in order to explain which aspects of this complaint I had the power to look into, given our rules about time limits and jurisdiction. And what I thought about the merits of the complaint points that I could look into. I explained, in summary, the following.

The rules under which we operate say we can't consider a complaint if the complainant refers it to us more than:

- six years after the event complained of, or (if later)
- three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint

That is unless the failure to comply with these time limits was a result of exceptional circumstances. Or the business being complained about consents to us looking at the case. GPL had not consented to us looking at the complaint, so I considered if it was raised in time. I noted:

- The "event" Mr and Mrs J complained about was the advice to enter into the DMP. This happened in 2007, so they had until 2013 (six years from the event) to complain, but they didn't do so until October 2018.

- Mr and Mrs J said the DMP was unsuitable because it didn't ensure their debt was repaid. But they knew, when the DMP ended and the IVA started in 2014 that there was still a debt outstanding. So I thought they ought reasonably to have become aware the DMP might not have been suitable at that point. And that means they had three years from then to complain – which took them to 2017 – but they didn't do so until 2018.

- I hadn't seen any exceptional circumstances that prevented Mr and Mrs J from complaining in time. Mr J told us he'd had some health problems. But it was apparent he and Mrs J were in contact with GPL in relation to their DMP over the years, and I could see no reason why they couldn't similarly raise any concerns about the advice with GPL or this service during this same period.

So I didn't think Mr and Mrs J had complained in time about the original advice to enter into a DMP. But the evidence GPL provided indicated it carried out periodic reviews of the DMP. And I thought, each time it did so, it was giving Mr and Mrs J fresh advice about the suitability of the DMP given their circumstances at the time. And, as Mr and Mrs J complained to GPL in October 2018, I thought I could consider any review that took place in the six-year period leading up to that.

The evidence indicated a review took place in 2013 and I thought the advice to remain in the DMP at that time was suitable given Mr and Mrs J's circumstances. It also seemed likely GPL had made clear the terms of the arrangement at that time, including the amount owed and the amount of time it would take to repay the debt.

The evidence also indicated a review took place in 2014. I was satisfied I had jurisdiction to look into the advice GPL gave at this point to end the DMP and enter an IVA. And I saw nothing which suggested that advice was unsuitable. I also explained why I didn't have jurisdiction to look into a complaint about the insolvency practitioner to which GPL referred Mr and Mrs J to arrange and manage the IVA.

GPL accepted my findings. But Mr and Mrs J still had some concerns – they said, in summary that:

- They realise now that they should've raised a complaint sooner. But they trusted GPL to act in their best interests and thought they would be made bankrupt, lose their home and could be prosecuted if they didn't follow GPL's advice. They didn't realise they could complain to GPL or this service. And they said that if GPL truly believed it had acted in their best interests then they should consent to us looking at the complaint.

- They're also unhappy more generally with GPL's management of the DMP. Mr J was a vulnerable adult due to his ill health and if GPL had explained this to their creditors it's entirely possible a more favourable repayment agreement could've been reached. This would've resulted in them being charged less in fees and interest and ensured full repayment of the debt by 2013.

- Most of their communication with GPL took place by phone and they didn't receive written confirmation of the review that took place in 2013. Nor do they understand why the IVA became more suitable in 2014.

my findings

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

Having done so, for the reasons set out in my previous correspondence and summarised above, I'm not persuaded to change my mind about the outcome of this complaint. I won't repeat what I've already said, but I will address the main points Mr and Mrs J have made in response.

I appreciate Mr and Mrs J say they trusted GPL and didn't realise they could complain. But I still think they ought to have realised, at the latest, when the DMP ended and the IVA began that they might have cause for complaint given the debt that was still owing and the length of time the DMP had been running. They had three years from then to raise a complaint, but

didn't do so. GPL isn't obliged to consent to us looking into the complaint and still hasn't done so.

Mr and Mrs J have provided more information about why they think they should have been treated and advised differently. But, I've already explained why I can only consider the events that took place from the review in 2013 onwards. So I can't consider the concerns they've raised about the advice GPL gave before then. That includes their assertion that if alternative, more appropriate agreements had been brokered with their creditors at outset or at various points along the way then their entire debt would've been cleared or written off by 2013.

When considering the advice that was given at the 2013 review, my role isn't to say what GPL should have done with the benefit of hindsight. I've considered whether or not GPL gave unreasonable or unfair advice in recommending that Mr and Mrs J remained on the DMP in 2013 (but then switched to an IVA in 2014), based on the information available to it at the time.

With that in mind, an IVA is an agreement with creditors to repay debt, either partially or in full. The creditors that hold 75% of the total debt need to agree with the proposal before it can be put in place. Because of this, it's wasn't simply a matter of GPL or Mr and Mrs J deciding when it would be best for them to enter into an IVA. GPL needed to consider their circumstances in the round, but it also needed to consider whether or not their creditors were likely to agree to an IVA.

At the time of the 2013 review, GPL's records suggest Mr and Mrs J were happy with the repayment arrangement and aware of its terms. And GPL has said it considered the option of an IVA, but because of Mr J's debt with the DWP it didn't feel an IVA proposal would've been accepted by 75% of Mr and Mrs J's creditors. On that basis it felt continuing the DMP was the best option. I still think that was a suitable advice based on the information available at that time.

Mr and Mrs J have since said the DWP debt was disputed, indicated that GPL should've disputed this for them and that GPL should've allowed the DWP to take legal action and pursue them through court. They've said a more reasonable repayment plan would've then been ordered which covered all their creditors. But I haven't seen anything to indicate GPL knew the debt with the DWP was disputed or that this has actually been confirmed. So I don't agree GPL should've done more to try and help. I also don't agree GPL should've based its decision on what might've happened in court.

Mr and Mrs J have also said GPL didn't explain in writing the reason why an IVA wasn't recommended in 2013, and that meant they weren't given the opportunity to dispute this. But, they do seem to accept that a conversation took place and so it seems that GPL kept Mr and Mrs J informed. And they could decide whether or not they wanted to accept the advice they were given and/or ask for clarification if required.

Finally, as I've said before, Mr and Mrs J seem to suggest that they were generally happy with the advice given in 2014 to enter into the IVA – the main thrust of their argument is that an IVA should've been put in place sooner – and I have no concerns about its suitability at that time.

my final decision

My decision is that I am unable to consider some aspects of Mr and Mrs J's complaint and I don't uphold the aspects I am able to consider.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 7 February 2020.

Ruth Hersey
ombudsman