

The complaint

Mr D complains that Allay Claims Limited are asking him to pay their success fee for a payment protection insurance (PPI) claim he never authorised them to make.

Mr D is represented by Mr S in bringing his complaint.

For ease of reading I will refer only to Mr D in my decision.

What happened

In December 2020, Mr D said he received a settlement from his lender I'll call "H" for a PPI claim he said he knew nothing about. Mr D sent a subject access request to "H" and found that Allay had submitted the PPI claim on his behalf. Mr D said he'd never authorised Allay to do this for him. In January 2021, Mr D asked Allay about the PPI claim and submitted a subject access request to them.

Mr D said the information Allay had about him was several years out of date and the signature on the letter of authority (LoA) wasn't his. Mr D said "H" had acknowledged they'd acted on incorrect information. And his internet provider confirmed they hadn't found any connection to Mr D's account for the IP address Allay said had been used to make the application. Mr D complained to Allay as he said the digital signature used didn't comply with the relevant regulations and Allay had failed to provide the agreement in a durable format.

Allay said they'd received an online application in July 2019 for them to pursue a free PPI check. The LoA was signed and they submitted the details to Mr D's lender, which they'd accepted. They'd used the contact details provided in the application to notify Mr D that PPI had been found and had provided their claims service from this point. Mr D hadn't cancelled the agreement and as his claim was successful because of the claim they submitted to his lender their success fee is justified.

Mr D wasn't happy with Allay's response and referred his complaint to us.

Our investigator said that, on balance, Mr D had authorised Allay to act on his behalf and so Allay could charge their fee.

Mr D didn't agree and has asked for an ombudsman to decide.

I issued a provisional decision in January 2022 that said:

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 currently minded to uphold this complaint. I'll explain why.

Allay feel strongly that the success of Mr D's claim was because of the submission they

made for him. Mr D is adamant that Allay didn't have a valid authorisation from him instructing them to act on his behalf. Mr D has said the signature on Allay's LoA isn't his. But it's not our role to validate a signature as we aren't handwriting experts.

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. Mr D has made a number of points, I may not refer to each specifically in my decision but please be assured all of the points raised have been considered. In making my decision I need to determine whether I think it's more likely than not Mr D had or hadn't authorised Allay to act on his behalf. If I consider he has, whether Allay knew he no longer wanted them to work for him. And to see whether Allay has acted fairly and reasonably in their actions with him.

The Financial Conduct Authority (FCA) deemed 29 August 2019 as the deadline for PPI claims to be made. Leading up to the August PPI deadline many claims management companies, such as Allay, 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. 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". 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. So, I've looked at what has happened.

Allay has shown an online application for a free PPI check was made in July 2019. Some of the personal details in this application correlate with personal details Mr D has given this service. But none of the contact details given match those that Mr D has given to us. The LoA clearly asked for current and previous addresses so there was the opportunity for Mr D to have added all the addresses connected to him. But the current address given relates to an address Mr D said he left in 2008. Allay has shown us a trace search they did for this address, and while it shows Mr D had an association with the address, the electoral roll doesn't list Mr D, but does show that someone with the same surname on the electoral roll left the address in 2014. Mr D has shown that any connection to this property ended at this time.

Allay said that their terms and conditions had to be agreed to for the application to progress. And by agreeing to the terms and conditions this would have generated the LoA populated with the personal details that had been supplied. Allay said the LoA couldn't be submitted without a signature being added.

I've looked at Allay's terms and conditions they say:

"We will notify you once PPI has been identified and submit your complaint to the lender. If the claim is successful, our normal fee, as per this Terms of Engagement, will apply."

In November 2019, I can see from Allay's records that "H" told them Mr D had PPI on an account. Allay's records also show they emailed Mr D to notify him that PPI had been found and to confirm his claim had been submitted in line with their terms and conditions. So as outlined above Allay's terms and conditions meant from this notification Allay would have been providing their claims service. But the notification was sent to an email address that Mr D says he hadn't actively used since 2015. I've asked Allay if their records show these emails being delivered, but they can't confirm this.

PPI being found didn't mean Mr D's claim was successful as it needed to be considered by "H" whether the PPI had been mis-sold to him.

In November 2019, I can see that Allay sent Mr D further emails to the email address they had on record. And a letter to the current address they had for Mr D (although this has been shown not to be his current address) saying they'd been trying to contact him but hadn't had any response.

In February 2020, "H" told both Mr D and Allay that his mis-sold PPI claim had been successful and the amount of compensation to be awarded. But again, this notification is to the incorrect current address that both "H" and Allay were using for Mr D. And for close to the next 12 months, I can see a barrage of emails and SMS messages being sent to the contact details Allay had for Mr D, all of which went unanswered. Until January 2021 when Mr D questioned Allay's authorisation to act on his behalf. This contact was generated by Mr D following the settlement made by "H" several months after they'd upheld his PPI claim, and not from any contact he'd from Allay.

Allay's terms and conditions say:

"From the point we submit your complaint, you have a 14 day cooling off period during which you can cancel your contract with us. If at any time during the 14 day cooling off period we obtain an offer of compensation for you, our normal fee will be payable."

And go on to provide the various channels for doing this, telephone, email, downloading a cancellation form from Allay's website or in writing. But for Mr D to have been able to exercise his right to cancel the agreement without 14 days, he would have had to have known that Allay had submitted his complaint to "H". While I don't think it's enough to simply disengage from the process to consider an agreement cancelled. I'm not persuaded that Mr D knew his PPI claim had been submitted and so he wouldn't have known that the 14 day cooling off period had started.

I say this as the evidence shows that neither "H" or Allay had any response from Mr D when they'd used the contact details provided on the LoA, over the course of more than a year. And as this meant any redress was unknown to Mr D for several months, I find it difficult to understand why anyone seeking recompense would provide out of date details for this. I'm persuaded by Mr D's testimony that it wasn't just a case of the current address no longer being his, but he'd been using a different email address and mobile telephone number for several years prior to the LoA's completion.

Further Mr D's internet provider has stated that they've no record of this IP address being used on Mr D's account. While an IP address is only an indicator and doesn't prove or disprove it wasn't Mr D that used the IP address, the evidence given by his internet provider reinforces my thinking that the application was completed by someone other than Mr D, who had some knowledge of his details.

So, I'm not satisfied that Mr D had the opportunity to cancel the agreement that had been made with Allay as he'd only received the information about his PPI claim from "H" as a result of his subject access request. And this was after "H" had paid the redress for Mr D's successful claim.

Allay's terms and conditions say:

"If you terminate this agreement after the 14 day cooling off period and prior to an offer of redress. Allay reserves the right to make a reasonable and proportionate cancellation charge that will reflect the work undertaken by Allay in pursuit of your claim."

While I think the success of the claim was as a result of Allay submitting Mr D's claim to "H" before the August 2019 deadline. I don't think Mr D had the opportunity to ask Allay to stop

what work they were doing in his name. Mr D as soon as he found from “H” who’d submitted the claim asked Allay to cease any further work. And I’m persuaded this is what would have happened if Mr D had the opportunity to cancel within the 14 day cooling off period. So, I intend to ask Allay to waive their fee.

Responses to my provisional decision.

Mr D said that Allay hadn’t complied with the relevant regulations by supplying the agreement in a durable medium. And that the situation had caused him trouble and upset over the time its taken to get the matter sorted.

Allay said:

- IP addresses are sometimes dynamic and are often a range of numbers provided by the ISP. It is rare that households have a static IP address;
- Mr D’s lender had accepted the signature provided as a true representation of Mr D’s signature, if they hadn’t, they would have rejected the LoA; and
- if Mr D believes that these funds have been fraudulently obtained then he should contact his lender and state this, as he shouldn’t be in receipt of these funds.

My findings

I’ve considered the additional comments that have been sent by both parties. Having done so I’ve not been persuaded by either party to change my thinking.

Its clear Mr D feels Allay hasn’t acted appropriately in their dealings with him and this has caused him some distress.

Allay strongly believe that Mr D’s claim was only successful because of their submission of an LoA, that had been accepted by Mr D’s lender as being his authority for them to act on his behalf. I can’t know who or how Allay was provided with Mr D’s out of date details and I don’t think Mr D should return the redress he’s received as “H” offered the compensation as a PPI policy had been mis-sold to him. But as I said in my provisional *“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 haven’t seen any evidence that Mr D submitted a claim direct to “H”. So, I can understand Allay’s pursuance of their fee as the claim was successful because of the actions they took.

Allay has shown how they capture an IP address when an application is made for their services. But as I said in my provisional decision the IP address *is only an indicator and doesn’t prove or disprove it wasn’t Mr D that used the IP address.* But when added to the other information about Mr D’s contact details it strengthens Mr D’s testimony that he didn’t make the application.

I can understand Allay’s comment about Mr D’s lender accepting the LoA as being signed by Mr D and being his authority for Allay to act on his behalf. Mr D says its not his signature, as I said before its not our role to validate a signature. And I can also see that “H” didn’t note the address details for Mr D weren’t correct.

Mr D said Allay should have provided the agreement in a “durable medium”. A durable medium can cover a wide spectrum, it doesn’t simply relate to a paper format. Allay has shown that access to a copy of the agreement was available to Mr D to download a copy or store a copy in a durable medium. And given Mr D said he wasn’t living at the address Allay

had on record, if they'd sent him a paper version of the agreement, I doubt he would have received it.

In deciding to uphold Mr D's complaint its that I'm not satisfied Mr D had the opportunity to cancel the agreement. So, I don't think its fair for Allay to ask Mr D to pay their fee.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 March 2022.

Anne Scarr
Ombudsman