

The complaint

Ms A is unhappy that Symmetric Systems Ltd (trading as Bank-Smart) has asked her to pay their commission fee and cancellation charges for mis-sold loan and default charge claims. Ms A says she hasn't received any compensation.

What happened

In 2018 Ms A signed a letter of authority (LoA) for a claims management company (CMC) I'll call "A" to pursue mis-sold loans and default charges on her behalf. In April 2019 Bank-Smart, another CMC, wrote to Ms A to let her know they had taken over her claims as "A" had stopped trading. And asked Ms A to sign another LoA, which she did. In signing the LoA Ms A also added four more lenders she wanted Bank-Smart to look into for her.

In May 2019, Bank-Smart told Ms A that they'd escalated her mis-sold loan complaints to the Financial Ombudsman service. And the same month, the Financial Ombudsman service told Ms A and Bank-Smart they had upheld one of Ms A's complaints against the lender I'll call "Q", and that she should be compensated for this. In September 2019, the Financial Ombudsman service upheld another mis-sold loan complaint from another of Ms A's lenders I'll call "S".

Following which Bank-Smart sent Ms A an invoice for commission fees for both the mis-sold loan cases, and several cancellation fees. In total Bank-Smart asked Ms A to pay £1273.69. In October 2019, lender "S" said they didn't accept the findings of the Financial Ombudsman service, but they did make an offer of £1032.38 to settle the complaint.

In November 2019, Bank-Smart again asked Ms A to pay their invoice, but she said she hadn't received any of the compensation from either "Q" or "S". And she couldn't get access to Bank-Smart's online portal to check what she was being billed for. She complained to Bank-Smart.

In their final response, Bank-Smart said they'd submitted the claims for Ms A so the offers came from the work they'd done. And as she had cancelled her other claims they had charged her their cancellation fees. But they would waive the cancellation fees if she paid the mis-sold loan claim invoices within 30 days.

Ms A wasn't happy with Bank-Smart's response and referred her complaint to us. Our investigator said Ms A had been offered redress from two of her lenders because of the work done by Bank-Smart. He also said Ms A hadn't provided the details Bank-Smart had asked for to accept the offers that had been made. He said Bank-Smart's fees were justified. He asked Bank-Smart if they were still willing to waive the cancellation fees. They said they weren't, but they would waive any late payment fees.

Ms A didn't agree and asked for an ombudsman to decide.

I issued a provisional decision in July 2020 which said:

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 minded to partially upholding this complaint. I'll explain why.

Ms A doesn't dispute that she authorised Bank-Smart to act on her behalf. But complains that she is being asked to pay fees for compensation she has yet to receive. Ms A has said she has been bombarded with paperwork, threats of breach of contract and unfair added charges. In reaching my decision I've looked at whether I think Bank-Smart has acted fairly and reasonably in their dealings with Ms A.

Lender "Q"

I can see that Bank-Smart, in June 2019 told Ms A about the offer for her mis-sold loans with lender "Q". And asked her to sign and complete an acceptance form. The letter went on to say:

"If settlement is not received within 30 days please contact us so we can chase the settlement. If you fail to respond to the offer and the offer expires, you will be in breach of your agreement with us and will still be liable for our costs."

I haven't seen any evidence of Ms A responding to this letter or Bank-Smart chasing the settlement offer with lender "Q". But in Sept 2019, Bank-Smart sent Ms A, another letter about her claim against lender "Q" with, it said, an attached offer and their invoice for their commission fee. The letter went on to ask Ms A to let them know if she rejected or accepted the offer. And said:

"You do not need to make payment until settlement has been issued,...."

Again, I can't see that Ms A replied to say whether she accepted or rejected the offer or that the offer expired. In November 2019, Ms A told Bank-Smart she hadn't received any redress and by this time Bank-Smart knew lender "Q" had gone into liquidation and had noted that they would put the invoice on hold until February 2020.

Ms A still hasn't received any settlement from lender "Q", And I doubt Ms A will now get any redress for this claim as lender "Q" had gone into liquidation. I don't think its fair that Bank-Smart should ask for a fee for compensation that Ms A won't receive. So, I intend to ask Bank-Smart to waive their fee for this claim.

Lender "S"

In September 2019, Bank-Smart told Ms A that she would be paid compensation for her claim against lender "S". And said:

"We will automatically chase up your refund after this time until we receive the offer." But I've not seen any evidence of Bank-Smart chasing lender "S" for the refund. In October 2019, lender "S" didn't agree to the Financial Ombudsman's findings and put forward an offer to them to settle the claim. I can see lender "S" asked Bank-Smart for Ms A's details so that the payment could be made. But the couple of attempts Bank-Smart made to contact her were unsuccessful.

Ms A says that the claim against lender "S" was successful because of her involvement, and that Bank-Smart had nothing to do with it. I understand why she'd think this as she hadn't yet received any redress. And it was only after her contact with this service that there has been contact with lender "S" about her settlement offer.

But I'm satisfied that when Ms A engaged Bank-Smart's services her intention was for them

to pursue her claims against her lenders. And I think Bank-Smart still had authority to act on behalf of Ms A. And if Ms A had sent the information Bank-Smart had asked of her she'd most likely have received her compensation. I haven't seen any evidence that Ms A cancelled Bank-Smart's authority in the intervening period. So, I'd expect Ms A to work with lender "S" if she intends to accept the offer. And I think it's fair for Bank-Smart to charge Ms A its fee of 32% plus VAT (£396.43) on confirmation she has received the settlement from lender "S".

Cancellation fees and other charges

In June 2019 Bank-Smart were notified that Ms A's default claims had been rejected by her lenders as she hadn't any default charges on her accounts. I can see from Bank Smart's audit trail that these claims were cancelled. As they were rejected by the lenders I don't think its fair for Ms A to be charged any cancellation fees for these claims.

In December 2019, Bank -Smart sent Ms A an invoice for her mis-sold loan claim against another of her lenders I'll call "L". But I can see that this claim was also considered by the Financial Ombudsman and was rejected in June 2019. So, I don't think its fair that Ms A should be charged any cancellation fee for this claim.

For the remaining mis-sold loan claim against lender "U", Bank-Smart hasn't provided any details as to the status of this claim or why they have charged a cancellation fee for it. Given what I've seen so far about the cancellation fees charged I don't think Bank-Smart has shown that Ms A should be charged the cancellation fees for this claim either.

So, I don't think Bank-Smart has acted fairly or reasonably in charging Ms A cancellation costs. And I intend to ask Bank-Smart to reverse all the cancellation charges it's made for its services. I'm pleased that Bank-Smart has already agreed to waive any late payment fees.

From what Ms A has told us, I understand this has been a very frustrating and distressing experience for her. And I think Bank-Smart, as her representative, could have done more to get Ms A her settlement offer. So, I also intend to ask Bank-Smart to pay her £100 to compensate her for the trouble and upset she's experienced.

responses to my provisional findings

Ms A said she would have preferred not to have to pay Bank-Smart as she doesn't think they have done the work they should have, but has accepted my provisionally decision.

Bank-Smart accepted my provisional decision and have agreed to waive their fees for lender "Q". And cancelled all invoices, except for their success fee for lender "S". But I note Bank-Smart has reduced the outstanding amount for this by £100, the amount I've asked them to pay Mss A for trouble and upset.

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 partially upholding this complaint. For the reasons outlined above.

In my provisional decision I said his had been a frustrating and difficult experience for Ms A and the trouble and upset award was in recognition of this. Bank-Smart has said they intend to offset Ms A's debt with her trouble and upset payment. But it would be for Ms A to decide

if she wants her trouble and upset award to be used in this way. So I'd expect Bank-Smart to get Ms A's acceptance of this before adjusting their outstanding success fee.

My final decision

I partially uphold this complaint and ask Symmetric Systems Ltd (trading as Bank-Smart to:

- waive any commission fees for Ms A's mis-sold loan claim against lender "Q", reference 231593;
- waive all cancellation fees; and
- pay Ms A, £100 for trouble and upset

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 9 October 2020.

Anne Scarr
Ombudsman