

The complaint

Mr and Mrs T are unhappy that Symmetric Systems Ltd (trading as Bank-Smart) has asked them to pay their commission fee, and breach of contract charges for mis-sold payment protection insurance (PPI) and default charge claims. Mrs T says she hasn't received any compensation.

For ease of reading I will refer only to Mrs T in my decision.

What happened

Mrs T said she signed a letter of authority (LoA) in 2019 asking Bank Smart to act as her representative to see if she was due any compensation from several of her lenders. Mrs T said Bank Smart told her in December 2019 that her claim against her lender, I'll call "J" had been successful, and that she was to be awarded compensation of £831.05. From this Bank Smart said they'd deduct their fee of £249.32.

But Mrs T said she's never received any compensation and has since been bombarded with invoices asking her to pay Bank Smart's fees, including breach of contract charges. She said Bank Smart has said the amount she owes is now £831.05, the amount of her compensation. They've said she'd been in breach of her contract for failing to provide requested information.

Mrs T said Bank Smart had told her she needed to verify her details with one of her lenders I'll call "B". And Mrs T said she'd visited her local branch to do this. But because of Covid restrictions she hadn't been able to chase this up.

Bank Smart said Mrs T had signed an LoA in 2012, and another LoA in 2019. And that they'd asked her on several occasions to verify her details, which she hadn't done. They said their fees and charges were justified.

Mrs T didn't agree and referred her complaint to us.

Our investigator said Bank Smart hadn't been clear as to what their fees and charges were for. She'd asked for a breakdown but Bank Smart hadn't provided her with the details. Our investigator didn't think Bank Smart has acted fairly or reasonably in their actions with Mrs T. She said the trouble and upset caused by this had been considerable. To compensate Mrs T she said that Bank Smart should waive any breach of contract charges, provide Mrs T with a breakdown of her successful claims and fees they've charged. And to pay Mrs T £200 for trouble and upset.

Bank Smart didn't agree saying their breach of contract charges were justified. They asked for 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.

Having done so I'm upholding this complaint. I'll explain why.

I can understand Mrs T 's frustration has it hasn't been made clear exactly what services Bank Smart has provided for her, or what claims they have made and charged her for. Mrs T doesn't dispute that she authorised Bank-Smart to act on her behalf. But complains that she is being asked to pay fees for compensation she has yet to receive. Mrs T has said she has been bombarded with paperwork, threats of breach of contract and unfair added charges. In reaching my decision I've looked at whether Mrs T had agreed and understood what services Bank Smart was offering. And to see whether their terms and conditions have been clear. I'll also consider whether Bank Smart have acted fairly and reasonably in their dealings with Mrs T.

I can see three LoA's have been signed. The first in July 2012, this was signed by both Mr and Mrs T and was for a specific lender I'll call "L". The LoA states at the top that this is in connection with "*PPI/Penalty Charges Multicclaim.*" There is an added note made by either Mr or Mrs T that says:

"Think we already did, but could you check please"

As this doesn't relate to any of the invoices Mrs T has been charged with or any success claim fee. I don't think Bank Smart can justify presenting this LoA as their authorisation for subsequent successful claims for other lenders.

The second LoA was signed solely by Mrs T in May 2019, and this indicated several lenders for loans and credit cards. And is headed "*Letter of Authority – Default charges*"

From this LoA I can see Bank Smart sent in the same month a subject access request to lender "B" They responded by asking for Mrs T to verify her account.

I can also see that Bank Smart has sent us their terms and conditions. But there isn't any date to say which LoA these terms and conditions relate to. And only the LoA signed in July 2012 has the pre fix before signature that says:

"I have read, understood and agree to be bound by the terms and conditions..."

But I've looked at the terms and conditions that Bank Smart has sent to us and these are clear about a fee for a subject access request – usually £10. And their success fee for when the claims process has been started. As lender "B" needed to verify Mrs T under the subject access request, I don't think the claims process had begun. So, I don't think Bank Smart can say Mrs T is in breach of her agreement when a claim for default charges is yet to be made.

The third LoA is dated July 2019 again signed only by Mrs T, and is specifically for lender "J" and relates to a PPI claim. I haven't seen an offer of compensation from lender "J". But Bank Smart say an offer of £831.05 was made in October 2019. And Mrs T says Bank Smart told her in December 2019 she'd been awarded £831.05, and asked for their success fee of £249.32.

Bank Smart said their success fee for this was £249.32. But the Financial Guidance and Claims Act 2018 (the Act) required the Claims Management Regulator to introduce a fee cap for PPI claims. The fee cap came into force on 10 July 2018 – before Mrs T signed the agreement with Bank Smart for lender “J”. From this date, claims management companies couldn’t legally charge a success fee of more than 20% plus VAT.

So I calculate Bank Smart’s success fee to be £199.45. This would leave a balance owed to Mrs T of £631.60. And as she hasn’t had the benefit of this amount since December 2019 Bank Smart should add 8% simple interest from then until the payment is made to Mrs T.

This has been a very distressing time for Mrs T, I can see she has tried to resolve this with Bank Smart through a variety of channels. I don’t think it’s unreasonable to have expected Bank Smart to have been able to provide a detailed breakdown of the claims they’d submitted for Mrs T. As well as being able to show any successful or unsuccessful claims they’d made and the success fees they’d charged. So I agree with our investigator that Mrs T should be paid £200 for the trouble and upset that has been caused.

My final decision

I uphold this complaint. And ask Symmetric Systems Ltd (trading as Bank-Smart) to

- cancel any breach of contract charges
- pay Mrs T the balance, after their success fee of 20% plus VAT has been deducted from her compensation awarded by lender “J”, plus *8% simple interest; and
- pay Mrs T £200 for trouble and upset.

*If Symmetric Systems Ltd (trading as Bank-Smart) considers that it’s required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs T how much it’s taken off. It should also give Mrs T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs T and Mr T to accept or reject my decision before 22 March 2021.

Anne Scarr
Ombudsman