

The complaint

Mr W and Mrs W complain about We Fight Any Claim Limited (WFAC) and their decision to invoice them for a settlement fee following a successful claim for mis-sold Payment Protection Insurance (PPI) that was paid out in 2016. Mr W and Mrs W are also unhappy with WFAC's decision to instruct a third-party debt collection agency.

What happened

In July 2016, Mr W and Mrs W instructed WFAC to pursue claims for mis-sold PPI against several lenders. This complaint relates to a PPI claim pursued against lender R taken out in Mrs W's sole name.

WFAC submitted a claim to lender R in August 2016. But there appeared to be an issue with the validity of the letter of authority (LOA) signed, which meant lender R supplied several versions of the LOA over a period of months. But during this period, Mrs W received a refund of £1,958.59 which related directly to the claim.

WFAC say they weren't notified of this refund until 14 September 2021, which is when they issued Mrs W with an invoice for their fee of £489.64. But Mrs W explained she hadn't received a recent refund from lender R, so asked WFAC to confirm the claim this refund referred to and when it was, or was likely to be, paid. WFAC requested this information from lender R but continued to ask Mrs W for payment. When this wasn't received by 26 October, WFAC referred the account and the invoice to a third-party debt collection agency, who I'll refer to as "D". Mr W and Mrs W were unhappy about this, so they raised a complaint.

Mrs W didn't think WFAC were fair to invoice her for a fee on a claim that had been successful five years prior. Mrs W explained she'd paid all WFAC's outstanding fees relating to refunds provided by lender R in September 2016 and that she assumed these fees settled all the amounts she owed. And she didn't think WFAC acted reasonably when referred her debt to D when she was in communication with WFAC and requesting clarification on the refund the fee related to. She explained her interactions with D had been stressful and she was worried about the impact this had on her credit file. So, she wanted the outstanding fee to be waived and to receive no further contact from D or WFAC regarding it.

WFAC responded and didn't agree. They thought they'd submitted the claim that had led to the refund Mrs W received in 2016. So, they thought their fee was due. And they explained they hadn't been made aware of the claim's success until November 2021 and so, didn't think they were responsible for the delay in invoicing Mrs W. Finally, they thought they were fair to pass the debt onto D as a fee remained outstanding despite Mrs W being asked to make payment. So, they didn't think they needed to do anything more.

Mr W and Mrs W remained unhappy with this response, so they referred their complaint to us.

Our investigator looked into the complaint and upheld it. They were satisfied the refund Mrs W received resulted from the claim WFAC submitted. So, they thought WFAC were fair to invoice Mrs W for their fee. But they didn't think WFAC acted fairly when referring the

account to D as Mrs W had requested clarification on the fee and our investigator thought this was a reasonable request. So, they thought WFAC should remove any additional fees charged by D for their involvement. And our investigator thought WFAC should pay Mrs W £250 to recognise the upset the situation had caused her as they thought WFAC should've invoice Mrs W sooner and prevent the situation that eventually arose.

WFAC didn't agree. They didn't think they had any way of knowing the claim had been successful until 14 September 2021, on the same day they issued Mrs W with their invoice. And they thought Mrs W had a responsibility under the terms of the agreement to notify them of any refund, which they didn't think she did. They also thought that, as Mrs W didn't pay the outstanding fee despite chasers via e-mail and text, were fair to refer the debt to D. So, they didn't think they should compensate Mrs W or remove D's additional costs.

Our investigator responded to WFAC's response explaining why they didn't think these changed their initial view. But WFAC continued to disagree and so, 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 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.

Before I explain why I've reached my decision, I think it would be useful for me to explain how I've considered the complaint. When considering whether the fee WFAC have charged is fair, I need to be satisfied they completed the work that led to the refund Mrs W received. Then, that the fee has been charged in line with the terms of the agreement **and** that WFAC have acted fairly and reasonably while relying on these terms. As well as this, I've also thought about WFAC's decision to refer Mrs W's debt to D.

In this situation, it's not in dispute that WFAC were authorised to pursue claims for mis-sold PPI against lender R on Mr W and Mrs W's behalf. Nor is it in dispute that WFAC submitted the original letter of claim in 2016, that led to the refund Mrs W received. I think it's reasonable for me to assume that without this submission, Mrs W's claim wouldn't have been successful as it would never have been considered by lender R. I've seen no evidence to show me Mr W and Mrs W liaised directly with lender R or made any indication they wanted to pursue the claim themselves. So, as I think the work WFAC completed led to Mrs W's refund, I think WFAC are entitled to invoice Mrs W for their fee. And I can see the original fee of £489.64 falls in line with the fee structure set by the agreement. So, I think this amount is payable and I can't say it should be waived.

But I don't think WFAC acted fairly when they referred Mrs W's debt to D. Whether or not WFAC's terms allowed them to pass Mrs W's debt on, I'd expect them to give Mrs W reasonable chance to understand and then pay the invoice. And I'd only expect a debt to be referred it was clear Mrs W had no intention of paying the debt or has stopped communicating with them.

In this situation, WFAC referred Mrs W's debt to D around six weeks after they issued their initial invoice. But during this time, Mrs W had contacted WFAC to express her confusion as she'd not received a recent refund from lender R. And WFAC had agreed to confirm when the refund had been or was due to be paid. So, I wouldn't have expected any referral to be

made until lender R had been responded. Yet WFAC referred Mrs W's debt to D on the same day they wrote to lender R, which I don't think is fair.

I also don't think allowing Mrs W a period of six weeks to pay an invoice in full is fair, considering the refund was received by Mrs W five years previously. Our service expects businesses such as WFAC to act positively and sympathetically towards a customer's financial situation. And I think it would've been reasonable to assume Mrs W had spent the refund and so, was unable to pay the outstanding invoice outright. So, I would've expected WFAC to explore affordable repayment plans with Mrs W before making a referral to D. And I can't see they did this.

So, I don't think WFAC's referral to D was fair. And Mrs W has confirmed receiving a letter from D was both worrying and upsetting, which I don't dispute. So, I think WFAC should address this and I've considered what I think WFAC should do further down the decision.

I've also thought about when WFAC should've reasonably invoiced Mrs W for their fee, as I think a period of five years is a significant amount of time. I note WFAC state they were only made aware of the refund on 14 September 2021. And they've referred to the terms of the agreement, which states a customer has an obligation to make them aware if a refund is received. And they don't think Mrs W did this.

But I don't agree. I can see WFAC issued Mr W and Mrs W with their invoices for other upheld claims with lender R in September 2016. And this was around the same time that Mrs W received the PPI refund associated with this claim. I don't think it is reasonable to expect Mr W and Mrs W to understand which refund associated to which claim due to the number of refunds they received within a short period of time. As the appointed representative and claim expert, I think it was reasonable for Mr W and Mrs W to look to WFAC to confirm this.

So, when WFAC issued Mr W and Mrs W several invoices for fees in September 2016, all of which were paid in full, I don't think it was unreasonable for Mr W and Mrs W to assume this covered all of WFAC's fees. So, I don't think it's fair for WFAC to rely on this term on this occasion.

And from WFAC's system notes, I can see in February 2017, following a chaser WFAC sent to lender R regarding the claim, in January of that year, a note that says a document had been received from lender R. And in the note itself, it says, "*Creditor states please see attached*" before stating the word "*outcome*" and that the note maker had passed this to post to be worked accordingly.

WFAC say they're unable to retrieve this document. And they've suggested this correspondence from lender R could've been a variety of things. But I disagree. I think, based on the wording of the system note, that it's most likely lender R provided WFAC with a copy their offer letter at this point. The note clearly states it was from the creditor, in this case lender R. And it includes the word outcome, which I think it's reasonable for me to assume is the refund Mrs W received. I've looked through all WFAC's system notes and where further information is requested from a lender, this is clearly states within the system notes.

So, because of the above, I think it's reasonable for me to assume it's at this point WFAC should've invoiced Mrs W for their fee. And I think it's likely if they had, Mrs W would've paid it in full as Mr W and Mrs W had for their other successful claims. Instead, WFAC failed to do this and I can't see they completed any work of value to the claim after this point. So, I think the delay in invoicing is the responsibility of WFAC. And this delay led to Mrs W's confusion, which caused her to question the fee and from this, WFAC referred the fee to D. So, I think this delay and its resultant impact should also be considered when I think about what WFAC

should do to put things right.

Putting things right

When thinking about what I think WFAC should do to put things right, any award or direction I make is intended to place Mr W and Mrs W back in the position they would've been, had WFAC acted fairly.

In this situation, had WFAC acted fairly, they would've invoiced Mr W and Mrs W sooner for their fee. So, the fee would always have been payable and because of this, I can't say the fee of £489.64 should be waived.

But I do think, had WFAC invoiced Mrs W in 2017 as I think they should've done, it's reasonable for me to assume Mr W and Mrs W would've had a reasonable awareness of the refund it related to and paid the fee. So, I don't think D would've become involved. Because of this, I think any fees D have applied to the original fee of £489.64 should be removed.

As well as this, Mrs W wouldn't have received correspondence from D and so, felt the worry and upset she was caused because of this. I don't think it was unreasonable for Mrs W to worry about the impact having a debt referred to D would have on her credit file. I also think it would've been shocking and upsetting for Mrs W to receive an invoice from WFAC out of the blue. And when she queried this with WFAC, I think this upset would've been made worse when WFAC agreed to confirm which refund it related to with lender R and, without warning, referred the debt to another company.

Our investigator recommended WFAC pay Mrs W £250 to compensate for the upset I've referred to above. I think this payment is a fair one, and in line with what I would've awarded had it not already been directed. So, I think WFAC should pay Mrs W £250 to recognise the worry and upset she's been caused.

I understand WFAC won't agree with this. And I recognise why they've relied on the terms of their agreement and why they may feel as though my decision fails to take these into consideration. But I have thought about these terms at length. Crucially, our service can consider the terms of any agreement **and** whether these relying on these terms are fair. And I don't think WFAC were fair to do so on this occasion.

My final decision

For the reasons outlined above, I uphold Mr W and Mrs W's complaint about We Fight Any Claim Limited and direct them to take the following action:

- Remove any additional fees applied to the outstanding invoice that relate to D's involvement; and
- Pay Mr W and Mrs W £250 to recognise the upset they've been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 31 May 2022.

Josh Haskey
Ombudsman