DRN-5147199

The complaint

Mr C complains about the fee charged by Money Redress Limited ("MRL") after he received a successful outcome to a complaint it raised against a pension provider on his behalf.

What happened

In mid-2018, Mr C signed an agreement with MRL for it to act on his behalf in recovering compensation in relation to a pension he'd held. The agreement provided that, in the event of a successful claim, MRL would be paid a fee equivalent to 25% plus VAT (a total of 30%) of the sum recovered.

The firm who was responsible for the sale of the pension had ceased to trade so MRL submitted a claim to the Financial Services Compensation Scheme (FSCS). The FSCS awarded Mr C compensation in early 2019. It said it estimated that Mr C's total loss was £173,662 but could only pay him £50,000 due to its compensation limits. MRL took its fee of £15,000 and the remaining £35,000 was transferred to Mr C.

In March 2019, MRL began to pursue a claim against the pension provider on Mr C's behalf. The pension provider rejected the complaint, so MRL referred it to the Financial Ombudsman Service.

An ombudsman issued a final decision upholding Mr C's complaint in February 2024, which was accepted by Mr C. The pension provider asked MRL to assist it in gathering some information from a third party so it could calculate the redress owed to Mr C. MRL asked Mr C to sign a Letter of Authority (LOA) so it could request further information from the third party. Mr C signed the LOA but he queried the fees he would be charged and said he believed that the Financial Conduct Authority (FCA) fee cap applied.

MRL told Mr C that the fee cap didn't apply. After some further discussion, Mr C said he was formally withdrawing his authority for MRL to act on his behalf. MRL said he may still be invoiced for fees for the successful outcome of his complaint achieved through work carried out by MRL.

A few weeks later, MRL sent Mr C an invoice for £37,098. It said this was based on the calculations provided by the FSCS.

After Mr C raised a complaint, MRL said it had acted in line with the terms of engagement Mr C had agreed to. It said the fee cap that came into effect in March 2022 didn't apply to Mr C's case. MRL said that because Mr C had cancelled its authority to act on his behalf, it hadn't had the benefit of reviewing the pension provider's redress calculation to understand how much compensation was payable. It said the invoice sent to Mr C in April 2024 might not be an accurate representation of monies Mr C had or was due to receive. If Mr C could provide MRL with any communication from the pension provider to show its calculations it would be happy to issue Mr C with a revised invoice.

Mr C asked our service to consider the matter. He disagreed that the fee cap didn't apply to his case. He was also unhappy that MRL had based its figure on a suggested figure (from the FSCS) not an actual one.

Our investigator wasn't persuaded that the fee cap applied. But she recommended that MRL recalculate its fee based on the redress Mr C received, once it had received evidence of this from Mr C. She noted that Mr C had told us he was currently in an Individual Voluntary Arrangement (IVA). She said we have no power to direct claim management companies to enter into payment plans but this was something they may choose to do. She said we would expect MRL to treat Mr C positively and sympathetically based on his circumstances.

Mr C disagreed with our investigator's outcome. He made some further comments about why he believed the fee cap should apply. He also made some comments about why he felt MRL had failed to comply with GDPR guidelines, and this meant the TOE was null and void. He said no further fees should be paid.

MRL said it agreed to our investigator's recommendations and had sent Mr C an email requesting details of his full calculation from the pension provider so it could recalculate his invoice, but his response was unhelpful.

As Mr C disagrees with our investigator's outcome, the complaint has been passed to me 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.

Having done so, I've reached broadly the same conclusions as our investigator. I'll explain why.

I've considered everything Mr C has told our service, but I'll be keeping my findings to what I believe to be the crux of his complaint. I wish to reassure Mr C I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

When Mr C engaged MRL's services in 2018, he signed its Terms of Engagement (TOE) which set out its fee of 25% plus VAT (30% total) of the compensation offered to him. Mr C signed another TOE in July 2021. There was no change to the fee being charged.

The TOE also provided examples of how the fee would be calculated. So, I'm satisfied Mr C was given clear information about the fee he would need to pay in the event of a successful claim.

Mr C says the fee cap introduced by the FCA in 2022 should apply to his claim. MRL says the cap doesn't apply because the contract was in place prior to the introduction of the cap.

The FCA's policy statement, which introduced the fee cap from 1 March 2022 says the fee cap wouldn't apply to pre-existing contracts except in certain limited circumstances where contracts were changed after the cap had come into force. It goes on to say:

"*The cap will still apply to fees under pre-existing contracts if:*

- *the contract is varied after the rules come into force to increase the fee; or*

- *the fee is added to the contract after the rules come into force, or*
- *the fee relates to a new claim that is added, after the rules come into force, to a pre-existing contract; or*
- *the customer's authorisation or instruction for the CMC to act occurs after the rules are in force*.

Apart from in the very limited specific circumstances listed above, the cap will only apply to fees imposed under contracts that are entered after the rules come into force."

MRL has provided evidence to show that it began to pursue the claim against the pension provider in 2019, which was a long time before the fee cap was introduced. Mr C has suggested that the fourth bullet point applies because he signed a new LOA in March 2024. He's also suggested that MRL didn't have the authority to act on his behalf because previous LOAs had expired.

MRL's TOE says ""*Letter of Authority" means the letter addressed to the Company from the Client setting out that We are authorised by the Client to approach, contact and liaise with the Company in respect of a Claim*."

It's not unusual for a financial business to require a claims management company to send a recent LOA before it will look into a complaint. But this doesn't mean that the contract needs to be renewed every year or that MRL's authority to act for Mr C ends after a year.

The duration of the contract was set out in the TOE. Unless terminated earlier the contract would continue until the later of several scenarios including: "(*ii) Compensation is recovered for You by Us and You have paid the Fee in respect of the final resolution of the last outstanding successful Claim*;"

The TOE also sets out what would happen in the event that Mr C cancelled the contract. It says that Mr C had the right to cancel the contract at any time after the 14 day Cooling Off Period but he may be obliged to pay MRL's fee. It also says:

"*If this contract is cancelled (by You or Us) after a reasonable offer of Compensation has been made), We will be entitled to Our Fee (as described in clause 7) on any Compensation that is paid to You or would, but for Your rejection of such offer, have been paid to You*."

Mr C cancelled his contract with MRL after the Financial Ombudsman Service had issued a final decision upholding his complaint against the pension provider. The pension provider was legally bound to pay the compensation awarded upon acceptance from Mr C. So, I think it was fair for MRL to charge Mr C its fee.

Mr C has provided another of comments about why he feels MRL has breached data protection guidelines and the TOE is null and void. It isn't our service's role to ensure that businesses comply with data protection law. But we do have the power to award compensation to consumers who have been caused distress and inconvenience by the way a business has handled their personal information.

I'm satisfied from the information I've seen that Mr C gave his consent for MRL to pursue a claim against the pension provider and its work resulted in a successful claim for him. So, I'm not persuaded that the fee doesn't apply, or any compensation needs to be paid to Mr C in relation to the points he's raised.

I can understand why MRL decided to issue Mr C with an invoice for its fee based on the FSCS's hypothetical estimate of what was due to him. As Mr C had cancelled the contract and withdrawn his authority for MRL to represent him, MRL didn't have any other information to base the fee on. However, I can see from internal emails that MRL recognised that the

redress Mr C received was unlikely to be above the Financial Ombudsman Service's award limit, yet its invoice was based on a higher amount.

I think MRL should have asked Mr C if he'd received the redress or a calculation of the redress and how much this was before sending him the invoice. I also think it would have been helpful if the covering letter sent with the invoice had advised Mr C that MRL would be willing to recalculate its fee if he provided information to show that the redress he'd receive from the pension provider was lower than the estimate.

MRL did say it would be willing to revise its invoice upon the receipt of information showing the pension provider's calculations in its response to Mr C's complaint. I think this would be reasonable to resolve the complaint. While Mr C has shared this information from us, he asked us not to pass this on to MRL. I don't think it would be fair for me to tell MRL to revise its invoice without sight of this information. So, MRL should recalculate its invoice once it's received the redress calculation information from Mr C.

Mr C has also mentioned being in an IVA. MRL says it wasn't aware of this, but it would be willing to take this into consideration if Mr C provides further details. It also says it has a detailed debt policy whereby clients are treated positively and sympathetically. If Mr C is unable to pay the fee in full, I'd suggest he contacts MRL to discuss the possibility of a payment plan.

Putting things right

MRL should send Mr C a revised invoice for its fee once it has received the pension provider's redress calculation from Mr C.

My final decision

Money Redress Limited has already made an offer to revise its invoice upon the receipt of further information from Mr C to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Money Redress Limited issue a revised invoice once it has received the relevant information to allow it to fairly calculate its fee.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 January 2025.

Anne Muscroft
Ombudsman