

The complaint

Mr and Mrs H are unhappy Moneyback Limited has charged a fee for their mis-sold payment protection insurance (PPI) claim.

What happened

In March 2019, Mr and Mrs H said they spoke to an agent of Moneyback about making PPI claims. Mr and Mrs H said they specifically checked whether any compensation would be used to offset the outstanding overdraft they had with their lender. They said they were given assurances that any compensation wouldn't be used for this.

In April 2019, Mr and Mrs H signed a letter of engagement (LoE) instructing Moneyback to act on their behalf to pursue any PPI claims. Mr and Mrs H did have a successful claim. But the compensation awarded was used by their lender to offset against their overdraft, so they didn't receive anything. And Moneyback has asked for their fee as the claim was successful.

Mr and Mrs H don't agree the fee being asked for by Moneyback should be paid, as they said Moneyback had mis-led them about their overdraft not being affected by any compensation that was awarded.

Moneyback didn't believe their agent would have said any compensation couldn't be used to offset an overdraft. And said their terms and conditions explained that any redress could be used to reduce a loan with the lender. But they offered to reduce the fee by 10% to a total of £678.29, payable over six months.

Mr and Mrs H wasn't happy with Moneyback's response and referred their complaint to us.

Our investigator said Moneyback had made it clear in their terms and conditions that any compensation could be used to offset any debt. And Mr and Mrs H's overdraft was a debt. So she said Moneyback's fee should be paid, and their offer to reduce their fee by 10% was fair and reasonable.

Mr and Mrs H didn't agree and have asked for an ombudsman to decide.

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. I'll explain why.

It's not unusual for me to need to decide a case where it's simply not possible to know exactly what happened. In situations where I can't ever know for sure what took place, I will make my decision based on the balance of the evidence that I do have.

I can understand Mr and Mrs H's frustration as they said they'd discussed the offset of any compensation against their overdraft. And it was only after they'd been given reassurance that their overdraft wouldn't be considered, that they decided to go ahead with Moneyback to make their PPI claim. A recording of this call isn't available, so I can't say what was or wasn't said.

But before Moneyback pursued the PPI claim with Mr and Mrs H's lender, they asked Mr and Mrs H to sign a LoE and sent them their terms and conditions.

On 6 April 2019, Mr and Mrs H signed the LoE. And in signing this document they said they'd:

" read, agreed and retained a copy of the Terms and Conditions"

Given Mr and Mrs H were aware of the potential to offset any compensation, and that they had sought reassurance about this. I'd think it would be reasonable to expect them to check what they said they were told against the terms and conditions they were going to agree to. And in Moneyback's terms and conditions the first paragraph says:

"Benefit" means all monetary and non monetary benefits arising from our services. This will often be a cash refund to you but in some cases may also include debt reduction and/or cancellation. For example if you are in arrears on a loan/credit card or any other form of debt, all or part of the refund may be used to pay off the arrears. If this happens, you will have benefited from our service and our fees will be payable in line with our service charges".

I think *"any other form of debt"* should have caused Mr and Mrs H concern about what they said they'd previously been told. But they didn't question this further with Moneyback and returned the LoE. And Moneyback then acted on their behalf in pursuing their PPI claim.

The agreement Mr and Mrs H had with Moneyback was on a "No win No fee" basis. This means Moneyback charged a percentage success fee, not a fee based upon the amount of work it did. So, any work done on any unsuccessful claims would be done for free. Mr and Mrs H's PPI claim was successful. And as outlined above Moneyback's terms and conditions are clear in that if any compensation is used to offset a debt their fee would still be payable. So I'm satisfied Moneyback can charge their fee.

Moneyback has offered to reduce their fee by 10% to £678.29. It will be for Mr and Mrs H to decide whether to accept this offer as I'm satisfied Moneyback can charge their fee.

My final decision

I'm not upholding this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 18 February 2020.

Anne Scarr
Ombudsman