

The complaint

Mr M is unhappy that Help Your Claim Limited (HYC) are charging him for a successful claim for mis-sold payment protection insurance (PPI) when he didn't receive any compensation.

What happened

Mr M instructed HYC to make a claim for mis-sold PPI against Lender N. The claim was successful, and Mr M was awarded compensation. But, because Mr M had previously been in an Individual Voluntary Arrangement (IVA), Lender N offset the compensation against the IVA debt.

Mr M has complained that HYC have invoiced him for their success fee on the claim against Lender N, even though he didn't receive any compensation.

Our investigator said that, at the time Mr M instructed them, HYC's terms and conditions only referred to a fee being payable on compensation received. And because Mr M didn't receive any compensation, then he didn't think any fee was due.

The investigator also said that HYC had since changed their terms to include that their fee would be payable if compensation was used to offset arrears or other debt. But, because this wasn't in the terms Mr M agreed to, HYC couldn't rely on this to charge a fee.

HYC didn't agree with the investigator. They say the claim was successful, and Mr M benefitted from this by a reduction in his debt. And they say Mr M would've been told, by the sales advisor he spoke to on the phone, that the fee would still be due if the compensation was used to offset arrears. So they've asked that an ombudsman make a final 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've seen that, on 16 February 2015, Mr M signed to say he agreed to HYC's terms and conditions. With respect to the fee, these terms and conditions say:

"On success of your claim, HYC will charge a 30% fee + VAT on all amounts received. Our charges apply to the total value of the compensation received."

While the terms give an explanation as to how the fee would be calculated *"if you receive a settlement figure of £1000"*, it doesn't give three separate examples; including what fee would be payable if part or all of the compensation was used to offset arrears/debt. It's my understanding that this was a regulatory requirement at the time.

And the terms make no other reference to what would happen if any compensation was offset. Nor do they explain what they mean by 'Compensation'. So, from the terms he agreed to, Mr M would reasonably have only expected to pay a fee on any compensation he physically received from Lender N.

HYC have since updated their terms. They now define 'Compensation' to mean *"any one or a combination of the following: a cash refund paid directly to you; a reduction of your credit balance; a reduction in your arrears, Debt Management Plan (DMP) or Individual Voluntary Agreement (IVA) Please note our fee is still payable if this applies to your claim."*

HYC wouldn't have needed to update their terms to include this definition of Compensation if the existing terms were clear that it included anything used to offset arrears/debt. So, in doing so, they accept the terms Mr M signed were deficient in some way. But an update to their terms doesn't mean that these apply to Mr M. He's only bound by the terms he agreed to. And these don't say that HYC's fee is still payable if the compensation is used to offset any arrears/debt.

HYC have said they verbally advised Mr M their fee would be due in these circumstances, when he spoke to their sales advisor. But they can't provide a copy of this call due to the time that's passed since the call took place. However they say that, if Mr M wasn't told this, it would've been picked up in an audit and flagged on his file. And it wasn't.

Given the time passed I wouldn't expect the call to be available. But I don't accept that a non-adherence to a sales script not being flagged in an audit is proof of what Mr M was told. I've not seen any evidence to show me this call was even audited. But even if Mr M had been told this (and I'm not convinced he was) it wasn't included in the terms he agreed to. And it's these terms that define when a fee is payable, not what may or may not have been discussed in an earlier telephone conversation.

Putting things right

Because the terms and conditions Mr M agreed to don't make it clear that their fee is still payable if any compensation is used to offset any arrears/debts; then HYC aren't entitled to charge him a fee in these circumstances.

So HYC should waive their outstanding fee for Mr M's claim against Lender N and waive any fees they've added to this for non-payment.

My final decision

For the reasons explained above I uphold Mr M's complaint. Help Your Claim Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 July 2020.

Andrew Burford
Ombudsman