

The complaint

The estates of Mr B and Mrs B complain about Olton Alexander Ltd (“OAL”) and their failure to progress two claims for mis-sold timeshares.

The estates of Mr B and Mrs B have been represented by their son, Mr B. So, for ease of reference, I will refer to both estates as “Mr B” throughout the decision where appropriate.

What happened

In November 2016, Mr B instructed OAL to pursue two claims for mis-sold timeshares on behalf of his parents. And when doing so, he paid two action commencement fees of £795, totalling £1,590. It was Mr B’s understanding that OAL would then pass the claims onto a solicitor’s firm, who I’ll refer to as “E”, to progress.

But Mr B received no meaningful updates from OAL after this date. And sadly, Mr B and Mrs B passed away during this time. So, in 2023, Mr B contacted E on behalf of the estates to ask for a status of the claims. And E responded, confirming neither claim had ever been referred to them. Mr B was unhappy about this, so he raised a complaint to OAL asking that the commencement fees be returned with interest. OAL failed to respond to the complaint and so, Mr B referred the complaint to us.

Our investigator looked into the complaint and upheld it. They noted OAL’s failure to respond to our service’s request for information, explaining because of this their view was based on the information and testimony provided by Mr B. And after considering this, they didn’t think they had any evidence to show OAL progressed the claims or completed any work of value on them. So, our investigator recommended OAL reimburse Mr B, on behalf of the estates, the £1,590 commencement fees paid plus 8% simple interest from the date of payment to the date of refund.

Mr B accepted this recommendation, but OAL didn’t respond. As OAL didn’t respond, our service must assume they rejected our investigators recommendation. So, the complaint has been passed to me for 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 so, I’m upholding the complaint for broadly the same reasons as the investigator. I’ve focused my comments on what I think is relevant. If I haven’t commented on any specific point, it’s because I don’t believe it’s affected what I think is the right outcome.

I note that OAL failed to respond to Mr B’s complaint. And, they have failed to respond to our service’s request for information despite repeated requests. So, when reaching my decision,

in line with our service's approach, I've relied solely on the information and testimony provided by Mr B, making adverse inference to OAL's lack of response where appropriate.

And having done so, I'm satisfied OAL were instructed to pursue two claims for Mrs B and Mr B. And, that they paid OAL a commencement fee of £795 each for this work to be undertaken.

Since this amount was paid, I've seen no evidence to show OAL completed any work of value. And E have confirmed Mrs B and Mr B's claims were never referred to them, despite the instruction to commence action document stating clearly, within the payment instruction, that a referral would be made to E following the payment of the commencement fees.

So, based on the above, I don't think I've seen any evidence that satisfies me OAL completed the work Mrs B and Mr B paid for when paying their commencement fees. So, I'm satisfied OAL have acted unfairly and because of this, I've then turned to what I think OAL should do to put things right.

Putting things right

When thinking about what OAL should do to put things right, any award or direction I make is intended to place the estates of Mrs B and Mr B back in the position they would've been in, had OAL acted fairly in the first place.

Had OAL acted fairly, I think it's reasonable for me to assume that the claims would've been referred to E and the estates would've received an outcome. But crucially, I can't speculate on whether the outcome would've been favourable to the estates, so I don't think I can say OAL should pay the estates what the claims may have been worth.

But I do think the commencement fees should be refunded, as they were fees paid for work that I've seen no evidence to suggest was completed. So, I'm directing OAL to refund the estates the total fees of £1,590.

And as the estates were without these funds unreasonably, in line with our service's approach, I'm directing OAL to pay 8% simple interest on this amount, from the date the commencement fees were paid, up to the date of refund.

I also want to explain that I do recognise Mr B, acting as the estates representative, has no doubt been caused a level of inconvenience when chasing OAL and E for updates on the claims. But the eligible complainants in this case are the estates of Mrs B and Mr B, as they were the customers paying OAL for a service. So, this inconvenience isn't something I'm able to direct OAL to compensate for on this occasion.

My final decision

For the reasons outlined above, I uphold the estates of Mrs B and Mr B's complaint about Olton Alexander Ltd and I'm directing them to take the following action:

- Refund the estates of Mrs B and Mr B the commencement fees paid, totalling £1,590; and
- Pay 8% simple interest on this amount calculated from the date of payment to the date of refund. If Olton Alexander considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B, acting as

representative, how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he's able to reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estates of Mr B and Mrs B to accept or reject my decision before 4 June 2024.

Josh Haskey
Ombudsman