

Early Resolution – A Question of Commission Claw Back

We had a call from Mr Jones* who wanted to make a complaint about his adviser – a mortgage broker.

The adviser had sent Mr Jones an invoice for commission the adviser claimed he had lost because of the actions of Mr Jones. The invoice was for over \$3,000.

Interestingly, on the same day we also received a call from the adviser asking if we could help him obtain the commission he believed he was entitled to.

When we took a few minutes to find a bit more information, we established that the adviser had undertaken a complete advice process and obtained an unconditional approval for a loan for the client. The adviser had done exactly what was required.

Unfortunately for the adviser, Mr Jones decided to go directly to another lender and was able to secure another loan on better terms.

Put simply this meant that the adviser had received no remuneration for the work he had done.

We asked the adviser what information he had in his Terms of Engagement and he assured us he had complaint information in relation to 'commission claw-back' and that he had had it checked by an external source.

We asked him to provide a copy of his Terms of Engagement. Upon inspection, we discovered that it was not compliant.

The Terms of Engagement stated that the adviser 'reserved the right to claw back any commission lost as a result of the actions of the client.'

As the amount of claw-back and how it was calculated was not clearly set out in the Terms and Conditions, we believed that it would be likely that the adviser would lose if the complaint proceeded.

We advised the adviser of this and discussed previous cases relevant to this situation. Naturally the adviser was very upset as he had done the work but would not get paid. Reluctantly he withdrew the invoice.

As there was no doubt the adviser had given good advice and done his job well, when we called Mr Jones to tell him the invoice would be withdrawn we also suggested that some form of payment to the adviser for his work would be appropriate.

Mr Jones agreed that the adviser had done a good job and he only didn't go ahead because the bank offered him a better interest rate. Based on this, Mr Jones agreed to pay the adviser \$1,000.

When we contacted the adviser to let him know the outcome we also provided him with some suggestions on how to change the wording in his Terms of Engagement with a view to preventing a reoccurrence of this problem. The adviser was appreciative of our assistance.

Our intervention took very little time and resulted in both parties having an outcome they were able to live with. This was done via our 'help line' and as such no complaint fee was charge.

**Names have been changed to protect our customers' identities*

