

The complaint

The estate of Mr B is unhappy that Allay Claims Limited are asking for their success fee for a payment protection insurance (PPI) claim made in Mr B's name.

What happened

Miss F is the executor for her late husband, Mr B. Miss F said from July 2019 she started getting text messages and emails addressed to her late husband from Allay saying he'd PPI and that they'd made a claim for him. Miss F said she was on holiday at the time but on her return, she emailed Allay and told them that her husband had died in 2016. She asked them to stop contacting her.

Allay asked her to send them Mr B's death certificate, which Miss F said she did. But despite this Allay continued to "bombard" her with messages and asked her to pay their success fees when redress was awarded to Mr B by his lender. She complained to Allay.

Allay said a letter of authority (LoA) was signed in July 2019 instructing them to look into a PPI claim for Mr B. And that the contact details given were those of Miss F. The LoA was accepted by Mr B's lender and they updated Miss F when PPI was found. When Miss F told them her husband had passed away, they asked for a copy of the death certificate which they said they only received in November 2019, after one of Mr B's claims was successful. Allay said their success fee was justified as they'd acted in good faith in submitting the LoA to Mr B's lender and pursuing his PPI claim based on the information provided to them in the initial application.

Miss F wasn't happy with Allay's response and referred her complaint to us.

Our investigator said that Allay hadn't been authorised to act on behalf of Mr B and so they couldn't charge their fee. He also asked Allay to pay Miss F £750 for the trouble and upset caused to her.

Allay didn't agree, they said the application had Miss F's contact details which suggested she'd submitted the claim for Mr B as his executor. As the claim was successful Miss F, as the beneficiary should pay their fee. They asked for an ombudsman to decide.

I issued a provisional decision in December 2021 that said:

Having done so I'm currently minded to uphold this complaint. I'll explain why.

I've seen a copy of the LoA completed and signed in July 2019. The LoA is in the name of the late Mr B. The applicant's details were pre-printed on the LoA by Allay and to be submitted a digital signature was added to it. But it doesn't mention that Mr B was deceased. Nor does it mention anyone acting as an executor for him.

Allay has said that the contact details given were those of Miss F. I can see the same contact details have been given to us. So, I don't think Allay would have been aware at the

time of the application that Mr B was deceased, and they submitted the claims to Mr B's lender(s) in good faith.

But as Mr B died in 2016, for a PPI claim to have been made in August 2019, it would have had to have been made on behalf of the estate of Mr B. For Allay to have been authorised to pursue a PPI claim for Mr B they would have needed a LoA that correctly reflected the claim being made. The LoA would have needed to have shown both, Mr B's name and that of the person acting for the estate, in this case Miss F.

When making the online application, the applicant in signing the LoA is agreeing to Allay's terms and conditions. But as I outlined above the only applicant named on the LoA is Mr B, and it wasn't possible for him to agree to Allay's terms and conditions or to sign the LoA. What I would have expected is when Allay was made aware that Mr B had died they'd have asked Miss F to complete a LoA on behalf of the estate of Mr B. And by doing this the estate would, if they signed the LoA, have agreed to Allay's terms and conditions. But I can't see that Allay did this. And as Allay didn't have a LoA signed on behalf of the estate of Mr B, I don't think their terms and conditions had been agreed to. So, I don't think Allay was authorised to act for Mr B to pursue a PPI claim, and so they can't charge their success fee for his claim(s).

Our investigator said Allay should also compensate Miss F for the trouble and upset caused to her. Whilst I don't doubt that Miss F has suffered significant distress and inconvenience dealing with this issue, I should make clear that under the rules governing our service, Miss F as the estate of Mr B, isn't entitled to any compensation for distress and inconvenience. In the circumstances, awarding Miss F £750 compensation for the trouble and upset caused wasn't correct. I can only tell a business to pay compensation for trouble and upset experienced by its customer, not by a third party.

I understand Miss F will be disappointed by my decision and I agree that Allay should have taken a more proactive approach after finding out Mr B had died, preventing further communications being sent out addressed to him. But as Miss F was acting as an executor on the claim, this means we wouldn't be able to award compensation for the distress she suffered in having to deal with the claim. The reason for this is because the complainant in this case is the estate. So, I won't be recommending any compensation for the trouble and upset caused.

Responses to my provisional decision

Both parties have provided additional comments for me to consider.

Miss F, through her representative says

- the provisional decision doesn't address key elements of the complaint. That being the destruction of data held by Allay about Miss F and the late Mr B. And an undertaking by Allay to stop any further communication with her;
- the sentence " *Allay didn't agree, they said the application had Miss F's contact details which suggested she'd submitted the claim for Mr B as his executor*" should be removed. As this implied Miss F had used her late husband's details and signature to submit the claim. Which with the sentence " *....they submitted the claims to Mr B's lender(s) in good faith*", gives the impression that this was the case, and
- the decision should make reference to the specific provision of the rule/legislation that prevents the award of compensation to Miss F because the complainant is the estate.

Allay have asked for the below comments to be considered:

- they cannot be held responsible for loved ones inputting details on behalf of deceased clients, nor was this encouraged or asked of potential clients during the onboarding process;
- the lender's process would routinely have returned a Pre-sub response advising that the client was deceased and requesting a new LoA and relevant documentation. The lender failed to do this. The lender did not advise that the client was deceased at Pre-sub response stage, which is the correct procedure;
- as the lender auto converted the positive Pre-sub response to a mis-sold PPI claim, this gave Allay no opportunity to gather the relevant documentation and new LoA with Miss F's details;
- the lender compounded their mistake and issued the win letter to the deceased client, only subsequently resending this with the correct details in order for Miss F to obtain the funds;
- the lender corresponded with Allay about this matter due to the LoA they provided and the initial submission into Pre-sub;
- clear and sound instruction has been given to Miss F on how to suitably close these claims, yet Miss F failed to do so. This lack of interaction from Miss F meant the collections process continued, until an instruction is given to change the claims course of action;
- the client's estate has benefited from Allays submission of the claim and Miss F is the main beneficiary. It was Miss F's details , email address, telephone number, that were used to provide the information at the outset and Miss F's details used throughout the process. They were able to demonstrate that the opt in shows personal details pertaining to the deceased client, that could only have been provided from someone with knowledge of this information; and
- they believe Miss F had knowingly instructed them on behalf of the estate of the deceased and benefitted from doing so.

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've not been persuaded to change my thinking from the provisional decision.

We're an informal dispute resolution service, acting as an alternative to the courts. This means we're impartial and look at both sides of the story. We don't place more weight on one side's story because of who they are. We ask questions and weigh up all the information we're given.

Both parties feel strongly about what has happened, Miss F is adamant she didn't complete the details on the LoA. And Allay are adamant that someone close to Mr B, who'd know his personal details would have had to complete the application. And given that it was Miss F's details that were given feel strongly, as the beneficiary of the estate that it was most likely she who completed the application. Where there is a different version of events as is the case here, I have to base my decision on what I think most likely happened.

Its not in dispute that a LoA was completed and submitted in the name of the late Mr B. But I can't know who completed that application, so I won't comment further on this. As I outlined in my provisional decision, the LoA was solely in the name of the late Mr B, and that any

signature on the LoA couldn't have been his. So, I'm satisfied that Allay weren't authorised by Mr B, himself, to submit the LoA to his lenders. But I don't think Allay, at the time would have known from the information in the application that Mr B had died in 2016. So, I don't think they'd any reason to question the LoA wasn't a valid authorisation to them to provide their services, and they submitted the LoA to Mr B's lenders.

I can understand Allay's point that on the submission of the LoA the lender should have identified that this wasn't a valid LoA as the late Mr B couldn't have signed it. But the Financial Conduct Authority (FCA) deemed 29 August 2019 as the deadline for PPI claims to be made. And with the approach of the deadline there were high volumes of PPI complaints raised, so I think it's understandable that there was a potential for some verification errors to have been made at this time. But Miss F, acting for the estate of Mr B can't be held responsible for an error made by the lender.

Leading up to the August PPI deadline many claims management companies amended their terms and conditions in recognition of the expected high volume of claims. And reflected that lenders could investigate any claim based on a data subject request. Any further information such as that provided in a PPI questionnaire could be used to strengthen the claim that the PPI policy was mis-sold. So, for some lenders the submission of a LoA was accepted as a claim for mis-sold PPI and no further information was needed for them to investigate the mis-sold PPI claim. This is generally referred to as the claim being "auto converted". But for others they asked for a "wet signature" and for the PPI questionnaire to be completed. Any claim received after the 29 August 2019 deadline wouldn't have been accepted by the lender(s) unless there were exceptional circumstances for doing so.

And I can see that the LoA submitted by Allay was "auto converted" by the lender so there wasn't a requirement for Allay to get any further information for the mis-sold PPI claim to progress. If there had been it would have, I think shown that Mr B couldn't have made the claim. But I can also see that from August 2019 Miss F questioned Allay's actions and had tried to get the claim cancelled before any redress was awarded. Allay has said Miss F hadn't followed "*clear and sound instruction*". But Miss F had sent them Mr B's death certificate and Allay confirmed receipt in November 2019, so they would have been aware that Mr B couldn't have signed the LoA in July 2019 that they'd submitted to the lender. After becoming aware that Mr B had died, I think Allay in trying to keep an active involvement in the claim chased for additional information, for example grant of probate, for this purpose rather than asking and explaining to Miss F about whether she wanted to make a claim on behalf of the estate. So, I'm satisfied Allay wasn't authorised to act for Mr B to pursue a PPI claim, and so they can't charge their success fee for his claim(s).

I sympathise with Miss F's situation and do appreciate how difficult this has been for her. If we decide a financial business has done something wrong, and the complainant has lost out as a result, an important part of our role is to say how the business should put right the impact of its mistake. The rules we follow are provided by the Financial Conduct Authority (FCA). These rules are set out in a section of the FCA's Handbook called Dispute Resolution: Complaints (DISP). DISP 3.7, sets out our power to put things right – which includes making money awards (at DISP 3.7.2R). This is where a complaint is determined in favour of the complainant, all eligible complainants are set out under DISP 2.7.3R.

A complaint can be brought on behalf of a deceased person that would have been an eligible complainant by those authorised to do so in law. That's usually the estate's executors or personal representatives. But we couldn't compensate the executor or personal representative personally for any impact incurred by them, when representing the estate. As the estate of Mr B is the only eligible complainant in this case, I can only consider redress for the estate, and have asked Allay to waive their fee. But as the distress and inconvenience was to Miss F and not to Mr B, I can't award any compensation for distress and inconvenience to her. I could only make an

award for distress and inconvenience to the estate of Mr B, if he'd suffered distress and inconvenience whilst he was alive. As he didn't, I can't make an award to his estate.

Miss F has asked that all data held by Allay about her and Mr B should be destroyed. Under General Data Protection Regulation (GDPR) there is the right to get personal data removed that's also known as the 'right to erasure'. But its not for me to direct Allay to destroy the data they hold about Miss F and Mr B. Miss F can ask Allay to delete that data and they should do so unless an exemption in data protection law applies. An exemption could be because Allay is legally obliged to keep hold of the data such as to comply with financial or other regulations. So, this is a matter that should be decided upon between Miss F, as the executor for Mr B and Allay.

As I'm asking Allay to waive their fee, I can't see any further need for Allay to communicate with Miss F about this other than to confirm they've waived their fee should Miss F accept my decision.

My final decision

I uphold this complaint. And ask Allay Claims Limited to waive their fee.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 7 February 2022.

Anne Scarr
Ombudsman