

The complaint

Mrs S and Mr S are unhappy with the service provided by Mercantile Claims Management Solutions Limited (MCMS) when dealing with a timeshare complaint.

Mrs S and Mr S are both party to this complaint. Mrs S has primarily dealt with this service. For ease of reference I have referred to Mrs S throughout this provisional decision.

What happened

Mrs S instructed MCMS to deal with a timeshare complaint against lender H on her behalf. The events following Mrs S's claim are well-known to both parties. So I haven't repeated them in detail here.

To summarise, MCMS referred Mrs S's complaint about lender H to the Financial Ombudsman Service. The Investigator found in favour Mrs S and said lender H needed to do more to put things right. The complaint was closed by the Financial Ombudsman Service on 11 April 2024.

On 25 June MCMS got in touch to say lender H had failed to fully explain how redress had been calculated, and Mrs S remained concerned that this hadn't been done properly. On the same day, the Investigator asked MCMS for additional information, and said *'Please provide all information requested above by 2 July 2024, if we don't hear from you by that date we'll assume you've resolved things with [lender H].'*

MCMS next got in touch on 11 November, asking the Financial Ombudsman Service to reconsider the complaint as Mrs S had proposed a counteroffer to the redress offered by lender H. MCMS was informed that the Financial Ombudsman Service wouldn't be re-opening Mrs S's complaint as too much time had passed since the last deadline.

Mrs S was unhappy with MCMS's handling of her claim, and complained about not being able to challenge lender H's offer through the Financial Ombudsman Service because of MCMS's failure to deal with the claim in good time. MCMS reviewed Mrs S's complaint but didn't agree with the points raised by Mrs S. Mrs S referred her complaint about MCMS's handling of her claim to the Financial Ombudsman Service.

The Investigator found that although MCMS had handled other parts of Mrs S's claim in line with the way we'd expect, it did cause Mrs S a loss of opportunity in its failure to refer her complaint about lender H for an ombudsman's decision on time. The Investigator recommended MCMS pay Mrs S £250 in recognition of this loss of opportunity and the impact on her.

Mrs S didn't agree with the Investigator's findings saying *'The fact that they still haven't sorted out any agreeable payment from the original claim that we were awarded. We were told several times accept it or lose it!'*

MCMS also didn't accept the Investigator's findings saying (amongst other things) *'Whilst it is clear that both parties accepted the investigators decision the client nor we could not have known there was an outstanding issue in relation to market deductions and the FOS were*

informed on an ongoing basis as to the nature of this continued dispute'. As the complaint couldn't be resolved it has been passed to me for 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.

I'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that has happened or been argued is set out above, I've read and considered everything that has been provided.

Having reviewed the evidence I agree with the Investigator's findings for this complaint for broadly the same reasons. I can understand this is likely to come as a disappointment to MCMS and Mrs S but I hope my findings go some way in explaining why I've reached this decision.

It's not disputed that following the closure of Mrs S's complaint with the Financial Ombudsman Service about lender H, all three parties, that is Mrs S, lender H, and MCMS continued to engage about the redress offered by lender H. I don't think Mrs S's specific concerns about the redress are relevant for the purposes of this complaint. The key question is whether the service provided by MCMS, as the business representing Mrs S, was fair and reasonable and in line with what we'd expect in the circumstances.

I can see the Financial Ombudsman Service asked MCMS for further information. MCMS has raised concerns about the nature of the questions asked and their relevance. But I can't see that any such response was given to the Investigator at the time.

The Investigator's email included a deadline for response, saying *'Please provide all information requested above by 2 July 2024, if we don't hear from you by that date we'll assume you've resolved things with [lender H].'* I haven't seen any evidence that shows MCMS responded to the Investigator's request or that they challenged why this information was needed (as they have now done in response to this complaint).

The Claims Management Conduct of Business (CMCOB) provides guidance to claims management companies like MCMS. I've considered the relevant guidance. CMCOB 6.1.5R says:

'A firm must notify the customer of:

(b) any material development in the progress of the customer's claim;'

CMCOB 6.1.6 provides examples of developments in the progress of the claim which should be treated as material for the purposes of this provision. Having reviewed this section, I'm satisfied the update from the Financial Ombudsman Service was material and ought to have been communicated with Mrs S, with particular emphasis on the deadline for response.

I can't see Mrs S was given any updates about the request from the Financial Ombudsman Service, and specifically, the deadline for response. Because of this, no contact was made with the Financial Ombudsman Service by Mrs S or MCMC until November 2024. And by this time, it was too late to re-open Mrs S's complaint, and refer it for an ombudsman's decision.

I can't know or speculate whether an ombudsman's decision would've meant Mrs S receives more money for her complaint about lender H, than what's currently on offer. But I can

understand Mrs S's frustration with not knowing whether the redress offered by lender H is in line with what she thinks it should pay.

I'm persuaded that MCMS's lack of communication on the claim led to Mrs S losing out on the opportunity for her complaint against lender H to be considered for an ombudsman's decision. So I think it's fair that MCMS pay compensation in recognition of this lost opportunity.

The Investigator recommended MCMS pay compensation of £250. Having considered our award bands, and what has happened on this case, I'm satisfied this amount is fair and reasonable and in line with what we'd direct in the circumstances. This recognises the upset caused to Mrs S in not knowing what the outcome of her complaint might've been if it had progressed to an ombudsman's decision. This amount also recognises that whilst Mrs S thinks lender H hasn't calculated her redress properly, this is only speculative, and an ombudsman asking lender H to pay more than what it has offered, isn't guaranteed.

Mrs S has highlighted how she still hasn't agreed a payment for her claim with lender H. This decision has awarded compensation for the lost opportunity in Mrs S not knowing what might've happened had her claim continued to an ombudsman's decision. The remit of this complaint doesn't include setting out whether lender H needs to do more to put things right. As it stands, it's for Mrs S to decide whether she wants to accept the offer from lender H.

My final decision

I uphold this complaint. Mercantile Claims Management Solutions Limited must pay £250 total compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 14 July 2025.

Neeta Karelia
Ombudsman