

The complaint

Mr S complains that We Fight Any Claim Ltd (WFAC) are charging him a fee for a payment protection insurance (PPI) claim he said he was told was made too late.

What happened

In July 2018, Mr S instructed WFAC to pursue mis-sold PPI claims on his behalf with several lenders. He'd three mis-sold PPI claims, two of which were with a one of his lenders I'll call "L". One of these claims was successful but in September 2018 "L" rejected the other claim. Mr S said he provided all the documents WFAC asked him for so that the rejected mis-sold PPI complaint could be considered by the Financial Ombudsman Service. He said despite this his complaint wasn't considered by the Financial Ombudsman Service, as they said the complaint had been submitted too late. Mr S said WFAC then asked him to pay a fee for the claim being successful. Mr S complained to WFAC.

WFAC said after "L" had rejected the mis-sold PPI claim they'd looked to refer the complaint to the Financial Ombudsman Service. They asked Mr S to provide further information, but he didn't do this until after they'd closed his claim. And after Mr S contacted them, they'd tried to get the Financial Ombudsman Service to consider the complaint, but they said it had been brought too late. WFAC said in April 2019 "L" told them that although the mis-sold PPI claim was rejected they'd considered Mr S' claim under "Plevin"- undisclosed commission. And "L" had awarded Mr S £139.82 for this. WFAC said as this claim was successful their fee of £54.53 was justified.

Mr S wasn't happy with WFAC's response and referred his complaint to us.

Our investigator said WFAC could charge their fee, but Mr S hadn't accepted the compensation until March 2022 and didn't receive the payment until May 2022. He said WFAC could ask Mr S to pay £54.53 but he shouldn't pay any collection charges that had been applied.

Mr S didn't agree he said his mis-sold complaint should still be considered as the claim wasn't decided on until April 2019. This meant he'd six months to bring his complaint to the Financial Ombudsman Service to consider, but WFAC didn't do this. He asked for an ombudsman to decide.

A provisional decision was issued in November 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. Its not in dispute that Mr S instructed WFAC to act on his behalf to see if he's been mis-sold PPI. And I can see that WFAC submitted Mr S' mis-sold PPI claim in August 2018 to "L" which they rejected. But In November 2014 the Supreme Court made a decision in the case of Plevin v.

Paragon Personal Finance. They found that if a business had high levels of commission there was a duty to disclose the commission, as it created an unfair relationship. In response, the FCA published new rules on how to consider PPI in light of the decision, and these rules came into force on the 29 August 2017.

So, while a claim may be rejected by a lender as it wasn't considered that the PPI had been mis-sold, a lender still had a responsibility to consider the claim under "Plevin". And "L" found there had been an unfair relationship and they'd offered Mr S compensation of £139.82 for the commission they'd received in selling the PPI policy. So, while Mr S didn't have a successful mis-sold PPI claim he did have a successful claim under 'Plevin'.

The agreement Mr S would have had with WFAC was on a "No win No fee" basis.

This means WFAC charged a percentage success fee, not a fee based upon the amount of work they did. This meant any work done on any unsuccessful claims would be done for free. Where a claim was successful, WFAC's fee maybe 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. So, I'm satisfied WFAC can charge their fee for Mr S' successful claim.

But the Financial Guidance and Claims Act 2018 (the Act) required the Claims Management Regulator (CMR) to introduce a fee cap for PPI claims. The fee cap came into force on 10 July 2018. From this date, claims management companies (CMC), such as WFAC couldn't legally charge a success fee of more than 20% plus VAT.

Prior to the fee cap coming into force, on 11 May 2018, the CMR issued guidance to all CMC's This said "from the date of this guidance you should inform all new or potential clients of the upcoming change to the fees you can charge."

By charging Mr S £54.53 WFAC have asked Mr S to pay a fee of 39% inclusive of VAT. This is above the fee cap a CMC can charge which at most should have been 24% inclusive of VAT. So, I don't think WFAC can ask Mr S for a fee greater than £33.56.

Referral to the Financial Ombudsman Service

When "L" rejected Mr S' claim that he'd been mis-sold PPI in September 2018, Mr S would have had six months from this date to refer his complaint to the Financial Ombudsman Service for them to consider whether "L" had acted fairly and reasonably in rejecting the claim. The letter from "L" is dated 19 September 2018, so Mr S would have had up to 19 March 2019 to refer his complaint to the Financial Ombudsman Service.

I can see that WFAC explained the process to Mr S in late September 2018 and they asked him to sign and return the required forms for them to escalate to the Financial Ombudsman Service. I haven't seen any evidence that Mr S signed and returned the forms at that time.

In February 2019 WFAC told Mr S they'd tried several times to contact him and asked for further information so that they could refer his complaint to the Financial Ombudsman Service but he hadn't responded. They said:

"Your claim was rejected by your lender on 19/09/2018. The deadline for referring your claim to the FOS is 19/03/2019."

I can see the letter explains:

"We must advise you that if your claim is not referred to the FOS within 6 months – starting on the date your claim was rejected by your lender - you will lose your right to

continue your claim for compensation.”

But I can't see that WFAC told Mr S that they were closing his claim. And WFAC have said they received the signed Financial Ombudsman Service forms from Mr S, dated 02 March 2019 on 11 March 2019, eight days before the deadline for referring Mr S' complaint to the Financial Ombudsman Service. As I can't see that Mr S would have known WFAC had closed his claim with them, and he'd returned the form(s) within the timeframe for his complaint to be escalated to the Financial Ombudsman Service I can understand the distress this has caused Mr S. As WFAC didn't escalate Mr S' complaint to the Financial Ombudsman Service before 19 March 2019 he's now no longer able to seek consideration of the decision made by "L" in rejecting his mis-sold PPI claim. I can't know what the outcome would have been if Mr S' complaint had been considered, but it's clear that the loss of this opportunity has caused Mr S some upset.

Further following Mr S' successful 'Plevin' claim he also received a letter from WFAC about the escalation of this claim to the Financial Ombudsman Service and Mr S returned these forms in April 2019. So, I can understand Mr S thinking that all elements of his complaint were still being considered. And why I think Mr S didn't accept the redress that had been offered by "L". So, I agree with our investigator that it was unfair for WFAC to seek collection of monies that Mr S hadn't yet received. But I'm pleased that the redress was paid to Mr S in May 2022.

I'm currently minded to uphold this complete. And intend to ask We Fight Any Claim Ltd to:

- reduce their success fee of £54.53 (39% inclusive of VAT) to no more than 24% inclusive of VAT of Mr S' redress, I calculate this to be £33.56;*
- remove any charges applied to Mr S' account for collection fees; and*
- pay Mr S £100 for the distress and inconvenience caused by failing to escalate his mis-sold PPI claim to the Financial Ombudsman Service within the six months timeframe.*

Responses to my provisional decision

While Mr S accepted the provisional decision, he said that

- WFAC hadn't pursued him for the return of the documents to escalate his claim to the Financial Ombudsman Service until a "flurry" of activity close to the referral deadline.
- The letters he'd been sent about the collection of the outstanding fee were intimidating and had caused him stress.
- The final letter response letter from WFAC contained inaccurate information.
- His initial contact with WFAC was in July 2018 and he'd paid their success fee on another claim in October 2018.

WFAC didn't ask me to consider any further evidence or comments.

I think Mr S' first three points have been addressed by my provisional decision. So, I won't comment further. Mr S' comment about the other claim wasn't a matter that Mr S had brought to WFAC or to this service. So, it hasn't been considered in my decision. But it has now been put to WFAC to consider whether the fee cap should have been applied. And a resolution offered by WFAC is now being considered by Mr S. If he remains unhappy with WFAC's response he can consider referring this complaint to us.

My final decision

I uphold this complaint. And ask We Fight Any Claim Ltd to:

- reduce their success fee of £54.53 (39% inclusive of VAT) to no more than 24% inclusive of VAT of Mr S' redress, I calculate this to be £33.56;
- remove any charges applied to Mr S' account for collection fees; and
- pay Mr S £100 for the distress and inconvenience caused by failing to escalate his mis-sold PPI claim to the Financial Ombudsman Service within the six months timeframe.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 March 2023.

Anne Scarr
Ombudsman