

The complaint

Mr A and Mrs A complain that Mercantile Claims Management Solutions Limited trading as Claim Experts 4 U (CE4U) has unfairly asked them to pay a second fee for a mis-sold timeshare claim.

For ease of reading I will only refer to Mr A in my decision.

What happened

In August 2018 Mr A acquired a timeshare property for £26,990 on the understanding the property would provide him with cheaper holidays. He entered into a loan agreement with a lender I'll refer to as "B".

In December 2020 Mr A instructed CE4U to act on his behalf to pursue a complaint about the mis-selling of the timeshare. Mr A used the services of a third party to terminate the timeshare agreement.

In September 2022, "B" told Mr A that they would refund any monies paid and cancel the loan agreement. "B" refunded Mr A the monies he'd paid (15,475.04) plus interest, the gross amount being £18,788.94. With tax deducted Mr A received £18,126.16.

In October 2022 CE4U sent Mr A their invoice for the successful claim, this being for a fee of £6,764.02 based on the gross amount payable for Mr A's successful claim, which Mr A paid.

But in November 2022 CE4U sent Mr A a second invoice for the recovery of £22,145.65 they said was the "written off" balance of the loan. CE4U asked Mr A to pay a further fee of £7,972.43. Mr A complained to CE4U.

CE4U said the agreement Mr A had with them covered all "*recovered*" monies so how much Mr A received was "*immaterial*". They said without the work they'd done Mr A would have had to pay the entirety of the loan. So, as he no longer had to pay this CE4U was justified in charging their fee for the monies they'd recovered. Mr A wasn't happy with CE4U's response and referred his complaint to us.

Our investigator said Mr A's understanding of the terms he'd agreed was that CE4U would charge a fee for recovery of monies he'd paid to "B" towards his loan agreement. And he'd paid this fee. She said it wasn't fair or reasonable for CE4U to charge their second fee as Mr A wouldn't have paid anything further as the timeshare agreement had been terminated and he'd no benefit from it. She also said CE4U should pay Mr A £250 for the distress and inconvenience caused.

CE4U didn't agree they said Mr A had benefitted not only from the refund of monies he'd paid. But also he'd the financial benefit of the loan agreement being "written off". They added that there'd been previous decisions made by our service that had considered this issue which hadn't been upheld. They asked for an ombudsman to decide.

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.

Firstly, CE4U has commented about previous decisions made by this service. As an impartial service we weigh up the evidence provided, we don't place more weight on one side or the other, and reach an outcome decided upon each complaint's own merits. So, this means what was decided in the other complaints doesn't limit or direct the decision I make in Mr A's case.

In reaching my decision I'll consider what I think is a fair and reasonable outcome based on the merits of Mr A's case. And while I've the relevant rules and terms and conditions in mind, my decision can depart from these where I think this provides for a fair and reasonable outcome.

Mr A isn't disputing the fee CE4U asked him to pay for the recovery of the money he'd paid to "B" under the agreement. What is in dispute is whether it's fair and reasonable for CE4U to ask Mr A to pay a fee for monies he would have paid if the loan agreement hadn't been cancelled.

The timeshare agreement Mr A had was for a timeshare membership for the sole purpose of taking holidays. And after Mr A terminated his timeshare agreement, he'd no use of the asset that being the timeshare property. I can see that the timeshare was acquired for £26,990, of which Mr A had paid £15,475.04 when the loan was cancelled. I can see that CE4U has asked him to pay their fee based on a total "recovery" amount of £37,620.69.

In December 2020, Mr A instructed CE4U to act on his behalf to pursue a mis-sold loan claim against "B". In doing so Mr A agreed to CE4U's terms of business. Under a heading *"What is covered by this agreement"*, the terms said:

"Your claim for monies paid to the seller/provider of the product/service using, in part or in entirety, credit, together with any further action, should the claim be rejected."

I can see that CE4U sent in December 2020 a letter of complaint to "B" that said Mr A was looking *"to recover the monies they have paid to the Seller from you."*

In acquiring the loan, I think the money paid to the seller by "B" would have been no more than £26,990. Any amount payable over this would have been made up of the interest and fees that formed part of the loan agreement Mr A had with "B".

CE4U's terms and conditions went on to say:

"If we are successful with your claim, you pay our success fee. The success fee is set at 30% of the monies you recover from your bank and/or credit provider plus VAT. By way of an example, if you recover £1,000.00 then our fee would be £300.00 plus VAT of £60.00. If you recover £5,000 then our fee would be £1,500.00 plus VAT of £300.00. You recover £10,000 then our fee would be £3,000.00 plus VAT of £600.00."

The loan agreement he'd with "B" was for Mr A to purchase a timeshare. And the outcome of Mr A's complaint was that the loan agreement was cancelled, and "B" refunded Mr A all the monies he'd paid plus 8% simple interest. I can see CE4U invoiced Mr A for their fee of £6,764.02 in October 2022, based on the gross amount of £18,788.94, and that Mr A paid the fee.

The Claims Management Conduct of Business (CMCOB) sourcebook relevant to when Mr A instructed CE4U says:

“A firm must ensure that each of its communications and financial promotions is fair, clear and not misleading (the fair, clear and not misleading rule).”

And that this applies to *“communications of or about fees, charges, invoices and payments”*. It goes on to say:

CMCOB 4.2.5 says:

“(1) The firm must explain the basis on which it would calculate its fee, and provide an illustration or estimate of that fee.”

I've considered CE4U's terms and conditions to see if I consider they were clear and not misleading. And I don't think they are. While I can see CE4U has provided examples of what fee Mr A would pay dependent on the amount recovered. As outlined above the terms mention recovery of monies paid by “B” to the seller, (which I think would have been £26,990) but also *“monies you recover from your bank.”* So, I don't think CE4U has been clear as to the basis on which they would calculate their fees, as they mention both monies paid by “B” to the seller and *“monies you recover from your bank”*. As I don't think they've been clear as to what monies they were looking to recover. I think the key issue here is Mr A's understanding of the term *“monies you recover”*.

I haven't seen anything in CE4U's terms of business that explained to Mr A before he signed the agreement what CE4U considered to be *“recovered”* money. I haven't seen any breakdown or example to show that CE4U would calculate their fee based in two parts. And neither do I think they made clear how the fee would be calculated. From what I can see CE4U has calculated the monies recovered - £37,620.69, based on the monies paid by Mr A to “B” and any balance left under the terms of the loan with “B” but this would have included interest and fees, and not just the amount borrowed. Yet their terms say they would look to get back the monies paid by “B” to the seller, with the fee based on *“monies you recover from your bank”*. So, I'm persuaded by Mr A's testimony that his understanding of this term was that the amount recovered by “B” from the monies they'd paid to the seller would be the monies he'd actually paid and had returned from them. And it would be this amount that CE4U would ask him to pay a fee for.

In invoicing Mr A for their fee of £6,764.02, CE4U said this was for *“Fees in respect of Successful Claim”*. So, when Mr A got this invoice in October 2022 I think he would have been of the understanding that this would be the only fee CE4U would ask him to pay. As he would have seen this as the fee for *“monies you recover from your bank”*. And when he paid CE4U their fee he'd have considered the agreement he'd with them as settled.

I'm satisfied that Mr A's understanding when he instructed CE4U was that he would have to pay a fee for monies they got back for him. And that the *“recovered”* money would be the money he'd paid to “B”. This being £18,126.16 (gross amount £18,788.94).

So, I don't think it's fair for CE4U to invoice Mr A in November 2022 for a fee of £7,972.43 for a *“write off loan”* for the amount of £22,145.65. As I don't think CE4U's terms and conditions had been clear. And I think Mr A has paid the fee that he'd agreed to.

Putting things right

As I don't think it's fair for CE4U to charge a fee in respect of the £22,145.65 they said was recovered as “B” had *“written off”* this amount. I think they should cancel their invoice dated 08 November 2022, for £7,972.43.

I can understand the distress and inconvenience this has caused to Mr A. After he'd received some monies in redress for his successful claim, he'd paid CE4U their asked for fee. Only then to be asked to pay an even greater fee, when he hadn't received any other redress to pay it from, this must have been upsetting and worrying for him. So, I agree with our investigator CE4U should pay Mr A £250 to compensate him for this.

My final decision

For the reasons I've explained, I uphold this complaint And ask Mercantile Claims Management Solutions Limited trading as Claim Experts 4 U to:

- Cancel their invoice dated 08 November 2022, for £7,972.43 and
- Pay Mr A £250 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 28 November 2023.

Anne Scarr
Ombudsman