

The complaint

Miss S complains about Money Redress Limited (“MRL”) and the fee they are charging regarding a successful claim for a mis-sold pension.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, in 2018, Miss S instructed MRL to pursue claims for mis-sold pensions on her behalf. She received an interim payment for a claim in 2020, and paid MRL their fee, in line with the terms of engagement she agreed to.

But following this, Miss S says she instructed another separate company, who I’ll refer to as “X”, to continue with her claim while it was with the Financial Services Compensation Scheme (“FSCS”), based on advice she says she was given. The same claim was successful again, and she received another payment, on top of the interim payment she already received.

MRL became aware of this additional payment, and invoiced Miss S for their fee. But Miss S was unhappy about this, so she raised a complaint. She didn’t think MRL’s fee was a fair one, as she’d already paid a fee for this refund to X. So, she wanted MRL to contact X and sort out the payment issue, setting out why she didn’t think it was fair for her to pay two fees for the same claim. Miss S also set out her unhappiness with the work MRL conducted, explaining why she didn’t think they had completed work of value on the claim.

MRL responded to the complaint and didn’t uphold it. They thought the work they had completed had led to the refunds Miss S had received. So, in line with the terms of engagement Miss S entered into, they thought they were fair to invoice her for their fee, as an offer of compensation had been made before any attempt by Miss S to remove their authority to act on her behalf. Miss S didn’t agree, so she referred her complaint to the Claims Management Ombudsman, a Financial Ombudsman Service.

Our investigator looked into the complaint and didn’t uphold it. They thought MRL had acted fairly, as they’d expect, when progressing the claim. And they thought MRL had acted within the agreement Miss S entered into when invoicing her for their fee, considering the refund she received was a part of a successful claim MRL had originally submitted. So, they didn’t think MRL needed to do anything more.

Miss S didn’t agree. She explained her view that it was unfair for her to be expected to pay a significant proportion of her refund to MRL, considering this refund was only paid as she’d been mis-sold her pension in the first place.

And she reiterated her belief that the work MRL completed didn’t warrant the level of fee they were requesting. Miss S asked for additional time to provide further comments aside from those set out above, but no further comments were provided within the deadline set and so, our service must assume Miss S has nothing further to provide. As Miss S didn’t agree, the complaint has been passed to me for a decision.

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 not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Miss S. I appreciate Miss S only felt the need to instruct MRL to act on her behalf due to the fact her pensions had been mis-sold to her, through no fault of her own. So, as Miss S has already paid a fee to X regarding the successful claim, meaning any further payment will further reduce the refund she received relating to the pension mis-sale, I can understand why she'd feel unfairly treated and wish to raise a complaint.

But for me to say MRL should do something differently, such as waive the outstanding invoice, I first need to be satisfied MRL did something wrong. So, in this situation, I'd need to be satisfied MRL have failed to act in line with the agreement Miss S entered into when invoicing her for their fee. Or, if I think MRL did act within this agreement, I'd need to be satisfied MRL have acted unfairly in some other way. And in this situation, I don't think that's the case. And I'll explain why.

But before I do, I think it would be useful for me to set out what I've been able to consider, and how. I recognise Miss S has stated she acted on the advice of the FSCS, and her pension provider, when instructing X after an interim refund had been made. While I don't in any way doubt Miss S' testimony regarding this, I must also make it clear MRL are not responsible for any advice, or mis-advice, Miss S was given by another business. And so, this hasn't impacted the decision I've reached.

Nor am I able to consider the fact Miss S has already paid a fee to another company relating to the same refund. While I understand the financial impact this will cause to Miss S, this doesn't automatically mean I can say MRL shouldn't charge for their fee as they were later to issue an invoice.

Instead, I've focused on the agreement Miss S entered into when she instructed MRL. I've read the Terms of Engagement at length, and these explain that *"The contract shall commence on the date you sign and return these terms to us and, unless terminated earlier, will continue until compensation is recovered for you by us and you have paid the fee, or we have advised you in writing that in our opinion your claim is unlikely to succeed and we are declining to act for you"*.

Miss S signed and agreed to these terms on 10 July 2018. And I've seen in a letter sent to Miss S in March 2020 regarding the interim refund, MRL state clearly that *"Although you have received an interim payment from the FSCS we believe there are still grounds for further compensation. Therefore, we haven't closed your case...Should we be successful in obtaining further compensation then our fee will continue to apply to the new award as per our current Terms of Engagement with yourself"*.

The terms also explain, regarding cancellation, that to cancel the agreement Miss S was able to do so by telephone, e-mail or by letter. But, that if Miss S did this after an offer of payment had been made, MRL would *"enforce our charges of 25% plus VAT... plus any fees which may have been incurred by us in the administration of your claim"*.

Miss S has since confirmed to our service directly that she didn't cancel her agreement with MRL directly. But instead removed their authority to act on her behalf with the FSCS, and then continued with the claim after instructing X.

So, based on all the above, I'm satisfied Miss S didn't cancel her agreement with MRL as I don't think removing their authority with the FSCS, and appointing another company, in any way impacts the legally binding agreement she'd entered with MRL. And I think MRL made it reasonably clear to Miss S that they didn't deem the interim refund to be the end of the claim, setting out clearly their expectation for a further refund to be due.

So, I think the agreement was still in place at the time Miss S chose to instruct X and even more crucially, when she received the second refund made after the interim by the FSCS. And, that this refund was paid on a claim originally brought to the FSCS by MRL. So, because of this, I don't think I'm able to say MRL have acted outside of the agreement Miss S held with them when invoicing her for their fee, which falls in line with the agreement's fee structure.

But as I've set out above, as well as thinking about whether MRL have acted within the agreement, I must also be satisfied they acted fairly when doing so.

I appreciate Miss S doesn't think they have, explaining why she doesn't think they've completed work that is equivalent to the fee they are charging for. But I must make it clear that when Miss S entered into the agreement with MRL, she was entering into a "no win no fee" agreement, meaning MRL's fee is based on the value of the refund, not the amount of work they complete.

But even so, for completeness, I have thought about their actions during the claim. And having done so, including a review of their system notes, I'm satisfied MRL completed work of value to the claim, submitting it to the FSCS initially as I would expect them to do.

I've also seen following the interim refund, MRL attempted to contact Miss S on several occasions without reply. And I've no reason to believe this information to be incorrect, especially considering Miss S has accepted she instructed X to do the same work and so, I wouldn't expect her to engage with two similar processes.

So, I think MRL were prevented from completing any further work on the claim. And I must also stress that at the point of the interim refund, I think MRL would've completed most of the work needed to secure the overall refund Miss S received. So, I don't think I can say MRL acted unfairly here.

However, I do note MRL's invoice has come a significant period of time after Miss S received the second refund. And I do appreciate this will likely have come as a shock to Miss S, and I don't doubt her testimony that she may not have the funds to pay it in full immediately.

But crucially, I can see that in early 2021 MRL did manage to speak to Miss S and explain they would expect to receive a fee for any further refund she received. So, I do think Miss S should've been reasonably aware a fee would be due. And I can see between Miss S receiving the refund, and MRL issuing the invoice, that MRL tried to contact Miss S on several occasions without answer, or response. I would've expected Miss S to engage with MRL when she received their contact, and I can't see that she did.

So, because of the above, I don't think I'm able to say MRL have acted fairly, based on the evidence and information supplied to me. And because of this, I don't think MRL need to do anything more on this occasion.

I understand this isn't the outcome Miss S was hoping for. And I appreciate this leaves her with a significant fee to pay, that she's already paid to another company. If Miss S feels she instructed another company on the mis-advice of another business, she should raise this complaint with the businesses involved directly.

And I recognise Miss S feels MRL should engage with X to come to some form of arrangement. This wouldn't be for MRL to pursue, or instigate, and so it would be down to Miss S to mediate this, should both companies wish to comply which they have no obligation to do. But in line with our service's approach and expectations, I would expect MRL to consider the length of time it has been since Miss S received the refund and act positively and sympathetically towards this when looking to recover their fee from Miss S.

My final decision

For the reasons outlined above, I don't uphold Miss S' complaint about Money Redress Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 August 2024.

Josh Haskey
Ombudsman