

The complaint

Mrs N and Mr N complain that Symmetric Systems Ltd trading as BankSmart (Symmetric) are unfairly asking them to pay cancellation fees for payment protection insurance (PPI) and default charge claims.

For ease of reading I'll only refer to Mrs N in my decision.

What happened

Mrs N said she was called around August 2019 and asked whether she wanted to make any PPI claims. She said she'd already done this but said she was persuaded to claim again before it was too late to make any further PPI claims.

In April 2021, Mrs N said she was asked by Symmetric to complete authorisation forms to prevent any charges and costs being incurred. Mrs N said she was concerned about what the charges and costs could be for and said she was dismayed to find she was possibly going to be asked to pay around £3,000. Mrs N said she asked Symmetric what these costs were for and was told she'd 30 claims with them. She asked for further details and found there were 14 PPI claims and 14 default charge claims. She complained to Symmetric.

Symmetric said they'd notified Mrs N in April 2019 that the claims she'd authorised another claims management company (CMC) to look into for her and her husband had been transferred over to them. In August 2019 she'd signed their letter of authority (LoA) authorising them to act on her behalf for both PPI and default charge claims for 14 lenders. Symmetric said Mrs N had agreed to the other CMC'S terms and conditions when she signed their LoA and letter of engagement (LoE) in 2018. These terms said if she didn't respond with the information needed to pursue her claims they would consider she'd cancelled her agreement with them and would charge her for the work they'd done. As Mrs N hadn't returned required documents and had asked them to stop working for her, they'd cancelled her agreement with them and charged their fee in line with the terms and conditions she'd agreed. Symmetric asked Mrs N to pay £3,297.90 for the work they'd done for her. But said if Mrs N settled within 30 days, they'd reduce their fees to £900.

Mrs N wasn't happy with Symmetric's response. She reiterated she didn't know about all the claims and hadn't authorised Symmetric to make these claims for her. She referred her complaint to us.

Our investigator said Symmetric's cancellation and breach of contract 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 fees for default charge claims as the lenders hadn't been contacted so there was no likelihood of success. She did detail several charges she said it was fair for Symmetric to charge. These were for Mrs N failing to return signed LoA's and for a couple of claims that were still on going. She asked Symmetric to recalculate their fees based on the terms and conditions Mrs N had agreed to.

Symmetric accepted the investigators outcome and recalculated the fee based on this. They said the fee would equate to 13.78 hours of work payable at £50 per hour plus VAT, in total £689.

Mrs N didn't agree as she said she shouldn't have to pay for any work done as she hadn't authorised Symmetric to do this. She asked for an ombudsman to decide.

I issued a provisional decision in April 2022 that 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 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 and look at both sides of the story. We don't place more weight on one side's story because of who they are. We ask questions and weigh up all the information we're given. Where there is a different version of events as is the case here, I will decide what I think most likely happened. And whether Symmetric has acted fairly and reasonably in their actions with Mrs N.

Symmetric said Mrs N initially signed up for the services of another CMC. But, in April 2019, the claims were transferred to Symmetric from the other CMC. Symmetric said they contacted the other CMC's clients, explained about the transfer and asked them to complete another LoA. They said the terms of the agreement with the other CMC hadn't changed. They said they also gave their details should Mrs N need to contact them along with log in details for their on-line portal. Symmetric has provided a generic copy of the letter they sent to the former CMC's clients but not the actual copy of the one they sent to Mrs N.

Symmetric has also provided a signed LoA for mis-sold PPI claims, and a signed LoA for default charge claims in their name as well as signed LoA's and a LoE for the other CMC. The LoE for the other CMC was signed in January 2018. Symmetric has also shown the other CMC's signed LoA for a PPI claim for a lender I'll call "C" solely in Mrs N's name dated January 2018. And another signed LoA for a packaged bank account claim for a bank I'll call "L" signed by both Mrs N and Mr N in February 2018.

Symmetric LoA's are dated August 2019 and appear to have been pre-populated with a list of 11 lenders, that include the lenders from the previous CMC's LoA's, "C" and "L". There are also handwritten details added about another three lenders. The LoA's show personal details for Mrs N, with only a single signature in her name. Symmetric haven't provided their terms and conditions as they say the terms and conditions of the previous CMC remained relevant as Mrs N had a legally binding contract with them.

I've looked at the other CMC's terms and conditions about cancellation and these say: "You have the right to cancel this agreement without charge by contacting us within 14 days of the start of this agreement..."

And go to say:

"Should you decide to cancel the agreement at any stage after this period, you may do so, however we reserve the right to charge you a reasonable fee based on the work we have completed at the time of the cancellation. This fee will be based on an hourly rate of £50." The LoA's were signed in January and February 2018, Symmetric said Mrs N didn't cancel the agreement until April 2021 so she'd cancelled outside of the 14-day cooling off period. And this meant they could charge the cancellation and breach of contract fees for all the claims they'd for her.

Symmetric has accepted that some of the cancellation fees charged weren't justified and

recalculated the cancellation fees based on the other CMC's terms and conditions, reducing the fees they're charging Mrs N to £689. So, in reaching my decision I will consider whether this fee is fair and reasonable.

*The revised charges relate to references 49**20, 49**21, 49**24, 49**25 for lender "B", 49**26 for lender "N", 49**27 for lender "R" and 49**28 for lender "H". All of these were lenders were pre-populated on the Symmetric LoA signed in August 2019. And so weren't related to the claims for "C" and "L" Mrs N had agreed with the other CMC in 2018.*

The letter Symmetric sent in April 2019 said they'd taken over the claims Mrs N had "registered" with the other CMC and that they would pursue these claims for her. So, I'd consider the claims that were registered were for "C" and "L" only. The terms and conditions also say that for any successful claim a fee of 39% would be charged. But in July 2018 a fee cap of 20% plus VAT was introduced.

The Symmetric LoA that was signed in August 2019 was for them to pursue claims, PPI and default charge for a further 12 lenders. As there weren't registered with the other CMC, I'd consider them to be new claims and not a continuation of the existing agreement. And being a new agreement, I would have expected Symmetric to have asked Mrs N to read and agree to their terms and conditions (CMCOB 4.2. 8 (3)). Which should have also explained the new fee structure and the services Symmetric would provide.

And if Mrs N had seen and agreed to Symmetric's terms and conditions, she would have had the opportunity of a 14 day cooling off period to decide whether she did or didn't want to pursue the claims. She would also have known what she needed to do to cancel the agreement and what the consequences of cancelling the agreement would be (CMCOB 4.2.8 (12)). I haven't seen any evidence to show Mrs N had seen or agreed to Symmetric's terms and conditions for these new claims.

As Mrs N had only agreed to the terms and conditions she'd seen in January and February 2018, that applied to one PPI claim and one default charge claim, for "C" and "L". I don't think these terms and conditions can be applied to the new claims begun with Symmetric in August 2019. And as Mrs N hadn't seen or agreed to Symmetric's terms and conditions when the new LoA was signed in August 2019, I don't think Symmetric provided the information and advice it should have in line with the relevant guidance. So, I don't think Mrs N can be charged a fee for the cancellation or breach of contract for this agreement as she hadn't agreed to the terms and conditions that I think would have needed to be applied. Overall, I don't think Symmetric has treated Mrs N fairly. I don't think it's communicated with her as clearly as they should have done. So, I intend to direct Symmetric to remove all of the charges they've asked Mrs N to pay.

Mrs N has said she has been caused a lot of stress and sleepless nights worrying about the charges that Symmetric were asking her to pay. And I think this must have been a very distressing time for her, I think Symmetric has caused Mrs N unnecessary trouble and upset. So, I intend to direct Symmetric to pay her £150 for the trouble and upset that has been caused.

Responses to my provisional decision

Mrs N accepted my provisional decision. And I haven't been asked to consider any further comments or evidence by Symmetrics.

My final decision

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

- waive all cancellation and breach of contract charges; and
- pay Mrs N £150 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 2 June 2022.

Anne Scarr
Ombudsman