

complaint

Mr F complains that Sun Lane Ltd did not deliver the debt adjusting service it promised him.

background

Mr F says that he told Sun Lane he would be receiving a lump sum from his divorce and he wanted to use it to settle his debts. He says that Sun Lane agreed to provide a full and final settlement service. He says that when he provided Sun Lane with the lump sum it was unable to settle his debts. He says that it has unfairly taken a lot of his money as fees for its services while distributing the rest under a debt management plan.

Sun Lane says that it negotiated settlement amounts with creditors but because Mr F did not pay the lump sum that it expected there was not enough money to carry out the full and final settlement process. It also says it carried out mediation for Mr F and that he has obtained further benefits from its services which he should pay for.

Our adjudicator recommended Mr F's complaint be upheld. He did not consider it fair for Sun Lane to retain fees for the full and final settlement process as it had not succeeded. He said that although Mr F's divorce settlement was less than expected it was for Sun Lane to verify the amount before charging fees and negotiating with creditors. He did not consider that the fees or nature of the service are clear from Sun Lane's terms and conditions. Nor, that there is sufficient evidence to show Mr F had agreed to pay £5,000 for mediation services or that he agreed to a debt management plan.

Our adjudicator considered that Sun Lane is entitled to retain fees for its successful claims management activity – however he recommended it refund Mr F the balance of what he paid it plus interest, minus the amount Sun Lane has distributed to his creditors.

Sun Lane says that Mr F authorised work which he has benefited from and that it is entitled to charge him fees. Therefore, this matter has been passed to me for determination.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Sun Lane has made detailed submissions and covered numerous issues which it considers relevant to this claim. However, as an ombudsman I will be focusing on the matters which I consider to be central to this complaint.

full and final settlement

I am satisfied that Mr F contacted Sun Lane so that it could assist him negotiating full and final settlements for his outstanding debts on the basis that he would soon be receiving a lump sum payment from his divorce.

However, it appears that the full and final settlement process failed and the funds Mr F had paid were primarily used for Sun Lane's fees and distributions under a debt management plan. Sun Lane blames Mr F for this – it says that he had told it that he was expecting more from his divorce settlement than it eventually received. It suggests that this, along with

deductions for client withdrawals and Sun Lane's professional fees meant there was not enough money to carry out the full and final settlement process as expected.

I am not satisfied that Mr F can be blamed for the failure of the full and final settlement process. I do not consider the terms and conditions of the plan to be sufficiently clear for Mr F to know exactly how the process was going to work or how fees would be charged. I do not consider it likely for him to have known Sun Lane would go ahead immediately and negotiate full and final settlements without confirming that he would actually be receiving £25,000 from his divorce. Nor do I consider it clear that Mr F would be charged fees of £7,000 from his client account from the outset. Furthermore, by administering the plan in this way I am not persuaded that Sun Lane acted in Mr F's best interests and in accordance with Office of Fair Trading and industry guidance.

Sun Lane has indicated that Mr F misled it about the funds available to him and eventually paid it closer to £20,000. But, considering the uncertainty over proceeds from divorce I would have expected Sun Lane to have ensured that any funds were confirmed before it negotiated full and final settlement offers and incurred fees.

Furthermore, Sun Lane has deducted fees for other services from Mr F's account which reduced the available balance for full and final settlement. As the expert in this situation Sun Lane would be expected to manage the client account in Mr F's best interests and I am not satisfied that it has done in this instance.

Sun Lane has indicated that Mr F has benefited from its full and final settlement process. However, although I accept that Sun Lane succeeded in negotiating reduced settlements, because the settlement payments were not made I do not consider that it should be able to retain a success fee. Ultimately, I am not sufficiently persuaded that Mr F received the service he wanted, or could reasonably have expected. If he had known how Sun Lane was intending to administer this process – and the sort of fees he could pay without actually settling his debts – I am not satisfied he would have agreed to go ahead with it. Therefore, I am unable to fairly conclude that Sun Lane should retain a fee for this service.

Furthermore, from the information available to me I am not persuaded there is sufficient evidence to show that Mr F agreed to pay £5,000 for mediation services as part of the debt adjusting service which Sun Lane was providing him. Therefore, I cannot fairly conclude that it should retain this fee.

debt management

I am satisfied that at the outset Mr F agreed to and wanted a full and final settlement process. From his credible and consistent submissions I am not persuaded that he agreed to or expected a debt management plan. Nor, am I persuaded that Sun Lane's terms and conditions are clear and transparent as to the nature of the particular services to be provided to Mr F. If Mr F was fully aware of the nature of the service he would receive I am not satisfied that he would have agreed to it.

I acknowledge that Sun Lane has done some work in distributing small payments to Mr F's creditors. However, in light of my reasoning above I am not persuaded it should fairly retain fees for administering a debt management plan. That said, from the information available I am satisfied that Sun Lane has distributed £347 to Mr F's creditors – therefore, this should be deducted from the total refund due back to him.

claims management

Sun Lane has attempted claims management services on behalf of Mr F and charged a success fee of a third of the total refund obtained. From the information available to me I am satisfied that Sun Lane has been successful in obtaining refunds for Mr F totalling £5,656.06. Overall, due to the benefit to Mr F, I consider it fair and reasonable that Sun Lane should keep its success fee for this work - being £1,885.35.

Of the £21,897.54 paid into Mr F's client account he withdrew £4,500 and his solicitors were given back £1,289.89. After deducting these amounts, plus the £1,885.35 success fee that Sun Lane should be entitled to keep, along with the amount it distributed to creditors (£347), I consider it fair and reasonable that Mr F should be paid back the balance of £13,875.30 plus interest at 8% per annum from the date of his original lump sum payment to Sun Lane (27 September 2010).

my final decision

My final decision is I uphold this complaint and direct Sun Lane Ltd to refund Mr F £13,875.30 plus interest at 8% per annum calculated from 27 September 2010 to the date of settlement.

If Sun Lane Ltd chooses to deduct tax from the interest element of my award it should provide Mr F with a certificate of tax deduction so he may claim a refund, if appropriate.

Mark Lancod
ombudsman