

## The complaint

Mr F complains that Symmetric Systems Limited trading as BankSmart (BS) are asking him to pay cancellation fees for payment protection insurance (PPI) and default charge claims.

## What happened

In September 2020, Mr F said he received a barrage of emails and letters from BS about numerous PPI claims. Mr F said he'd already been told by his lenders some time before, that he didn't have any PPI policies. Mr F said he didn't recognise the claims, or account details sent by BS. He immediately asked BS to stop contacting him. Mr F said they responded by sending him a bill for around £4,000 for cancelling his claims. He complained to BS.

BS said that Mr F had signed their letters of authority (LoA) in May 2019, instructing them to pursue mis-sold PPI and default charge claims. As Mr F cancelled all his claims with them, outside of the 14-day cooling off period they could charge their cancellation fee for the work they'd done for him. But as a gesture of goodwill they said they were willing to reduce this by 50%. And gave Mr F 90 days to respond, if he agreed within the timeframe they said they would waive the remainder of their fee.

Mr F wasn't happy with BS' reply. He said he remembered being contacted about PPI in 2018, but he didn't have any successful claims. He reiterated he hadn't authorised BS to make any claims for him. He referred his complaint to us.

Our investigator said BS' cancellation fees weren't justified where there was no evidence of PPI, or the claim had already been dealt with by the lender. Neither could they charge their cancellation fees for default charge claims where there was no likelihood of success. He also detailed a number of charges he didn't think it was fair or reasonable for BS to include.

BS didn't agree, they said Mr F had cancelled his agreement with them, and they were charging their cancellation fee in line with their terms and conditions. They asked for an ombudsman to decide.

I issued a provisional decision in February 2022 that said:

## 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 currently minded to uphold this complaint. I'll explain why.*

*We're an informal dispute resolution service, acting as an alternative to the courts. This means we're impartial, we ask questions and consider the information we've been given by both parties to reach an outcome that's fair and reasonable. We wouldn't comment on the validity of a signature as it's not within our role as we aren't handwriting experts. Where there is a different version of events as is the case here, I will decide what I think most likely happened. And whether BS has acted fairly and reasonably in their actions with Mr F.*

BS said Mr F initially signed up for the services of another claims management company (CMC). After the CMC transferred their claims, BS said they contacted the CMC's clients and asked them to complete their LoA. BS has provided a signed LoA for mis-sold PPI claims, a signed LoA for default charge claims, a signed letter of engagement (LoE), and a signed credit report request form. The LoA's appear to have been prepopulated with a list of 14 lenders, and the personal details for Mr F. All the documents have a handwritten signature and are dated May 2019. BS has shown they provided Mr F, in August 2019 log in details to enable him to access their claim portal so he could check the progress of his claims. I've also seen copies of letters from lenders sent to Mr F that have a BS reference. So, I think Mr F is likely to have agreed for BS to represent him.

The LoE includes BS' terms and conditions which show that Mr F would have engaged BS on the basis their fee would only be payable on the success of the claim(s) - agreeing to pay BS a commission of 20% (plus VAT) on successful PPI claims. And 25% (plus VAT) for any other financial claims.

Mr F has said he was told he didn't have any PPI policies and only recognised a savers account in the details sent to him. I can see BS registered claims for Mr F in July, August and September 2019. But I haven't seen any evidence of Mr F having any successful claims for either mis-sold PPI or default claim charges. And as some of the lenders were corresponding with BS about Mr F's claims, as they recognised them as Mr F's representative, I think it's likely the lenders would have made BS aware of any settlement offers they'd made to Mr F.

In September 2020, BS contacted Mr F after they'd sent progress requests to the lenders about Mr F's claim(s), and it was this that Mr F said made him aware that BS was pursuing claims he considered "fictitious" and "futile" and he asked BS to stop their actions. BS said Mr F had registered 42 claims with them, 32 were still active at the point he asked them to stop and the other 10 had been cancelled/closed free of charge. As BS said Mr F had cancelled their agreement they invoiced him for cancellation fees for the 32 mis-sold PPI or default charge claims which totalled £4,074.30.

I've looked at BS' terms and conditions about cancellation and these say:

"You have 14 days from the date of signing these terms to cancel or 14 days from the initial LOA to cancel each individual claim."

As the LoA's were signed in May 2019, and BS said Mr F didn't cancel the 32 claims until September 2020, BS considered him to have cancelled outside of the 14-day cooling off period.

The terms and conditions go on to say:

"If cancellation is received before settlement is awarded but outside of the 14 day cooling-off period, our reasonable processing costs will be payable subject to a maximum charge of £400 plus VAT per 'claim'."

The terms and conditions go on to explain how reasonable costs would be calculated:

"Our reasonable costs will vary depending on how much work has been completed up to the point of cancellation/breach; for example cancellation within the first 4 months of a simple claim could incur a fee of £100 plus VAT, whereas if the matter is complex and takes longer than one year the fee for each claim could be £400 plus VAT (the maximum per claim)."

BS has said that their cancellation fees would be payable irrespective of whether the claim would have been successful or not. But their terms and conditions clearly state that "if cancellation is received before settlement..." . So, I agree with our investigator that

*cancellation fees shouldn't be charged where there isn't any likelihood of success, as there wouldn't be any likelihood of settlement.*

*The Financial Conduct Authority (FCA) deemed 29 August 2019 as the deadline for PPI claims to be made. Any claim received after the deadline had passed wouldn't have been accepted by the lender(s) unless there were exceptional circumstances for doing so. When BS contacted Mr F in September 2020 it was on the basis that for several of his claims the lenders were struggling to find his account details. BS asked Mr F to provide further details for them to pursue his claim.*

*The relevant guidance says:*

*"A firm must not make or pursue a claim on behalf of a customer, or advise a customer to make or pursue a claim, if the firm knows or has reasonable grounds to suspect that the claim does not have a good arguable base."*

*I can see for one of Mr F's lenders, I'll call "R" told him in February 2020 they'd done an extensive search of his account and hadn't been able to locate any PPI policies. And for another, I'll call "H" told Mr F in September 2019 that they'd been unable to locate any PPI policies for him. There is also a BS reference on this letter, so I'd have expected BS to have also been made aware by "H" as they saw BS as Mr F's representative. For the other claims, they'd been registered in August 2019 just before the August deadline for making such claims. As none of the lenders had been able to locate Mr F's accounts and I haven't seen any communication made between any of the parties for several months. I don't think BS had a good arguable case for these claims to remain active. And so, they shouldn't have continued to pursue these claims for Mr F.*

*The relevant guidance also says that Mr F should have been notified of any material development in the progress of his claim. I can see another lender "L" told Mr F in December 2019 that he hadn't taken out a PPI policy on the product and they'd closed his claim. I can't see that BS updated Mr F that this claim was unsuccessful. But I can see this has been included in the list of claims they are charging Mr F a cancellation fee of £154.20.*

*And:*

*"A firm must provide each customer with an update on the progress of the claim at least once every six months"*

*From BS' records I can't see that Mr F was kept updated about the progress of his claims. There is some activity when the claims were registered but I can't see that BS progressed Mr F's claims. I can't see any evidence of other lenders informing BS or Mr F on the status of these claims, which persuades me that Mr F's testimony that he didn't have accounts with these lenders for mis-sold PPI or default charge claims is valid. And given the void of communication from BS until September 2020, I again think these claims were speculative with no likelihood of success.*

*So, I don't think BS can charge their cancellation fees as I don't think it's fair or reasonable for charges to be applied for speculative claims where there is no likelihood of any settlement.*

*Overall, I don't think BS has treated Mr F fairly. I don't think they've communicated with him as they should have done. And I think it was unreasonable for them to have charged him cancellation fees for claims I don't think had a good arguable base for success. So, I intend to direct BS to remove all of the cancellation charges they've asked Mr F to pay. I also think BS has caused Mr F unnecessary trouble, and upset, having had the cancellation fee*

*recovery placed into debt collection with the prospect of legal action being taken against him.*

*So, I intend to direct BS to pay him £250 for the trouble and upset that this has caused.*

### **Responses to my provisional decision**

BS said they'd additional information about the updates they provided to Mr F but didn't ask me to consider it. They agreed to waive all the cancellation fee charges.

Mr F made no further comments.

So, I haven't seen any evidence or comments that persuade me to change my thinking from my provisional decision.

### **My final decision**

I uphold this complaint. And ask Symmetric Systems Limited trading as BankSmart to:

- waive all the cancellation fees charged to Mr F, including any amounts added for debt recovery; and
- pay Mr F £250 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 1 April 2022.

Anne Scarr  
**Ombudsman**