

The complaint

Miss C complains about Allegiant Finance Services Limited (“AFSL”) and the success fee they are charging following her unaffordable lending claim.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, in the summer of 2020, Miss C instructed AFSL to pursue an unaffordable lending claim on her behalf against lender A.

AFSL submitted this claim to lender A, and then to the Financial Ombudsman Service (“FOS”) when lender A failed to respond. Due to lender A’s trading status, a scheme of arrangement was put in place in 2022 to provide payment to consumers such as Miss C. And because of this, FOS stopped investigating complaints about lender A.

In June 2024, Miss C received a payment of £761.47 through this scheme of arrangement and so, AFSL invoiced Miss C for their success fee, which was 30% of the payment she received. Miss C was unhappy about this, so she raised a complaint.

Miss C didn’t think it was fair for AFSL to charge her a success fee, as she didn’t enter into a new agreement with AFSL when the scheme of arrangement was put in place. Miss C felt her original agreement with AFSL ended when FOS stopped investigating her original claim. And she explained why she felt she had acted on her own when joining the scheme of arrangement. So, she wanted AFSL to waive their outstanding invoice.

AFSL didn’t agree. They thought the payment Miss C received resulted from the original claim they submitted to AFSL. And they didn’t think Miss C was required to enter into a new agreement, nor did they think Miss C had cancelled the original agreement with them. So, they thought they had acted fairly when invoicing for their success fee and maintained payment was due. Miss C remained unhappy with this response, so she referred her complaint to the Claims Management Ombudsman.

Our investigator looked into the complaint and didn’t uphold it. They thought AFSL were fair to invoice Miss C for their success fee, as they felt the payment resulted from the original claim AFSL submitted. And they explained why they didn’t think a new agreement was required. So, they didn’t think AFSL needed to do anything more.

Miss C didn’t agree. And she provided an email from lender A, which she felt supported her position, alongside further comments.

Our investigator considered this email and Miss C’s rebuttal, but their position remained unchanged, explaining why and reiterating they had seen no evidence to show Miss C had cancelled the original agreement with AFSL before lender A’s payment was made. Miss C 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 not 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.

First, I want to recognise the impact this complaint has had on Miss C. I recognise Miss C feels she engaged directly with lender A and the scheme of arrangement. So, I can understand why Miss C may look at this direct involvement and feel that the payment she received resulted from this, and not the work AFSL completed. So, I can understand why Miss C would feel as though the invoice she received from AFSL is unreasonable.

But for me to say AFSL should waive this fee, I first need to be satisfied AFSL did something wrong. So, I'd need to be satisfied AFSL failed to act within the terms and conditions of the agreement Miss C entered into when issuing this invoice. Or, if I think AFSL did act within these, I'd need to be satisfied AFSL acted unfairly in some other way. In this situation, I don't think that's the case and I'll explain why.

I note it's not disputed that Miss C did originally instruct AFSL to pursue the claim on her behalf. And that she signed and agreed to AFSL's terms of engagement when doing so. I've read through these terms of engagement at length, including the additional information Miss C was provided in the claims pack she received at the time of instruction.

These terms set out clearly what services AFSL provide, which included submitting the claim to lender A and if necessary, FOS. From the evidence I've seen, AFSL provided the services they set out.

The terms go on to explain that by signing this agreement, Miss C agreed to pay AFSL *"the success fee without undue delay upon receipt of funds paid to you by {lender A}"*. And I can see Miss C received a payment from lender A in June 2024, which related directly to the unaffordable lending claim AFSL were instructed to pursue. So, because of the above, I think AFSL were entitled to charge Miss C their success fee, and that they acted within the policy terms and conditions when doing so.

But as I've explained above, I've also thought about if AFSL were fair to do so. And I want to reassure Miss C I've thought carefully about her belief that a new term of engagement should've been required when the scheme of arrangement was put in place. But crucially, I don't agree.

The scheme of arrangement was put in place by the industry regulator to aide consumers such as Miss C in receiving compensation, taking into consideration lender A's trading status. This isn't something AFSL were able to control, or influence. Nor were AFSL able to control FOS' decision to pause, and then stop, investigating complaints brought to them, due to the creation of this scheme.

From the evidence available to me, I'm satisfied AFSL's original submission to lender A ensured Miss C's claim was included in the scheme of arrangement. I've seen evidence that shows lender A continued to engage with AFSL, making AFSL aware of the payment made to Miss C, including the amount. So, I'm satisfied lender A continued to note AFSL as her

representative. And I think this is further supported from the updates I've seen AFSL provided to Miss C, confirming her claim had been registered with the scheme and what she should expect to happen next. So, I think AFSL made it reasonably clear to Miss C they were continuing to act on her behalf, after the scheme was put in place.

While I don't doubt Miss C may have engaged with the scheme, and lender A, directly, I don't think this means the terms of engagement Miss C originally entered into were invalid or no longer in force. This would only have been the case had Miss C cancelled her agreement with AFSL, and I've seen no evidence to show she did this, despite the terms of engagement making it clear how Miss C could do this.

So, because of all the above, I'm satisfied AFSL progressed Miss C's claim as I'd expect them to do, considering the circumstances they were able to control. And, that they acted fairly when continuing to invoice Miss C for their fee, when they were made aware a compensatory payment had been made. Because of this, I don't think AFSL need to do anything more on this occasion.

I understand this isn't the outcome Miss C was hoping for. And I want to reassure Miss C I've thought about all the information and arguments she's put forward, even if I haven't commented on them directly due to the informal nature of our service.

While I appreciate lender A have confirmed they would've processed her claim in the same way they did if she had brought the claim herself, crucially Miss C didn't. She instructed AFSL to complete this work on her behalf. And I think this was Miss C's own choice to make, as made clear in the document pack she received in 2020, which included a section titled *"pursuing the claim yourself"* within the pre-contract information which set out clearly that Miss C didn't need to engage the services of AFSL.

I think it's also worth noting that the agreement Miss C entered into was a "no win no fee" agreement, meaning any fee would be based on the payment Miss C received, rather than the amount of work AFSL completed when pursuing the claim.

My final decision

For the reasons outlined above, I don't uphold Miss C's complaint about Allegiant Finance Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 23 December 2024.

Josh Haskey
Ombudsman