

complaint

Ms M instructed Allay Claims Ltd to deal with a number of claims for potentially mis-sold PPI.

background

Ms M is unhappy that Allay didn't give her enough time to cancel her claims before they were successful. She has also said that Allay didn't tell her about the fee cap for PPI claims put in place by the Claims Management Regulator (CMR).

This complaint was originally accepted for investigation by the Legal Ombudsman, but was transferred to the Claims Management Ombudsman (a Financial Ombudsman Service) as part of the change in the regulation of claims management companies. It has been investigated by the Claims Management Ombudsman under the Legal Ombudsman's rules.

Our investigator found that Allay gave Ms M a reasonable amount of time to cancel her claims. She also found that Allay should have made Ms M aware of the fee cap. She recommended that Allay only charge Ms M the amount of the fee cap (20% plus VAT).

Ms M agreed with the investigator but Allay didn't. They say that Ms M chose to *"formally submit her claim once more online without speaking to us therefore we were not given an opportunity to speak with the client in order to have a conversation regarding the fee cap."*

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

cancellation of claims

Allay sent claim paperwork to Ms M on 8 May 2018, and received this back on 21 June. Allay looked into if Ms M had been sold PPI and let her know by text on 17 July that she had a potential claim.

Allay needed a PPI questionnaire completed before they could start the claim. Ms M filled this in online on 18 July and Allay submitted the claim for her. The claim was successful on 14 August and Allay invoiced for their fee.

Allay told Ms M about her potential claim on 17 July, and she could've made a claim herself at this point. But, by completing the PPI Questionnaire, she instructed Allay to make the claim for her. Ms M then had 14 days during which she could cancel her claim at no cost, but she didn't do this.

Based on what happened I agree with the investigator that Ms M was able to cancel her claim and Allay have acted reasonably.

fee cap

The Financial Guidance and Claims Act 2018 (the Act) required the 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 couldn't legally charge a success fee of more than 20% plus VAT.

Ms M instructed the business on 21 June 2018 – after the Act was passed but before the fee cap came into force. Because of this the fee cap shouldn't apply to her claims.

But, on 11 May 2018, the CMR issued guidance to all claims management companies. 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."* In December 2018, the CMR told the Legal Ombudsman how this guidance should be applied. They confirmed that, once the guidance had been issued, *"we expected businesses to inform all new or potential clients of the change to the fees that could be charged."*

My decision is based on the 11 May 2018 guidance and the December 2018 clarification from the CMR. Allay sent their paperwork to Ms M before the CMR guidance was issued, so this couldn't have told her about the fee cap. But Ms M sent this back to Allay after the guidance, which meant that Allay should've let her know about the fee cap before they started the claim. I've not seen any evidence they did this.

I've also not seen any evidence that Ms M wanted her claim to be progressed as fast or as soon as possible. Had Ms M known of the fee cap, it's likely she would've waited until after the fee cap came into force before instructing Allay. She would then only have had to pay a fee of 20% plus VAT. Because of this I agree with the investigator that applying the fee cap to Allay's fees is a fair and reasonable remedy in the circumstances.

my final decision

For the reasons explained above, I uphold the complaint about the fee cap.

Allay Claims Ltd should reduce their fees to 20% plus VAT. As Ms M has already paid their fee they should refund her the difference between the amount she paid and their reduced fee, along with simple interest calculated at 8% a year from the date they received her payment to the date of the refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 21 July 2019.

Andrew Burford
ombudsman