

## Case study

### Claiming Clawback Costs

#### Background

Michaela\* used the services of a financial service provider (FSP) to assist her in restructuring her personal lending. She later sold some significant assets and repaid her lending earlier than expected. She was aware that this would incur an early repayment fee (clawback) to her bank but was not aware that her FSP provider would also charge her a clawback fee for their services if she repaid the loan early.

The FSP claimed that the existence of the early repayment fee had been disclosed to Michaela and that she had signed a document which included this clause. Michaela agreed that she had signed a form about the clawback for the lender but says that it did not include information about a clawback for the FSP. She asserted that she would never have agreed to such a clause and that the signature applied to the document was not hers.

Michaela agreed that the FSP's services had been of value to her, and she was willing to pay something for the service but not the amount sought by the FSP. Attempts by the parties to settle the matter between themselves had not been successful and the relationship between them had broken down so Michaela lodged a complaint with FDRS.

#### Next steps

FDRS referred the complaint to the FSP who did not accept that FDRS had jurisdiction to consider the matter because they had made an application to have the matter heard in the Disputes Tribunal. FDRS issued a jurisdiction decision that, under the Scheme Rules, the scheme member having made an application in the Disputes Tribunal did not impact on FDRS jurisdiction when the customer chose to use the FDRS forum.

Despite the FSP continuing to strenuously object to FDRS having jurisdiction in this matter, our Resolution Practitioner contacted both parties to see if there was a prospect of a mediated resolution before the matter proceeded to adjudication. The practitioner explained the various options and the parties engaged in a 'shuttle mediation' whereby our practitioner moved between the two, conveying information to each from the other.

#### Outcome

With the assistance of FDRS the parties were able to reach a mediated settlement which was formally recorded, and the matter closed. The terms included a part payment of the FSP's fee in two instalments.

Because the matter was mutually resolved through mediation there was no need to proceed to adjudication and the Disputes Tribunal hearing was vacated by the parties.

#### Lessons learned

This complaint highlights the ability of alternative dispute resolution to reach flexible settlement arrangements without further damaging relationships.

This complaint also shows the need for scheme members to be aware of the jurisdiction of FDRS and to engage with our service when a matter is within our jurisdiction.

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