

The complaint

Mrs M complains about Clear Legal Marketing Limited ("CLM") and the success fee they are charging her following her claim for mis-sold lending.

What happened

The claim and complaint circumstances are well known to both parties. So, I don't intend to list them chronologically in detail. But to summarise, in the summer of 2020, Mrs M instructed CLM to pursue a claim for mis-sold lending against lender A.

CLM submitted this claim to lender A, who declined it. So, CLM referred Mrs M's claim to the Financial Ombudsman Service ("FOS"). While her claim was with FOS, lender A entered into a Scheme of Arrangement in 2022. So, FOS stopped investigating complaints about lender A.

In February 2024, lender A upheld Mrs M's claim through this scheme, providing a breakdown of how her total refund value was calculated. This included a refund of payments Mrs M made before and after the scheme effective date. CLM subsequently invoiced Mrs M for their fee, based on the percentage set out within the terms of the agreement Mrs M entered into. But Mrs M was unhappy about this, so she raised a complaint.

Mrs M didn't think it was fair for CLM to calculate their invoice on the payment refunds she received, as she thought these refunds were separate to payments of compensation. So, she wanted CLM to recalculate their success fee based on the compensation payment only. Mrs M was also unhappy with CLM's failure to respond to her emails querying their fee and how it was calculated and the fact she'd had to engage with lender A during the claim process.

CLM responded to the complaint and didn't uphold it. They thought they had acted fairly, and in line with the terms of the agreement Mrs M entered into, when calculating their fee on the total amount paid to Mrs M by lender A. And they didn't think they were able to control delays caused by lender A during the scheme process, or that lender A had liaised directly with Mrs M. So, they didn't think they needed to do anything more. Mrs M remained unhappy with this response, so she referred her complaint to the Claims Management Ombudsman, a Financial Ombudsman Service.

Our investigator looked into the complaint and upheld it in part. They thought CLM acted within the terms of engagement Mrs M entered into when invoicing her, setting out why they felt CLM were fair to calculate their fee on all the payments and refunds made by lender A.

But they thought CLM had failed communicate with Mrs M effectively when she challenged their fee and so, they recommended CLM pay Mrs M £100 to recognise any distress and inconvenience this caused.

CLM accepted this recommendation. But Mrs M didn't. She maintained her position that it was unfair for CLM to base their invoice on payment refunds she received. And she felt CLM had purposefully advised her to continue making payments when other people she knew

hadn't. And, that if she had stopped making payments, these payments then wouldn't have been refunded for CLM to charge their success fee on.

Our investigator considered Mrs M's comments, but their opinion remained unchanged. Mrs M continued to disagree and 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 recognise Mrs M has accepted CLM should be able to charge for a success fee based on the payments lender A have made and categorised as compensation. So, based on this, I think it's reasonable for me to assume it's accepted by Mrs M that she did instruct CLM to pursue the claim on her behalf. And, that the claim CLM pursued ultimately led to the overall refund she's received from lender A. So, I don't intend to discuss this in any further detail.

As this is accepted, I think it's also accepted by Mrs M that she agreed to be bound by the business agreement signed in the summer of 2020. This agreement explains clearly that *"If you win your claim, we are entitled to deduct 30% plus VAT from your compensation"*. And in CLM's client care letter, I can see it defines compensation as *"any direct monetary payment made by your opponent in respect of your claim"*.

In this situation, part of Mrs M's payment received from lender A relates to a refund of payments she continued to make to her loan(s) both before and after the scheme of arrangement was put in place. And because of this, they are listed as separate to what lender A determined to be "compensation" payments. So, I can understand why Mrs M may challenge this with CLM.

But crucially, I think these refunds fall within CLM's definition of compensation. And how lender A determines or classifies the payments doesn't, and shouldn't, impact the separate legally binding agreement Mrs M entered into with CLM.

From the evidence I've seen, CLM submitted Mrs M's claim to both lender A and then FOS. And I've seen evidence that confirms because of CLM's actions, Mrs M's claim was automatically enrolled into the scheme of arrangement. So, I'm satisfied the work CLM undertook led to the overall payment Mrs M received, as without this enrolment Mrs M's claim wouldn't have been in the scheme to receive a refund at all.

And while Mrs M is unhappy that a major part of the payment she received was based on payment refunds, crucially I still think Mrs M has received a financial benefit from lender A refunding these payments to her.

And although I've seen no evidence to show CLM were the ones to advise Mrs M to continue making payments during the claim, and through the scheme of arrangement, even if I had I don't think I can say this is unreasonable advice. This is because any failure to make payments on an outstanding credit agreement can have significant negative consequences on a customer's credit file. So, as Mrs M was able to meet these payments and CLM had no way of knowing for certain if Mrs M's claim would be successful when the claim originally began, I don't think I could say CLM advised Mrs M unfairly, if I had seen evidence to show

this is what they did.

And while I do recognise Mrs M's unhappiness that the delays caused by lender A meant she paid more payments than she should've done had they arranged the scheme sooner, this isn't something CLM were able to control, or are responsible for. I've seen evidence that satisfies me CLM were actively engaged and involved with lender A during the arrangement of the scheme, which included referrals to the industry regulator and regular updates to their customers, such as Mrs M. So, I can't say they've done anything wrong here, or that this point should impact the decision I've reached.

So, because of the above, I think CLM have acted fairly, and within the agreement Mrs M entered into, when calculating their success fee on the total monetary payment Mrs M received, which includes the payment refunds. And because of this, I'm not directing them to reduce or recalculate their success fee as Mrs M has requested.

But I do think CLM could've been more proactive in addressing Mrs M's concerns about the fee when she initially challenged it. And I note CLM have accepted our investigators recommendation on this, where they also set out why they thought CLM could've done more. So, I think it's reasonable for me to assume it's accepted by CLM that they acted unfairly under this point and so, I've then turned to what I think they should do to put things right.

Putting things right

When thinking about what CLM should do to put things right, any award or direction I make is intended to place Mrs M back in the position she would've been in, had they acted fairly in the first place.

In this situation, had CLM acted fairly, Mrs M would still have been required to pay the full invoice CLM issued. But I think CLM would've been clearer, and more proactive, in responding to Mrs M's queries which would've prevented her needing to chase CLM for a response on more than one occasion, which I've no doubt would have been both frustrating and inconvenient, especially considering she had an outstanding invoice for a significant fee to consider.

Our investigator recommended CLM pay Mrs M £100 to recognise the above, which I note CLM accepted. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed had it not already been put forward. So, it's a payment I'm now directing CLM to make.

My final decision

For the reasons outlined above, I uphold Mrs M's complaint about Clear Legal Marketing Limited and I direct them to take the following action:

- Pay Mrs M £100 to recognise the distress and inconvenience she was caused by their poor communication.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 31 December 2024.

Josh Haskey
Ombudsman