

The complaint

Mrs H and Mrs S have complained that Olton Alexander Ltd (“OA”) took payment for initiating three claims relating to timeshares they’d bought – but have only progressed one of the three.

What happened

Mrs H and Mrs S instructed OA in early 2017 to assist them in three claims relating to mis-sold timeshares. They paid OA an “action commencement fee” of £795 for each claim.

Mrs H and Mrs S are satisfied that one claim was progressed by the solicitors OA instructed. But they said they’ve heard nothing about either of the other two claims. So they wrote to OA in August 2021, asking them to refund two of the £795 payments. When they got no reply, they brought their complaint to us.

When our investigator received the file, he noted that OA hadn’t responded to our requests to contact Mrs H and Mrs S to reply to their complaint. Nor had they provided us with their business file. Despite requesting this on many occasions, and being told by OA it had been sent, the investigator never received OA’s business file. So he based his conclusions about the complaint on the testimony of Mrs H and Mrs S.

The investigator concluded that OA hadn’t treated Mrs H and Mrs S fairly. In the absence of any evidence from OA to show that all three actions had been started, he was persuaded that only one had been progressed. And he was satisfied OA hadn’t replied to requests for updates.

So he thought OA should refund two of the three action commencement fees they’d received – which totalled £1,590. And he said OA should pay Mrs H and Mrs S interest at the rate of 8% for the time they’ve held the funds until they’re repaid. Finally, he said Mrs H and Mrs S should receive £250 compensation for the distress and inconvenience OA’s lack of communication and updates had caused them.

Mrs H and Mrs S agreed with the investigator’s view, but OA didn’t. So I’ve now been asked to make a decision.

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.

Having done that, I’m upholding Mrs H’s and Mrs S’s complaint. I’ll explain why.

Like our investigator, I’ve not been able to consider any evidence from OA’s business file because it’s not been received, despite the requests made for it to be sent. The most recent correspondence between the investigator and OA confirms that position. So I’m satisfied OA have been given the opportunity to provide that evidence.

However, in response to the investigator's view, OA did send an email, which they said had been sent before the investigator drew his conclusion, but which the investigator didn't receive. OA said they'd taken on the three claims, two of which were allocated to a group action they'd referred to a firm of solicitors and the third was dealt with as a standalone case. But after discussion with the solicitors, only one case proceeded in the first instance.

OA said they were in a position to place the third claim with a law firm. And they'd kept Mrs H and Mrs S informed about all three matters.

I've considered what OA have said alongside the information and copy documents sent to us by Mrs H and Mrs S.

I've seen a copy of an invoice OA sent Mrs H and Mrs S in March 2017. This is for three action commencement fees of £795 each (totalling £2,385). One fee is described as being for inclusion in a class action and the other two for stand alone matters. Two are marked as already paid and the third as due. Mrs H and Mrs S have provided a bank statement showing payment of the third fee was made two days after the date of the invoice.

I'm satisfied from this that all three fees were paid. But the descriptions on the invoice show the information OA gave the investigator in 2022 was incorrect, as Mrs H and Mrs S were charged for two stand alone matters and one to be added to the group action – not the other way around.

To try and clarify matters, I asked the investigator to get details from Mrs H and Mrs S of exactly what information they'd received from the solicitors about the claims. Mrs H and Mrs S sent copies of the documentation showing one claim was included in a class action. And they sent a copy of an email from the solicitors which said:

"We have you as a party to one action alone. I attach the Claim form. This is an ongoing action in which slowly claims are being settled. We do not have any other cases for you. We fully expect your case to settle."

I'm satisfied from this that, despite what OA told the investigator, only one claim has been commenced. And that means I think OA were only entitled to ask Mrs H and Mrs S for one fee.

And, in the absence of any evidence showing OA kept Mrs H and Mrs S updated on three cases – particularly the two that haven't been passed to a solicitor – I'm satisfied it's fair to uphold their complaint that OA didn't keep them informed about what was happening in their claims.

Putting things right

Because I'm satisfied only one of the three claims for which OA received an action commencement fee has been started, I think it's fair that OA refund Mrs H and Mrs S the other two fees totalling £1,590. And I think OA should pay Mrs H and Mrs S simple interest on that amount, calculated at the rate of 8% per annum, from the date they received the funds until they repay them.

And I'm satisfied Mrs H and Mrs S have been worried and inconvenienced by the lack of updates they've received about their claim. I think they should be compensated for that. And I agree with our investigator that £250 is a reasonable amount for this.

My final decision

For the reasons I've explained, I'm upholding Mrs H's and Mrs S's complaint about Olton Alexander Limited and directing OA to:

- refund them two of the three action commencement fees they paid – a total of £1,590;
- pay Mrs H and Mrs S simple interest on this amount, calculated at the rate of 8% per annum from the date OA received payment until the date they refund Mrs H and Mrs S. If Olton Alexander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H and Mrs S how much it's taken off. It should also give Mrs H and Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate; and
- pay Mrs H and Mrs S £250 compensation for the stress and inconvenience they've been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mrs S to accept or reject my decision before 1 December 2022.

Helen Stacey
Ombudsman