

The complaint

Mr B complains that We Fight Any Claim Limited (“WFAC”) have overcharged him for the work they’ve carried out on his claim for mis-sold Payment Protection Insurance (“PPI”).

What happened

Mr B instructed WFAC to handle a claim about mis-sold PPI against Lender E. The claim reached a successful outcome and Mr B was awarded £519.05 – but the amount he received after tax had been deducted was £467.09. WFAC then sent their invoice for £218. Mr B says he received a call from WFAC for payment and it was agreed he could pay four instalments of £36.66 and he says these were paid. Mr B says he then received a letter from WFAC asking for an outstanding amount of £108.02 to be paid. Mr B says he ignored this as he believed no further payments were due. WFAC then instructed a debt collector who contacted Mr B for the outstanding payment. Mr B says he then paid the sum of £282 to stop any further action but he complained to WFAC about being overcharged.

WFAC responded and explained their fee was £218 and Mr B called them to pay the first instalment of £36.66. And their system notes showed the agent set up a payment plan for five further payments to be made. WFAC said, including the payment made over the phone, three payments had been made which meant there were three payments outstanding. WFAC said they attempted to contact Mr B but there was no answer. WFAC said they then issued an invoice for the outstanding amount of £108.02. WFAC explained Mr B was therefore aware there was an outstanding amount owed and, because this wasn’t paid, they referred the matter to a debt collector.

Our investigator looked into things for Mr B. He thought WFAC had given Mr B incorrect information about the amount he’d paid so Mr B shouldn’t have been charged the court and legal representative fees. So, our investigator recommended WFAC deduct this from the amount which was charged by the debt collector and refund the difference between what the debt collector should’ve charged and what Mr B paid, together with 8% simple interest. WFAC agreed but Mr B disagreed so the matter has come 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’ve decided to uphold the complaint. And, I think the investigator’s recommendation here is a fair way to resolve matters. I understand Mr B will be disappointed by this but I’ll explain why I have made this decision

There’s no dispute between the parties that WFAC carried out work on Mr B’s PPI claim and that a fee was due for their service. Lender E set out a breakdown of the compensation and this shows total redress of £519.05 had been calculated but, after tax had been deducted, the sum of £467.09 was paid to Mr B. I understand Mr B is concerned WFAC calculated their fee based on the total redress and not the compensation he actually received.

The Engagement Letter and terms and conditions signed by Mr B say WFAC will charge 35% plus VAT of any compensation awarded. The terms and conditions describe compensation as “...*any financial benefit that is awarded to you (prior to the deduction of any tax)*” So, while I do acknowledge Mr B remains concerned about WFAC calculating their fee based on the total redress, I can’t say they’ve acted unfairly here as the terms and conditions allow them to work out their fee by applying the 35% plus VAT fee to the total redress and not the actual amount received by Mr B following the tax deduction. I note Mr B says he was never made aware of WFAC’s charges, but I can see the Engagement Letter sets out the charges and this has been signed by Mr B.

There’s a further dispute between the parties and this relates to what Mr B was told about the fee and how much has been paid. Mr B says, during a call with an agent, he was told he only needed to make four payments in instalments – which he says he paid. WFAC say the agent’s notes on their system show they took one payment and a payment plan for five further payments was set up. WFAC say this was made up of five payments of £36.66 followed by one payment of £34.70. I can see WFAC emailed Mr B in August 2021 and attached a payment slip showing the “...*outstanding balance after you paid 4 instalments of £36.66 towards your fee.*” So, this supports Mr B’s account of events that he’d paid four instalments. WFAC say this was an error and Mr B had only paid three instalments which meant there was a balance of £108.02 outstanding. So, I’ve carefully considered the information I have to decide what I think is more likely than not the case here.

WFAC say they no longer hold the recording for the phone call Mr B had with the agent. WFAC say their system notes show one payment of £36.66 was taken and a payment plan set up for five further instalments. I do acknowledge Mr B’s points, but I’m not persuaded he was told he only needed to pay four instalments of £36.66 to satisfy WFAC’s fee. I say this because four instalments amount to £146.64. But the invoice WFAC sent to Mr B shows their fee is £218 – and the £218 fee represents 35% plus VAT of the compensation awarded to Mr B, so I’m persuaded this is the fee owed. So, the combined payment of £146.64 wouldn’t cover the fee and would leave an outstanding balance. I agree WFAC have given incorrect information in their email to Mr B as they say four instalments have been paid, but the payment advice attached to the email shows an outstanding balance of £108.02. That being the case, this would mean Mr B had only paid three instalments of £36.66 and not four. And, I’m persuaded this is the correct position as WFAC’s system notes support this.

Taking this into account, that means there was an outstanding balance of £108.02 owed at the point WFAC referred the matter to a debt collector. The information shows further charges accrued following referral to the debt collector and the total outstanding costs at this point were £351.38 – and Mr B then paid £282. The further charges relate to a debt collector fee, interest on the outstanding balance, a court fee and a legal representative fee. I can see WFAC have agreed to waive the court fee and legal representative fee, which represents a combined fee of £85. I think this is fair and reasonable in the circumstances. This means the debt collector’s charges have been reduced down to £266.38. And, given Mr B has paid £282, this means there’s an overpayment of £15.62 – and I can see WFAC have agreed to refund this.

I note Mr B says he received £467.09 in compensation, but he has had to pay total fees of £428.64. I understand why Mr B has been left frustrated, but my explanation above sets out why I’m not persuaded Mr B paid WFAC four instalments. I believe Mr B paid three instalments which gives a total figure of £109.98 – and combined with the £282 he paid, Mr B paid a total of £391.98. I accept this still makes up a significant proportion of the compensation received by Mr B, but this is down to the way in which WFAC have calculated their fee and the additional charges incurred following their referral to a debt collector.

Putting things right

I've taken the view that it's fair and reasonable for WFAC to waive the court fee and legal representative fee which means the debt collector's charge should've been £266.38. Mr B has paid £282 which is an overpayment of £15.62. So, WFAC should refund £15.62 to Mr B together with 8% simple interest from the date of the overpayment to the date of settlement. WFAC should provide Mr B with a certificate showing any taxation deducted.

My final decision

My final decision is that I uphold the complaint. We Fight Any Claim Limited must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 December 2022.

Paviter Dhaddy
Ombudsman