

The complaint

Mr S complains about Allegiant Finance Services Limited (“AFS”) and the success fees they have invoiced him for following a successful claim against lender A.

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 June 2020 Mr S instructed AFS to pursue a claim against lender A on his behalf.

AFS submitted this claim to lender A and then the Financial Ombudsman Service (“FOS”) when they failed to receive a response. While Mr S’ claim was with FOS, a scheme of arrangement (“SOA”) was put in place following involvement from the industry regulator. So, FOS took the decision to close the claim down.

Mr S’ claim against lender A was automatically enrolled into this SOA. And in 2024, Mr S received two separate payments from lender A through this scheme. So, AFS invoiced Mr S for their success fees on both amounts. Mr S was unhappy about this, so he raised a complaint.

Mr S’ complaint included, and is not limited to, his dispute that the success fees were payable, as he felt the claim progressed by AFS had ended when FOS closed the claim. So, he thought his agreement with AFS also ended at that point. Mr S also set out why he felt his claim had been entered into the SOA without the involvement of AFS. So, because of all the above, he felt the outstanding invoices should be waived. Mr S also raised concerns about the way AFS updated him and chased for payment of their fees.

AFS responded to the complaint and didn’t uphold it. They thought the payments Mr S received from lender A resulted from their initial submission made in June 2020. And as Mr S hadn’t terminated the agreement with them, despite them providing him updates during the claim process, they thought they were entitled to invoice Mr S for their fees. Mr S remained unhappy with this response, so he referred his complaint to the Claims Management Ombudsman, a Financial Ombudsman Service.

Our investigator looked into the complaint and didn’t uphold it. In short, they thought AFS acted fairly, and in line with the terms of the agreement Mr S entered into, when invoicing Mr S for their fees. And they set out why they thought AFS’ service overall was fair, including the way they chased Mr S for payment and the updates they provided. So, they didn’t think AFS needed to do anything more.

Mr S didn’t agree, providing several comments setting out why. This included, and is not limited to, Mr S’ continued belief that his claim had been enrolled into the SOA automatically as he was a customer of lender A, not because of the claim AFS made. And he maintained his belief that the agreement ended when the claim was closed by FOS. Mr S also reiterated his concerns about the way AFS contacted him after he had received payment from lender A, setting out why he felt AFS had purposely attempted to mislead him.

Our investigator considered Mr S' comments but their opinion remained unchanged. They reiterated why they were satisfied the payments Mr S received arose from the initial claim AFS submitted to lender A. And why they thought AFS were entitled to contact Mr S to request their fees. Mr S 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 Mr S. I recognise Mr S feels strongly about the situation and I appreciate why Mr S feels he has been unfairly financially impacted, as AFS have invoiced him for fees he doesn't believe should be payable. I want to reassure him I've thought carefully about all the points he's raised. But my decision will focus on the points I feel are pertinent to the decision I've reached.

For me to say AFS should do something differently here, for example waive the fees they are chasing Mr S for, I first need to be satisfied they have done something wrong. So, I'd need to be satisfied AFS failed to act within the terms of the agreement Mr S entered into when invoicing for these fees. Or, if I think they did act within these, I'd need to be satisfied they acted unfairly in some other way. For example, if I was satisfied they completed no work of value on the successful claim. In this situation, I don't think that's the case and I'll explain why.

I note Mr S doesn't dispute he instructed AFS to pursue his claim against lender A. So, my decision has been reached on this basis.

I've read through the terms of the agreement, as well as the contract pack Mr S would have received at the time he instructed AFS. Having done so, I'm satisfied these documents made it reasonably clear AFS would charge a success fee of 30%, inclusive of VAT, for any cash in hand compensation Mr S received. And I'm satisfied the two fees AFS invoiced Mr S for equate to 30% of the cash refunds he received from AFS.

And I think these documents also make it clear the actions AFS would take on behalf of Mr S, which including submitted a claim to lender A and if necessary, progressing the claim to the FOS, which AFS did.

I note that once the claim was with FOS, a decision was taken by FOS to close all claims about lender A, due to the creation of the SOA due to lender A's financial position and trading status. This wasn't something AFS was able to control. Nor was it the conclusion to Mr S' claim, as his claim was then automatically enrolled into this SOA.

I note Mr S feels his claim was automatically enrolled into the SOA, without AFS' involvement. But I've seen an email sent to AFS by lender A in May 2022, which states the following:

"I can confirm that our claims portal has now launched. Any open complaints that {lender A} hasn't issued a Final Response Letter too, or that were open with the Financial Ombudsman Service, will be joined into the scheme automatically. These customers do not need to take

any further action”.

So, as AFS originally submitted the claim to lender A and then subsequently to FOS, I’m satisfied Mr S’ claim was enrolled into the SOA due to the work AFS completed. And as Mr S received refunds from lender A through the SOA, I’m satisfied these refunds resulted from the work AFS completed. If lender A provided Mr S with conflicting information regarding this, this wasn’t something that AFS are responsible for as it was outside of their control.

Further to this, I note lender A made AFS aware of the refunds issued to Mr S and so, I’m satisfied lender A were aware of AFS’ involvement and deemed them to be the representative of Mr S during the claim they ultimately upheld.

Because of the above, I’m satisfied AFS acted fairly, and within the terms of the agreement Mr S entered into, when invoicing for their fees. So, I won’t be directing AFS to waive these.

I recognise Mr S is unlikely to agree with this decision. And I want to revisit his point about his agreement ending with AFS when FOS closed his complaint with them. But crucially, I’m satisfied FOS decision to close his claim shouldn’t, and didn’t, impact the agreement he entered into with AFS, which was entirely separate and legally binding.

I’m satisfied AFS’ terms made it clear Mr S was able to terminate the agreement himself and the actions he would need to take to do so. But I’ve seen no evidence to show Mr S contacted AFS to end the agreement before lender A issued the refunds he received. And I also think Mr S should have been reasonably aware AFS were still acting on his behalf, as I note he doesn’t dispute he continued to receive updates from them regarding his claim. While some of these may have been generic, due to the length of time it took to put in place the SOA and begin issuing payments through it, this doesn’t mean AFS acted unfairly or failed to ensure Mr S was aware of their involvement, or the status of his claim with lender A. So, I’m satisfied the agreement was still in place.

Finally, I’ve turned to Mr S’ concerns about the way AFS chased him for payment. And I note he’s raised concerns about the messaging they provided, which he feels was intentionally misleading. But crucially, once AFS had issued their invoice, Mr S had an obligation to arrange payment of AFS’ fee, in line with the terms he agreed to. As Mr S didn’t do this, in line with our service’s approach, I’m satisfied it was fair for AFS to contact Mr S regarding their fee. And while I do note AFS recommended Mr S provide them with information that would allow lender A to pay them directly, which wasn’t required as he received the payment directly himself, I’m not persuaded Mr S was detrimentally impacted by this request. Had Mr S arranged payment of AFS’ fee as he was required to do, I’m satisfied this would have prevented the communication he has since raised concerns about.

So, I’m satisfied AFS have acted fairly in this situation and because of this, I’m not directing them to take any further action.

My final decision

For the reasons outlined above, I don’t uphold Mr S’ complaint about Allegiant Finance Services Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 14 April 2025.

Josh Haskey
Ombudsman