

The complaint

Mr H and Mrs S have complained that Praetorian Legal Limited invoiced them for a success fee based on the amount a lender had written off, as opposed to what they'd recovered.

What happened

Mr H and Mrs S bought a timeshare funded by loans from a lender I'll call L. After several years, they felt they'd been mis-sold the timeshare and the funding. So in 2016 they engaged Praetorian to help them recover what they'd lost. The agreement Mr H and Mrs S signed provided that Praetorian would receive a fee equivalent to 25% plus VAT of anything they recovered from L.

In respect of one loan, L offered a single payment as a gesture of goodwill. Mr H and Mrs S accepted the offer and paid Praetorian's fee for recovering this.

L broke payments in respect of the second loan down into a basic refund of £10,948.17 (made up of interest and charges paid) and an additional refund of £10,289.47, representing the capital repayments Mr H and Mrs S had made and 8% interest on those. And they wrote off the outstanding balance of £18,282.79.

Praetorian invoiced Mr H and Mrs S £6,373.61 (including VAT) in respect of the two refunds they'd received. And they sent them a second invoice for £5,484.82 (including VAT) in respect of the £18,282.79 which L had written off.

Mr H and Mrs S accepted £6,373.61 was due. But they said they'd not recovered £18,282.79. So they didn't think they should be charged a fee for that.

Praetorian rejected Mr H's and Mrs S's complaint. They said they'd done a great deal of work on their claim, with the result that Mr H and Mrs S no longer had to make further payments to L. So Praetorian said Mr H and Mrs S had "recovered" this money for the purposes of the claim.

Mr H and Mrs S didn't accept Praetorian's final response and brought their complaint to our service. Our investigator considered it and concluded Praetorian were entitled to charge their fee because future payments to L had been cancelled. But he said Praetorian should pay Mr H and Mrs S £250 compensation because their fee information didn't make this clear and so Mr H and Mrs S were shocked when they received the invoice.

I didn't agree with the investigator's view. So I made a provisional decision.

During the investigation, Praetorian sent us copies of two decisions made by our service which they said also considered this issue. Neither decision upheld the complaint.

I explained in my provisional decision that we consider the facts and evidence of each case to reach a decision we think is fair and reasonable. So I wasn't bound to reach the same outcome in Mr H's and Mrs S's complaint as the ombudsman did in those cases.

I looked at the agreement Mr H and Mrs S signed and noted no terms were defined. And Praetorian had confirmed that no other guidance about fees was given, nor had they provided any illustrations to show how their fees were applied. In the absence of any other guidance I provisionally decided it was fair to apply the everyday meaning of “recover” to the agreement.

I referred to the definition in Dictionary.com which is “*to get back again or regain*”. I said I thought that was consistent with the general understanding of the word. And that, in the absence of any information to persuade me otherwise, it was reasonable for Mr H and Mrs S to have understood the agreement with Praetorian related to money returned to them by L.

L never paid them £18,282.79. So I provisionally decided it wasn't fair for Praetorian to charge them a fee based on “recovering” this sum. I provisionally directed them to cancel their invoice of 10 September 2021 for £5,484.82, as well as pay Mr H and Mrs S the £250 compensation the investigator had recommended.

Mr H and Mrs S have acknowledged my provisional decision, but not added anything further. Praetorian asked for an explanation about why this matter differed from the two decisions previously made, which they called precedents.

The matter's now been passed back to me to make a final 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 Mr H's and Mrs S's complaint. I'll explain why.

I've summarised my provisional decision above. Praetorian didn't accept that as they thought I should follow the “precedent” of the copy decisions they sent me. They asked this matter differed from those “precedents”.

The investigator replied to Praetorian's comments, confirming that I'd explained in my provisional decision why I'd reached a different decision from the previous ombudsman and inviting them to make further representations. None have been received. So I'll set out here what I said in my provisional decision.

Firstly, as I explained, we consider each case on its own merits. So the other decisions Praetorian have supplied aren't “precedents”. What was decided in those complaints doesn't limit or direct the decision I make in Mr H's and Mrs S's case.

And, even if that were the case, I was only provided with the decisions – not the evidence that led to them being made. They don't show me what costs information was supplied or what definitions the agreements applied to terms.

The decisions relate to a different business – so I have no way of knowing how similar (or not) that business's terms and conditions are to Praetorian's. And the agreements the decisions considered were made several years later than the one Mr H and Mrs S signed.

So – as I've outlined above – I think the fairest approach is to consider the everyday meaning of “recover”. I've explained why I'm more persuaded by Mr H's and Mrs S's interpretation. Nothing's been submitted which has led me to change my view. And that's why I'm upholding Mr H's and Mrs S's complaint.

Putting things right

In my provisional decision, I said:

“As I don’t think it was fair for Praetorian to charge a fee in respect of the £18,282.79 which L wrote off, I think they should cancel their invoice dated 10 September for £5,484.82.

And I think Praetorian should also pay the £250 compensation the investigator concluded Mr H and Mrs S should receive. It’s clear that receiving a significant bill they weren’t expecting was a shock to them and they were clearly concerned that – unlike the other two bills they received – they’d had no refund from which to make payment. I think it’s reasonable for Praetorian to compensate them for that distress and inconvenience.”

On the basis that nothing has been submitted which has persuaded me to change what I said there, it remains my view that this is a fair resolution to Mr H’s and Mrs S’s complaint.

My final decision

For the reasons I’ve explained, I’m upholding Mr H’s and Mrs S’s complaint about Praetorian Legal Limited and directing Praetorian to:

- Cancel their invoice dated 10 September 2021 for £5,484.82; and
- Pay Mr H and Mrs S £250 compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H and Mrs S to accept or reject my decision before 7 February 2023.

Helen Stacey
Ombudsman