

## **The complaint**

Mr D complains about Facility Review Ltd (“FCR”) and the fee they are charging following his removal as a guarantor from a loan with 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 2021, Mr D instructed FCR to pursue a claim with lender A on his behalf, with the intention of removing him as guarantor from a loan.

In the summer of 2024, lender A issued a response to Mr D’s claim, in line with the scheme of arrangement that was set up. And this response confirmed Mr D has been removed as a guarantor from the loan, whilst also confirming the loan itself was deemed to be unaffordable, with no redress due to Mr D as he hadn’t needed to make payments towards it in his role as guarantor.

FCR proceeded to invoice Mr D for a fee of £1,260, which equated to 24% of the total loan value £5,250. But Mr D was unhappy about this, as he hadn’t received a monetary award, explaining he was currently in an IVA. So, he raised a complaint about this.

FCR responded to the complaint and didn’t uphold it. They felt Mr D being removed as guarantor was a monetary benefit to him, as he was no longer liable for the loan provided by lender A. So, they thought they had acted fairly, and in line with the agreement Mr D entered into, when invoicing for their fee based on the total loan value. Mr D remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They explained why they thought FCR were unfair to invoice Mr D for a fee, considering the terms of the agreement Mr D entered into and the fact Mr D didn’t receive a monetary award, instead being removed as a guarantor. So, they recommended FCR waive their outstanding invoice.

Mr D accepted this recommendation. But FCR didn’t, providing several comments and accompanying information explaining why. These included, and are not limited to, their continued belief that they were fair to deem Mr D to have received a monetary benefit by being removed as guarantor. So, they continued to reiterate why they felt they were fair to invoice him for their fee, in line with the terms of the agreement Mr D entered into.

Our investigator considered FCR’s comments, but their outcome remained unchanged. FCR 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 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, in line with our services informal approach.

In this situation, it isn't in dispute that Mr D instructed FCR to pursue a claim against lender A on his behalf, with the intention of being removed as a guarantor. So, my decision is made on this basis.

When Mr D instructed FCR, he entered into a no win no fee agreement. And this agreement explains that *"if you win (which means you receive reimbursement, costs, monies, debt reductions or any monies recovered as a result of the action following acceptance of this agreement) you pay {FCR} 20% + VAT (equivalent to 24% inclusive) of the total monetary benefit paid, received or refunded"*.

I think these terms makes it clear that for a fee to be paid, a claim must first be classified as a "win". And it details a "win" as Mr D receiving reimbursement, costs, monies, debt reductions or any monies recovered.

I've seen lender A's response to Mr D's claim. And this explains under *"claim outcome"* that there was *"no redress due"* while also explaining that *"as our records indicate that you have not made payments towards the loan(s) in question, there are no repayments due to be refunded to you"*. So I'm satisfied Mr D's claim doesn't qualify as reimbursement, costs, monies or monies recovered.

I've then considered whether Mr D being removed as guarantor should qualify as a debt reduction, which I recognise is FCR's position, explaining why they feel Mr D's liability to the loan has been removed.

But crucially, while Mr D was a guarantor for the loan, the loan itself was the responsibility of the individual who took the loan out and received the associated funds. Having reviewed the evidence available to me, I've seen no evidence that shows Mr D was ever required to make payments towards the loan, before he was removed as guarantor. And having considered lender A's outcome letter, which states *"we have concluded that we cannot be confident that the loan agreement(s) was affordable at the time it was entered into"* alongside Mr D's testimony that the loan was written off in a separate claim brought by the individual who took it out, I think it's reasonable for me to assume, based on the balance of probability, that Mr D would never have been liable to make payments towards the loan, if he hadn't been removed as guarantor.

So, I'm not persuaded that Mr D being removed as a guarantor qualifies as a debt reduction. And because of this, I'm not persuaded there was a "win" as set out in the agreement Mr D entered into. So, I'm satisfied FCR have acted unfairly when invoicing Mr D for the fee of £1,260.

I recognise FCR are unlikely to agree with this. And I do want to recognise I've seen emails which do suggest Mr D was expecting a cash settlement, which contradicts other emails he sent where he states he was only looking to be removed as guarantor.

But crucially, FCR are the professional expert in this situation. And they were responsible for the wording of their agreement, and ensuring any work they carry out reasonably falls within their fee terms and structure. In this situation, I think it would've been best practice for FCR to have secured authority from both the guarantor and individual who actually received the loan, if they had the intention of charging an invoice based on the loan amount. So, while I

don't doubt FCR were acting in good faith based on Mr D's instruction, this doesn't impact the decision I've reached.

As I think FCR have acted unfairly, I've then turned to what I think they should do to put things right.

### **Putting things right**

Mr D has explained he is currently in an IVA, and more recently has been facing difficulties with his current housing situation. Considering this, I recognise how impactful it would have been to receive an invoice from FCR, which he didn't have the means to pay considering he didn't receive a financial award from the claim.

As I've already set out above, I'm not persuaded Mr D's claim met the definition of a win. This means that had FCR acted fairly, they would not have issued an invoice in the first place. So, to place Mr D back in the position he should've been, I'm directing FCR to waive the outstanding invoice of £1,260, which I'm satisfied is a fair outcome that falls in line with our service's approach.

I'm satisfied this fairly takes into consideration the impact Mr D has been caused by having the threat of paying this invoice over him but also recognises that there has been conflicting information provided to FCR by Mr D and that ultimately, FCR did act in good faith and that their actions did secure the removal of Mr D as a guarantor. Albeit I'm satisfied this doesn't mean a fee can fairly be charged based on the agreement Mr D entered into.

### **My final decision**

For the reasons outlined above, I'm uphold Mr D's complaint about Facility Review Ltd and I direct them to take the following action:

- Waive the outstanding invoice of £1,260.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 April 2025.

Josh Haskey  
**Ombudsman**