

## The complaint

Miss H is unhappy with the service provided by Allegiant Finance Services Limited (Allegiant) after instructing it to deal with a crypto scam complaint on her behalf.

## What happened

I set out the background to Miss H's complaint in the provisional decision I issued on 11 April 2024, but I'll set it out again below.

On 9 March 2022 Miss H contacted the Financial Ombudsman Service asking it to make a complaint on her behalf to business W. The complaint summary was recorded as '*consumer was a victim of a scam and [lost] £15,000.*' The complaint was sent on the same date to business W.

On 23 and 24 March Miss H discussed her complaint with business W through its webchat service. During this exchange, Miss H was asked if she also wished to dispute an additional two transactions totalling £40,000. Miss H replied, '*I had informed the financial team about £40,000 also.*'

On 28 March business W responded to Miss H directly saying that it wouldn't be doing anything in settlement of her complaint. The final response letter also acknowledged that '*In your complaint to FOS, you detail three transfers totalling £15,000 GBP. There are an additional two payments totalling £40,000 GBP which you have also reported as a scam but you have not mentioned these additional payments in your official complaint.*'

Following the response from business W, on 1 April Miss H contacted this service to progress her complaint. Miss H was sent a complaint form to complete and return. In February 2023 Miss H instructed Allegiant to pursue a complaint against business W. Miss H confirmed acceptance of Allegiant's terms and conditions for representing her. The terms and conditions explained how Allegiant's fees would be calculated in the event of a successful claim. A table was included showing the percentage of fees charged depending '*on the amount of redress you receive in cash in hand compensation.*'

On 10 March 2023 Allegiant sent a complaint to business W on Miss H's behalf. The complaint letter referred to a payment of £15,000 being made to company X. The supporting documentation also referred to £40,000 paid to company T. Miss H received updates from Allegiant saying it was waiting for a response from business W.

Business W responded to Allegiant saying it had already issued a final response to Miss H's complaint in March 2022. On 25 and 26 May an email exchange took place between Miss H and Allegiant where Allegiant explained the response from business W. Allegiant informed Miss H that she should have referred her complaint to the Financial Ombudsman Service by 22 September 2022. Miss H was further informed '*As we are unable to progress your claim any further, we will now arrange to close your claim on our systems.*'

Miss H has advised that she spoke to a representative from Allegiant on 13 June asking for an update on her claim but she was told it had been closed as it is out of time.

On 19 June Miss H contacted the Financial Ombudsman Service providing further details about different scam transactions involving business W. During this call Miss H provided detailed information about two separate scams. Miss H explained company X took £14,700 from her, and company T £40,000.

On 20 June Miss H informed Allegiant that she had contacted the Financial Ombudsman Service before March 2022. Miss H also provided the case reference number for her complaint with the Financial Ombudsman Service. Miss H informed Allegiant *'I hope this will help you reopen my case.'*

Allegiant contacted the Financial Ombudsman Service providing the case reference number given by Miss H, and saying that it had been appointed by Miss H to deal with her complaint about business W. In its email to this service, Allegiant included a copy of business W's final response letter dated 28 March 2022, Allegiant's original letter of complaint to business W dated 10 March 2023, and a supporting questionnaire. On the same date, this service sent Miss H's complaint to business W, including the three attachments sent from Allegiant in support of Miss H's complaint. Miss H was sent an email from Allegiant saying *'We've Referred Your [business W] Claim To The Financial Ombudsman Service'*.

On 21 June Allegiant informed Miss H *'The Financial Ombudsman Service has agreed to look into the claim for you. We will be in touch once we have additional updates for you.'* On 24 July business W informed this service of its offer to settle Miss H's complaint about the two transactions totalling £40,000 paid to company T. On 7 August this service forwarded details of this offer to Allegiant. Allegiant subsequently informed Miss H of business W's offer to settle her complaint. A few days later, Miss H removed Allegiant as her authorised representative from the complaint with this service about business W.

Miss H subsequently complained to Allegiant about its demand to pay its success fee following the successful claim with business W. Miss H said her claim had been closed by Allegiant and so Allegiant wasn't entitled to charge her a success fee. Allegiant responded to Miss H's complaint saying that it had acted in line with the terms and conditions of the contract Miss H had agreed to at the time of signing up to using its service. And so, it wouldn't be doing anything in settlement of Miss H's complaint. Unhappy with this response, Miss H referred her complaint to this service.

The investigator found that the service provided by Allegiant wasn't reasonable. The investigator said in settlement of Miss H's claim Allegiant should waive its fee because it wasn't responsible for the successful claim. This was on the basis that Miss H had contacted this service before agreeing for Allegiant to represent her. The investigator also recommended Allegiant pay Miss H £150 in recognition of the distress caused to Miss H because of the way Allegiant had handled her claim. Allegiant didn't agree. Allegiant said its success fee was being charged in accordance with the terms and conditions agreed to by Miss H. Allegiant also made further representations supporting its position.

As the complaint couldn't be resolved, it was passed to me for decision.

I issued a provisional decision on Miss H's complaint. This is what I said about what I'd 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.*

*I'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that's happened or been argued is set out above, I've read and considered everything that's been provided.*

*The investigator determined that Miss H referred her complaint about business W to the Financial Ombudsman Service on 1 April 2022. The investigator also determined that Miss H's instruction to Allegiant in March 2023 was limited to the transactions involving company X. I have seen that on 10 March 2023 Allegiant sent a complaint to business W referring to a payment of £15,000 being made to a scammer trading company (company X) only.*

*I've considered the complaint made to business W, and business W's subsequent offer in respect of the transactions involving company T. In doing so, I'm satisfied that, on balance, Miss H was reasonably aware of the scope of the complaint being made on her behalf by Allegiant to business W- including company T which hadn't specifically been referenced in Allegiant's complaint letter. I'll explain why.*

*I've considered the evidence showing Miss H's interactions with business W, this service, and Allegiant. It's evident from these interactions that Miss H is unhappy with several different losses involving more than one company, transacted through business W. I'm persuaded Miss H was looking to recover both the money paid to company X (£14,700), and the money paid to company T (£40,000) in settlement of her complaint. I've seen that Miss H also made this clear in her exchange with business W on 24 March 2022 through its webchat service, before it issued a final response to her complaint.*

*At the time of instructing Allegiant, Miss H completed a supporting questionnaire. I have seen that in this questionnaire (sent to business W as part of Allegiant's letter of complaint), Miss H referred to the payment of £40,000 to company T forming part of her complaint, and money that she was looking to recover. So, on balance, I think it's fair to say that she understood, and agreed with, the instruction for Allegiant to look into all transactions involving business W.*

*The crux of Miss H's challenge to paying Allegiant's success fee is that she feels strongly that the contract with Allegiant was cancelled in June 2023. Miss H has specifically referred to a telephone call with an Allegiant representative on 13<sup>th</sup> June. Allegiant say after this call Miss H was aware Allegiant were representing her and continued to deal with the claim.*

*When evidence is contradictory or inconclusive (or both) I have to make a finding on the balance of probabilities. That is what I find is most likely to have happened in view of the available evidence and wider circumstances. I've carefully considered Miss H's testimony. However, Miss H's version of events to this service don't match the emails I've seen she sent to Allegiant, or the work completed by Allegiant on her claim, after 13 June 2023.*

*The evidence I've seen shows that in June 2023 Miss H contacted both the Financial Ombudsman Service, and Allegiant, in respect of her claim against business W. Around this time, it appears that Miss H was hoping to progress her claim herself using this service, and also through Allegiant.*

*Allegiant told Miss H by email in May 2023 that her claim would be closed. But, I've seen that on 20 June, (after the date Miss H says she discussed cancellation with an Allegiant representative) Miss H told Allegiant that she had contacted the Financial Ombudsman Service in time, and provided Allegiant with a case reference number in support of her position. Miss H told Allegiant 'I hope this will help you reopen my case.'*

*Having considered the conversation history from June 2023, I'm persuaded that even if Miss H did speak to an Allegiant representative about cancelling, it's evident that she later specifically requested for Allegiant to look into her claim, and sought reassurance from it that it would.*

*Miss H says she was waiting for Allegiant to send additional forms to reinstruct it after her call with a representative on 13 June 2023. But I've seen that Allegiant sent confirmation of contact with the Financial Ombudsman Service to Miss H on 20 June, and on 21 June advised 'We will be in touch once we have additional updates for you.' I haven't seen any evidence of Miss H challenging Allegiant's authority over her claim at this time.*

*Miss H doesn't feel Allegiant is entitled to its success fee, which she says is excessive. But the agreement Miss H had with Allegiant was on a "No win No fee" basis. This means Allegiant charged a percentage success fee based on the amount of compensation recovered- not a fee based upon the amount of work it did. This meant any work done on any unsuccessful claims would be done for free. Where a claim was successful, Allegiant's fee maybe more or less than the value of the work it actually did. This is the risk taken by all parties in this type of agreement. Miss H signed Allegiant's terms and conditions. And this document provided examples of how Allegiant's fee is calculated, based on different compensation amounts recovered. I'm satisfied that Miss H knew the services provided by Allegiant would result in a fee if she received compensation.*

*I've seen Allegiant submitted the claim to business W in March 2023. When business W said that it had already responded to the same complaint in March 2022, Allegiant engaged in a number of emails with Miss H about what this meant for her claim. Following this exchange, I'm persuaded it was clear to Miss H that Allegiant would continue to act for her, in line with the update she received telling her that her claim had been referred to the Financial Ombudsman Service. Miss H didn't ask Allegiant not to represent her at that time.*

*I've seen that Miss H contacted the Financial Ombudsman Service, and provided details about the scams involving company X and company T in June 2023. This was around the same time she told Allegiant about the reference number for her complaint with the Financial Ombudsman Service, and asking it to re-open her claim. I accept that Miss H may have believed that she could pursue both avenues in trying to get her money back from business W. And she may not have considered the success fee that would be triggered following her instruction to Allegiant. But I don't think this means Allegiant's success fee isn't payable.*

*I've considered what action Allegiant ought to have taken after informing Miss H that her claim had been closed, and the subsequent email exchange in June 2023. And I'm satisfied the work it did was reasonable, and in line with agreement from Miss H. Allegiant acted on Miss H's instruction and sent her claim to the Financial Ombudsman Service. Following this, business W made an offer to settle Miss H's claim. So I don't think that I can say Allegiant has acted unfairly or unreasonably in charging its success fee.*

*I'm satisfied Miss H had authorised Allegiant to act on her behalf in making the crypto scam complaint, which resulted in a successful pay out. Allegiant made it reasonably clear to Miss H that there would be a fee payable if a claim was successful. Miss H, in signing the terms and conditions, had agreed to this condition. Because of this, I won't be asking Allegiant to do anything in settlement of Miss H's complaint.*

*My provisional decision*

*I'm minded to not uphold this complaint for the reasons I've explained above.*

**The responses to my provisional decision**

I invited both Miss H and Allegiant to respond to my provisional decision.

Allegiant didn't respond to my provisional decision. Miss H responded to my provisional decision rejecting it. Miss H reiterated why she considered her claim had been closed, and the lack of work completed on her case.

### **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.

Miss H remains strongly of the view that her claim had been closed by Allegiant, and that's what she was told before an offer to settle her complaint was made. I've carefully considered Miss H's comments. But as explained in my provisional decision, the evidence I've seen doesn't support what Miss H has explained about her agreement with Allegiant coming to an end before an offer to settle was made from business W. The evidence I've seen supports that Miss H was agreeable to Allegiant representing her in her claim, and sought assurance from Allegiant that it would. I accept that Miss H didn't receive any forms to sign after her interactions with Allegiant in June 2023. But I'm not persuaded her agreement had come to an end. So Allegiant wouldn't have needed to seek any additional authority from Miss H.

Miss H has made strong representations about the impact on her health, and well-being, as a result of having to pay Allegiant's success fee. And she doesn't feel it's justified based on the lack of work completed by Allegiant. The agreement Miss H had with Allegiant was on a "No win No fee" basis. This means Allegiant charged a percentage success fee based on the amount of compensation recovered- not a fee based upon the amount of work it did. Where a claim was successful, Allegiant's fee maybe more or less than the value of the work it actually did. This is the risk taken by all parties in this type of agreement.

I am empathetic to the position Miss H finds herself in with having to pay Allegiant's success fee. And it's clear she has experienced stress and upset by what's happened. But having reviewed the evidence I'm satisfied the fee being chased is in line with the agreement signed by Miss H. I haven't seen any evidence to persuade me that Allegiant's actions have been wrong, or outside of the terms agreed to by Miss H. So I won't be asking Allegiant to do anything in settlement of this complaint.

I've thought carefully about the provisional conclusions I reached. As neither party has provided anything which would lead me to depart from this, my final decision remains the same as my provisional decision, and for the same reasons.

### **My final decision**

For the reasons provided I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 30 May 2024.

Neeta Karelia  
**Ombudsman**