

The complaint

Mr M complains about Charterhouse Claims Limited (“CCL”) and the settlement fee they are charging following a successful unaffordable lending claim against his lender, who I’ll refer to as “B”.

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 February 2024, Mr M instructed CCL to pursue an unaffordable lending claim against B, entering into a “no win no fee” agreement.

CCL pursued a claim against B, and B agreed to reduce Mr M’s outstanding balance by £2,694, which was the amount equivalent to the interest charges on the loan he took out with them. Mr M accepted this offer and CCL proceeded to invoice Mr M for their settlement fee, based on the refund applied by B to his outstanding loan balance. Mr M was unhappy about this, so he raised a complaint.

Mr M didn’t think CCL were fair to invoice him a fee, as he was in an existing debt management plan (“DMP”) and he had instructed CCL to pursue a claim against B to help further reduce his debt. So, as he hadn’t received a cash award from the claim, he didn’t think the settlement fee CCL were chasing for was fair, and he wanted this fee to be waived.

CCL responded to the complaint and didn’t uphold it. They thought their settlement fee was invoiced fairly, in line with the terms of the agreement Mr M entered into when he instructed them. They didn’t think Mr M had made them aware of his existing DMP, despite him being given the opportunity to do so at the start of the claim. So, they didn’t agree the fee should be waived. But they did offer Mr M a repayment plan, to make the fee more affordable for him. Mr M remained unhappy with this response, so he referred his complaint to us, setting out why he thought CCL had failed to complete the affordability checks they should have.

Our investigator looked into the complaint and didn’t uphold it. They explained CCL had no obligation to carry out an affordability check before entering into an agreement with Mr M, as they weren’t providing him with credit. And they thought CCL had invoiced Mr M for their fee fairly, in line with the terms of the agreement, as the claim they pursued had resulted in Mr M receiving a financial benefit of a balance reduction. So, they didn’t think CCL needed to do anything more.

Mr M didn’t agree, providing comments setting out why. These included, and are not limited to, his continued belief that CCL hadn’t allowed him a reasonable chance to declare his DMP. And even if they had, Mr M provided medical evidence to show at the time he instructed CCL he was suffering with injuries sustained in a car accident, that impacted his cognitive function. So, because of the above and his continued financial situation, he maintained his belief that CCL’s fee was unfair, and should be waived. As Mr M didn’t agree, 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 not 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.

First, I want to recognise the impact this complaint has had on Mr M. I don't doubt Mr M instructed CCL with the intention of using their services to help him reduce his outstanding debt, considering he'd been in a DMP for some time prior to the instruction. So, when CCL invoiced Mr M for their fee without him receiving a cash award, essentially leaving him with a new invoice to pay that he couldn't afford, I can understand he'd feel unfairly treated and choose to complain.

But for me to say CCL should do something differently, for example waive the fee they are charging Mr M, I first need to be satisfied CCL have done something wrong. So, I'd need to be satisfied they failed to act within the terms and conditions of the agreement Mr M entered into when charging this fee. Or, if I think they did act within these, I'd need to be satisfied CCL acted unfairly in some other way. In this situation, I don't think that's the case and I'll explain why.

I note it's not in dispute by either party that CCL did pursue a claim with B, and it was this claim that led to the balance reduction Mr M received. So, I don't intend to discuss this in great detail. But for completeness, I want to make it clear that I've seen B's offer letter, and this includes CCL's case reference number and was also sent to CCL directly. So, I am satisfied CCL's work directly led to the balance reduction Mr M received and I've continued with my decision on this basis.

I've reviewed the terms and conditions of the agreement Mr M entered into, which I want to make clear was a "no win no fee" agreement, meaning CCL's fee would always be based on the refund they obtain on Mr M's behalf, and not the amount of work they completed.

Within this agreement, it explains that CCL's fee *"is inclusive of VAT and percentage of the total monetary redress offered in a settlement proposal; this can be a cash award, balance reduction or combination award"* before going on to explain that *"If the total offer is less than your outstanding balance, the refund offered would be used to reduce your outstanding balance. Where this happens, you may need to find an alternative method to pay our invoice"*.

In this situation, B offered to reduce Mr M's outstanding balance by almost £3,000. And Mr M himself agreed to this offer. So, based on the above, I think the terms and conditions Mr M agreed to make it reasonably clear CCL would still charge their fee in this scenario, and that Mr M would be responsible for paying it. So, I don't think I can say CCL acted outside of the agreement terms and conditions.

But as I've set out above, I must also be satisfied they acted fairly when doing so.

I note Mr M doesn't think CCL have, as he thinks they should completed more checks to ensure he was able to afford the repayment of their fee in a situation such as the one he found himself in. But I don't agree.

CCL weren't offering Mr M credit here, so there was no obligation on them to conduct

affordability checks as Mr M has suggested. And I've seen from the fact find document Mr M completed that he answered "*none of these*" to the question "*Have you been declared bankrupt/been subject to a bankruptcy petition, debt relief order or are you in an IVA/or have proposed an individual voluntary arrangement (IVA) which is yet to be approved or rejected by creditors?*".

While the question doesn't list a DMP specifically, I think it's reasonably clear to ascertain from this question that CCL were trying to understand Mr M's financial situation. And as Mr M was in a live DMP, with the intention of reducing his debt through the claim with CCL, I think it's reasonable to expect Mr M to at the very least discuss his financial situation with CCL at the time he instructed them.

Further to this, by signing the Letter of Authority ("LOA") instructing CCL to act on his behalf, Mr M agreed that he had read and understood the terms and conditions of the agreement. So, as these terms and conditions explained there was a situation where Mr M would need to pay an invoice by alternative means where a balance is reduced, I think it was reasonable for CCL to assume Mr M was happy with this, and that this was an affordable option to him when continuing with the claim. Even more so when Mr M confirmed to CCL directly he wished to accept B's offer, which was made reasonably clear to him was a balance reduction.

So, while I do appreciate Mr M was experiencing symptoms linked to a car accident he was involved in around the time he instructed CCL, I don't think I've seen any evidence that satisfies me CCL acted unfairly, based on the information available to them at the time they were instructed, and progressed, Mr M's claim against B. And since Mr M has made CCL aware of his financial situation, I'm pleased to see CCL have offered a repayment plan in recognition of this, which I think shows them acting positively and sympathetically to Mr M's situation as I'd expect.

So, because of all the above, I think CCL have acted fairly here and I don't think they need to do anything more on this occasion.

My final decision

For the reasons outlined above, I don't uphold Mr M's complaint about Charterhouse Claims Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 October 2024.

Josh Haskey
Ombudsman