

The complaint

Mr K complains Allay Claims Ltd has charged him success fees for payment protection insurance (PPI) claims he said he never authorised them to make.

What happened

Mr K said he asked Allay to carry out a free PPI check. But he hadn't given them any instruction to pursue any PPI claims on his behalf. He said his intention was to see if he'd any PPI and then claim directly with his lender(s).

Mr K said he was told PPI had been found and Allay asked him to sign letters of authority (LoA) for them to pursue the claims. Mr K said he didn't sign any of the forms. He complained to Allay.

Allay said Mr K had initially asked for them to act for him in March 2019 when he signed a LoA, for a previous address. They subsequently received further LoA's after Mr K changed his address and details of another nine lenders. They said they'd acted in good faith in submitting these to Mr K's lenders, pursuing his PPI claims based on the information provided to them in the application. In September 2019, Allay said they'd updated Mr K when PPI had been found for accounts with one of his lenders I'll refer to as "R", and they'd provided him with their claims service. Allay said they asked Mr K to complete a PPI questionnaire (PPIQ) to strengthen his claim that the PPI had been mis-sold. Allay said the PPIQ was completed and returned to them the same day, and they'd submitted this to "R".

Allay said "R" and another lender I'll call "H" told them when Mr K's claims were successful, and as he hadn't cancelled his agreement with them, they said their fee was justified.

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

Our investigator said Mr K, on balance, had authorised Allay to act on his behalf for his PPI claim with "R". But Mr K had looked to cancel his agreement concerning "H" in January 2020 before he was told by Allay that PPI had been found, and before they were providing their claims service for any mis-sold PPI claims he'd with "H". But he was given incorrect information about this claim, so the cancellation hadn't been actioned. Our investigator said Allay's fees for the successful claims with "R" were justified. But said the fees charged for lender "H" weren't.

Allay accepted that the fee for "H" wasn't justified. Mr K didn't agree that he should pay the fees for "R". He said he hadn't signed the LoA's and that Allay hadn't followed regulations as they'd pursued claims with only a digital signature. He also said he hadn't been sent a cancellation form or the agreement in a durable medium. He asked for his complaint to be considered by an ombudsman.

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 partially upholding this complaint. I'll explain why.

Both parties have accepted that the fees for lender "H" aren't justified. So I won't consider this further as Allay has agreed to waive this fee. What is still in dispute are the fees Allay have charged for PPI claims made to Mr K's lender "R".

I can understand Mr K's frustration as he feels strongly that he didn't authorise Allay to act on his behalf to pursue a PPI claim with "R". And doesn't accept the signature on the LoA's are his. Allay also feel strongly that they'd Mr K's authority to submit his PPI claim to his lenders, and it was their work that meant Mr K's claims were successful.

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. I understand Mr K's concerns about the LoA's Allay said he'd signed that authorised them to pursue a claim of mis-sold PPI on his behalf. But it isn't our role to validate a signature. We're an informal dispute resolution service, 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.

So, I need to determine whether, on balance, I think Mr K authorised Allay to act on his behalf. And if he had, whether he let them know he no longer wanted them to work for him. I'll also consider whether I think Allay has acted fairly and reasonably in their actions with Mr K.

Its not in dispute that Mr K made an online application asking Allay to carry out a free PPI check. Allay has shown an online application for Mr K for a free PPI check was made in March, June and August 2019. The personal details in the application(s) correlate with the personal details Mr K has given to us. The application(s) also needed details of Mr K's lenders, and these details were also provided.

Allay has shown the audit trail for the on-line application(s) and the information that was supplied. They said that the terms and conditions had been agreed to. 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. And an acknowledgement would have been sent to Mr K after it was submitted. Mr K said a 'wet' signature was needed for an agreement. But the relevant guidance for claims management companies (CMC) such as Allay does allow for a digital signature to be acceptable.

As the information provided was specific to Mr K, and he has confirmed that he was aware the information was supplied. I've no reason to doubt that Mr K or someone acting on his behalf submitted the online application(s). And I can see from Allay's records a LoA submitted to them dated 25 August 2019 was sent to "R" just prior to the deadline date for making such claims.

As outlined above Allay's terms and conditions were available to see and that they could be downloaded in a durable medium. In submitting the LoA Mr K would have had to agree to them.

Allay's terms and conditions 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 September 2019, I can see from Allay's records they sent to Mr K's email address (the same email address given to us) notification that “R” had told them they'd found PPI on his accounts and that they would investigate his claim that PPI had been mis sold. The notification was headed “Great News” and went on to say they'd submitted Mr K's claim to his lender.

In 2019, leading up to the August PPI deadline many CMC's 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. A PPIQ wasn't always needed for a PPI claim to be considered. But the information 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 some lenders asked for a “wet signature” and for a PPI questionnaire to be completed for them to investigate whether any PPI had been mis-sold.

I can't see that “R” asked for a ‘wet’ signature, and it was Allay who recommended that Mr K complete a PPIQ to support his claim that he'd been mis-sold PPI. The notification sent by Allay to Mr K in September 2019 provided a link to the PPIQ. I can see from Allay's records that the PPIQ was completed and returned to them the same day. So, I think it was clear from Allay's terms and conditions that from this point the free PPI check period would end as any successful claim would incur a fee.

Allay has shown that in October 2019 they submitted a letter of complaint with the completed PPIQ to “R”. And that “R” acknowledged receipt of the submitted documents the same month.

In December 2019, “R” notified Mr K and Allay that six PPI claims had been successful for loans *9718, *4027, *6565, *0072, *6446 and *3957 and offered in total redress for the mis-sold PPI claims, £6,122.89. I know Mr K said he planned to claim directly with his lenders once he found he'd PPI.

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've only seen evidence that Allay submitted Mr K's claims before the August 2019 deadline. The notifications sent by “R” I think show “R” recognised Allay as being authorised by Mr K, and that they weren't solely dealing with Mr K for his PPI claims.

I've considered whether Mr K cancelled his agreement with Allay. Their 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 various ways the agreement can be cancelled, including a cancellation form:

“To cancel your contract with us, either call Customer Services on 0191 462 0000,

email your cancellation request to cancellations@allay.co.uk, download a Cancellation Form from our website www.allay.co.uk or write to us at The Processing Centre, Trafalgar Street, Newcastle upon Tyne, NE1 2LA."

I can see from Allay's records they told Mr K that PPI had been found 19 September 2019, and so from this point he would have had a 14 day cooling off period to cancel the agreement without incurring any charge. This meant Mr K would have had up to and including 2 October 2019 to cancel the agreement without incurring any fees.

I can also see from Allay's records a number of emails and text messages were sent to Mr K throughout September to the same email and mobile phone number he has given to us. But I haven't seen any evidence that Mr K asked or attempted to cancel the agreement.

As Mr K hadn't told Allay he wanted to cancel his agreement with them before he received his redress in December 2019 Allay had continued to provide their services, and to update Mr K about his PPI claim. So, I'm satisfied that Mr K authorised Allay to act for him in pursuance of his PPI claim(s), and that he hadn't cancelled his agreement with them.

The agreement Mr K had with Allay was on a "No win No fee" basis. Allay charged a percentage success fee, not a fee based upon the amount of work they actually undertook. This means that any work done on any unsuccessful claim would be done for free. When a claim was successful, Allay's fee may be more or less than the value of the work they actually did. This is the risk taken by all parties in this type of agreement. And Mr K's claims were successful.

Allay's fees were charged in line with what Mr K agreed to and reflect the fee cap that's in place for PPI claims. Mr K could have cancelled his claim with Allay. But I can't see he cancelled the claim before it was successful.

I agree with our investigator that Mr K tried to cancel the agreement he'd with Allay for lender "H" in January 2020 before the end of the free PPI check period, Mr K wasn't told by Allay that PPI had been found for lender "H" until early February 2020, but Allay didn't cancel the agreement. Allay has agreed to waive their fee for Mr K's successful claim with "H"

I know Mr K will be disappointed by my decision, that the fee being charged by Allay for his claims with "R" are justified. But, on balance, I'm satisfied that Allay was authorised by him to act on his behalf and his claims with "R" were successful. This means Allay have acted fairly and reasonably in charging their fees for these claims.

My final decision

I partially uphold this complaint. And ask Allay Claims Ltd to waive their fee for Mr K's claim with lender "H" only.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 July 2022.

Anne Scarr
Ombudsman