

The complaint

Mr G complains about We Fight Any Claim Limited (WFAC) and the fees they are charging him following a successful claim for mis-sold Payment Protection Insurance (PPI).

What happened

In April 2017, Mr G signed a Letter of Engagement (LOE) and Letter of Authority (LOA) authorising WFAC to pursue claims for mis-sold PPI against lender L on his behalf. Following this authorisation, WFAC say they submitted claims to lender L in May.

But Mr G says he dealt with lender L directly before he instructed WFAC. And in June, Mr G says lender L contacted him directly to see if he wanted them to liaise with him, or WFAC. Mr G says he asked lender L to continue dealing with him directly and so, lender L revoked WFAC's authority, writing to WFAC to confirm this.

On 5 July, lender L issued their final decision letter to Mr G directly, upholding two of his claims and providing with him with a pre-tax refund of £5,845.27. But following this offer, and lender L's confirmation that WFAC had no authority to pursue the claims, Mr G says he continued to receive correspondence from WFAC including a request for a new LOA to be signed in November 2020. Mr G says he didn't respond to any of these communications.

In September 2021, WFAC issued Mr G with an invoice for their fees, calculated on the PPI refund he received in July 2017. Mr G didn't pay this invoice and so, WFAC instructed a third-party debt collection company to pursue him for payment. Mr G was unhappy with this, so he raised a complaint.

Mr G didn't think WFAC were fair to invoice him for their fee. Mr G explained he'd cancelled the agreement with WFAC verbally over a month before he received the refund from lender L. And he thought lender L had made it clear that WFAC had no authority over the claim before the refund was issued. So, he wanted WFAC to waive their outstanding invoices.

WFAC responded to the complaint and didn't uphold it. They thought they submitted the claims that led to the refunds Mr G received when they had authority to do so. So, they thought they had acted fairly, and in line with the terms and conditions of the agreement Mr G entered into, when invoicing Mr G for their fee. So, they didn't think they needed to do anything more. Mr G remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They were persuaded that Mr G cancelled his instructions to WFAC before he received a refund from lender L, based on their assumptions and the information available to them. So, they didn't think WFAC had acted fairly when issuing an invoice and thought this should be cancelled. And they thought WFAC should compensate Mr G £100 to recognise any upset he was caused by their chase for payment.

Mr G accepted this recommendation. But WFAC didn't. They provided a new timeline of events, which they thought showed Mr G cancelled their instructions after he received the

refund from lender L. So, they thought they were entitled to charge Mr G for their fee, based on their terms and conditions. Our investigator considered WFAC's comments, but this didn't change their opinion. So, they maintained their original recommendations. WFAC didn't agree, 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.

It's not in dispute that Mr G did initially authorise WFAC to submit claims to lender L on his behalf. So, I don't intend to discuss this in any further detail. Instead, my decision will focus the fees WFAC are charging Mr G. And when doing so, I've thought about the terms and conditions of the agreement Mr G entered into, as well as the fairness of WFAC's actions. And most importantly, I've thought about the main area of dispute, which centres around whether Mr G reasonably cancelled his agreement with WFAC before lender L issued the refund he received.

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. Due to the length of time that's elapsed since Mr G instructed WFAC, and lender L issuing their refund, WFAC have been unable to provide call recordings of conversations they had with Mr G. So, I'm unable to say for certain what was said verbally around this time. I also recognise that the length of time means Mr G has found it more difficult to provide evidence to dispute any system evidence WFAC still hold. So, I've placed the same weighting on the testimony Mr G has provided as I have done on the evidence WFAC has been able to provide. And from this, I've thought about what I think was most likely to have happened at the time and whether WFAC were fair to issue their invoice considering this. And in this situation, I don't think they were.

I've first thought about whether I think Mr G reasonably cancelled his instruction to WFAC, before lender L made their offer. I recognise WFAC doesn't think Mr G did, and they say the first time Mr G mentioned the cancellation was in August 2017, a month after lender L provided him with a PPI refund.

And I appreciate that, because of this belief, WFAC feel their fee is invoiced fairly, as their terms and conditions do explain that they are entitled to charge their fee even if an agreement has been cancelled, if the cancellation is made after a customer has been notified that an offer of compensation is due.

I've read the e-mail Mr G sent to WFAC in August 2017. And in it, Mr G states *"I spoke with your office a month ago and withdrew my claim... so once again, I no longer wish you to proceed"*. I'm in agreement that this constitutes as a cancellation as it's made clear Mr G didn't want WFAC to proceed any further.

And I recognise this e-mail was sent on 5 August, a month after he received his PPI refund from lender L. So, I understand why WFAC would decide they were still fair to issue Mr G for their fee when they were notified of the refund some years later by lender L directly. So, I've thought about whether I think Mr G had, more likely than not, attempted to cancel his agreement with WFAC earlier than this e-mail, as he states he did.

I appreciate WFAC say that, if Mr G has contacted them a month earlier, this would've been around the time an offer was made. So, they don't believe this e-mail changes their position. But I don't think it's fair or reasonable to use Mr G's statement of "a month ago" as a strict deadline, as I think it was provided in a vague sense by Mr G in the context of the e-mail.

And from what I can see, is that Mr G did withdraw WFAC's authority on the claim with lender L in June, which is before any refund was issued to him. And I can see lender L wrote to WFAC on 21 June making them aware of this in a letter that WFAC received on 26 June.

This letter from lender L explains that they would no longer be dealing with WFAC. And it explains that they had advised Mr G to contact WFAC directly to formally end the agreement he held with them. So, I think WFAC were made reasonably aware before lender L issued their refund that Mr G wanted to cancel the agreement he held.

And, as Mr G had taken the time to speak to lender L to withdraw WFAC's authority, I think it's most likely that he would've followed lender L's advice and cancelled his agreement with WFAC around this time. And I think this falls in line with Mr G's testimony, that he spoke to WFAC and made them aware of this around a month before he e-mailed WFAC to re-iterate this desire in the e-mail I've already discussed. While WFAC say they don't have a record of this conversation, it's already been admitted that due to the time that's elapsed, calls are unable to be searched for and found. So, I don't think WFAC not being able to evidence this call means it didn't take place.

Based on the evidence and information available to me, I think it's more likely than not that Mr G did cancel his agreement with WFAC before lender L issued their decision. And because of this, I don't think WFAC have acted fairly or reasonably when invoicing Mr G for their fee. As I don't think WFAC have acted fairly, I've then thought about what I think WFAC should do to put things right.

Putting things right

Any award or direction I made is intended to place Mr G back in the position he would've been in, had WFAC acted fairly in the first instance.

In this situation, had WFAC acted fairly, I think it would've been noted that Mr G had cancelled his agreement before he received a refund from lender L. I note WFAC have admitted this should've been done in an e-mail sent to our service in March 2022, before they changed their position following our investigators view.

Had WFAC done this, then I don't think they would've issued Mr G with an invoice for their fee when they received communication from lender L in 2021. So, I think the outstanding invoice should be cancelled and not pursued any further.

And I think it would've been distressing and upsetting for Mr G when he received an invoice for a substantial sum from WFAC, so many years after the claim had been settled by lender L. And I appreciate how stressful it would've been for Mr G to receive chaser letters, leading to a debt collection company being appointed. So, as I don't think WFAC should've pursued this fee in the first instance, I think WFAC should compensate Mr G for the upset this is likely to have caused. Our investigator recommended WFAC pay Mr G £100 to recognise this. And I think this offer is a fair one, which falls in line with what I would've awarded had it not already been recommended. So, I think WFAC should pay Mr G £100 to recognise the trouble and upset he's been caused.

My final decision

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

- Cancel their outstanding invoices and stop any further collection activity; and
- Pay Mr G £100 to recognise the trouble and upset he's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 July 2022.

Josh Haskey
Ombudsman