

The complaint

Mr A complains that Stonerock Finance Ltd has unfairly charged him a cancellation fee for a claim he said he hadn't withdrawn.

What happened

In August 2022 Mr A instructed Stonerock to pursue a claim for a mis-sold packaged bank account (PBA) with his bank who I'll refer to as "L". In October 2022, "L" said Mr A had closed his claim about the mis-selling of the PBA. And in January 2023 Stonerock told Mr A that as he'd closed his claim with "L" he'd effectively cancelled his claim with them. But Mr A said he hadn't asked "L" to close his claim. He said Stonerock invoiced him for their cancellation fee of £900 and to prevent bailiffs chasing him for the fee he'd paid their invoice. He complained to Stonerock.

Stonerock said they'd reimburse Mr A the £900 and reopen his claim with "L". But Mr A said they didn't do this as they saw he'd complained to us. They said he'd filed a frivolous and baseless complaint against them and so they wouldn't reimburse the cancellation fee.

Our investigator said Stonerock should have reimbursed Mr A the cancellation fee, and that they should add 8% simple interest from the date of payment to settlement. She also said that the situation had caused Mr A distress and inconvenience and so they should pay him £100 to compensate him for this.

Stonerock didn't respond to the investigators outcome so Mr A's complaint has been referred to an ombudsman to decide.

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.

Where the evidence is incomplete, inconclusive, or contradictory, as in this complaint I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened or not considering the available evidence and the wider circumstances. Having done so I uphold this complaint. I'll will explain why.

On 1 April 2019 the regulation of claims management companies (CMC) moved to the Financial Conduct Authority (FCA), and complaints to the Claims Management Ombudsman - a Financial Ombudsman Service. The Financial Ombudsman Service operates according to a set of rules made by the FCA. These rules are set out in a section of the FCA's Handbook called Dispute Resolution: Complaints (DISP). Its unfortunate that Stonerock haven't responded to our requests for information, DISP 1.1.4 says:

"Where a complaint against a respondent is referred to the Financial Ombudsman Service, the respondent must cooperate fully with the Financial Ombudsman Service and comply promptly with any settlements or awards made by it."

So in reaching my decision I've looked at the evidence provided by Mr A. In October 2022 I can see "L" said Mr A had closed his PBA claim with them, this is something Mr A has consistently denied in his testimony. He said he'd spoken to "L" on the telephone but at no point had he asked for his mis-sold PBA complaint to be closed. And I've not been given any reason to doubt Mr A's account. In January 2023 I can see Stonerock said as Mr A's mis-sold PBA complaint had been closed they sought to recover cancellation fees invoicing Mr A for £900 (3 hours at £300 per hour). Mr A has shown Stonerock sent him an email in February 2023 asking him to pay the overdue cancellation fee of £900, which also said:

"...we will commence will Bailiff Legal action to recover our fees if our fees are not satisfied within 14 days."

Mr A said to prevent any bailiff action being taken he'd paid Stonerock the £900. But he sought recovery of this payment as he reiterated, he hadn't asked "L" to close his claim. In early March 2023 Mr A has shown Stonerock said that they would void the invoice and continue with his mis-sold PBA claim. They also told Mr A that "L" had told them they'd rejected his claim as it was *"time barred"*. And Stonerock went on to say:

"Our Legal team is assessing the rejection, and we intend to appeal the bank decision. In the event that our appeal is successful, you may be awarded financial redress. At which point we will issue an invoice based on the No-win, No fee percentage agreed when you originally instructed our firm."

So, at this point I'd consider Mr A still had a "No Win No Fee" agreement with Stonerock. This means Stonerock would charge a percentage success fee, not a fee based upon the amount of work they did. This meant any work done on any unsuccessful claims would be done for free. If Mr A's claim was successful, Stonerock's fee would be more or less than the value of the work they actually did. This is the risk taken by all parties in this type of agreement.

But, shortly after this was confirmed with Mr A I can see Stonerock told him that they wouldn't proceed with his claim unless he withdrew the complaint, he'd brought to us. They didn't void the invoice or refund Mr A the £900 he'd paid to them.

The Claims Management Conduct of Business sourcebook, CMCOB 2.1.1R says:

"A firm must act honestly, fairly and professionally in accordance with the best interests of its customer"

And

PRIN 2.1.1R(6) says:

A firm must pay due regard to the interests of its customers and treat them fairly.

From the evidence I've seen I don't think Stonerock has acted in Mr A's best interest or treated him fairly. I'm persuaded that Mr A hadn't cancelled his No Win No Fee agreement with Stonerock, and so a cancellation fee isn't justified. Neither is a fee justified under the No Win No Fee agreement Mr A had with Stonerock as his mis-sold PBA complaint wasn't successful.

Stonerock told Mr A they wouldn't pursue his mis-sold PBA complaint unless he withdrew the complaint he'd brought to us. They also told him they'd send their casefile to us and recordings of calls they had with "L", but they haven't done this despite our requests. I can't see Stonerock took any action to progress Mr A's mis-sold PBA claim further after they were

told by “L” that his complaint had been rejected for example by referring the complaint to this service to consider whether the rejection by “L” was fair and reasonable. So, as Mr A’s mis-sold PBA complaint was unsuccessful under a No Win No Fee agreement, Stonerock couldn’t charge him a fee. But I can see that they’ve looked to retain the £900 Mr A paid to them which I don’t think is fair and reasonable.

Putting things right

To put things right, Stonerock should refund Mr A the £900 cancellation fee he’s paid to them, plus 8% simple interest from the date Mr A made the payment to the date of settlement. And Stonerock should pay Mr A £100 for the distress and inconvenience caused to him, not only by the concern of legal action being taken against him, but also for the way Mr A was treated when he’d looked to seek a resolution to his complaint.

My final decision

I uphold this complaint. And ask Stonerock Finance Ltd to:

- Refund Mr A the £900 cancellation fee he’d paid, plus *8% simple interest from the date paid to the date of settlement; and
- £100 for distress and inconvenience.

*Should HM Revenue & Customs require Stonerock Finance Ltd to take off tax from this interest. Stonerock Finance Ltd must give Mr A a certificate showing how much tax they have taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 25 July 2023.

Anne Scarr
Ombudsman