

## **The complaint**

Mr M complains that Brazier Consulting Services Ltd (Brazier) failed to pursue a mis-sold payment protection insurance (PPI) complaint which meant he's lost the opportunity to have his claim investigated.

## **What happened**

Mr M said he was "cold called" by Brazier about making a complaint about mis-sold PPI. He said he signed their forms and waited to hear about his claim. But despite calling, emailing and texting Brazier hadn't given him a resolution to his claim. Mr M said the odd time when he'd get a response from them, they just said there was a backlog because of high volumes and the pandemic. Mr M said he'd instructed Brazier to pursue a mis-sold PPI complaint with a lender who he'd taken out a loan with in 1990, and he just wanted an answer whether his claim was successful or not. Mr M complained to Brazier, but they didn't respond. He said after contacting the lender they told him they hadn't received a complaint from Brazier. Mr M referred his complaint about Brazier to us.

Our investigator asked Brazier to provide their business file so that we could consider what they'd done for Mr M in pursuance of his mis-sold PPI claim. But Brazier didn't provide the requested information. Our investigator said he couldn't say whether Mr M's claim would have been successful but said Mr M had suffered a loss of opportunity. He asked Brazier to compensate Mr M £250 for this.

Brazier didn't respond to our investigator's outcome, so Mr M'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.

It's unfortunate that Brazier hasn't engaged with our investigation. They haven't provided for example any instruction authority from Mr M, nor any case notes, call recordings or lender responses. Where the evidence is incomplete, inconclusive, or contradictory, 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 explain why.

Mr M's main dispute centres around the potential for a mis-sold PPI claim with his lender. Mr M said he was hopeful of success as he'd had a loan account with them in 1990.

Firstly, Mr M said Brazier had cold called him to make a claim that he'd been mis-sold PPI. As Brazier haven't engaged with us I can't see how contact was made with or by Mr M. The Claims Management Code of Business sourcebook (CMCOB) sets out guidance provided to claims management companies (CMC) by the regulator the Financial Conduct Authority (FCA) for CMC's to follow. CMCOB 2.1.5 R says:

*“A firm must not carry out a cold call in person.”*

The FCA deemed 29 August 2019 as the deadline for PPI claims to be made. For some lenders the submission of a letter of authority signed by the complainant instructing a CMC to act for them was accepted as a claim for mis-sold PPI and no further information was needed for them to investigate the mis-sold PPI claim. But for others a formal complaint with supporting information was required. Any claim received after the 29 August 2019 deadline wouldn't have been accepted by the lender(s) unless there were exceptional circumstances for doing so.

Mr M said his lender told him they hadn't received a complaint about mis-sold PPI from Brazier. But his lender has since shown us that they did receive a complaint from Brazier about mis-sold PPI on 12 September 2019 but were unable to locate Mr M's account. They said they responded to Brazier via a spreadsheet, to confirm they were unable to locate an account for Mr M. And that they hadn't heard anything from Brazier since they responded to them in 2019.

Mr M's lender can only show they received a mis-sold PPI complaint from Brazier in September 2019, after the deadline for making such complaints. And as I outlined above for a complaint to be accepted after the August 2019 deadline there had to be exceptional circumstances. Mr M said he was called by Brazier to make a claim for mis-sold PPI. I think this was unlikely to have happened after the August 2019 deadline had passed. So, on balance I think Mr M would have instructed Brazier to act for him before the deadline for making such claims had passed.

Mr M's lender said they told Brazier, in October 2019, they couldn't locate an account for Mr M. I would have expected, as Mr M's lender couldn't find an account for Brazier to seek further information from Mr M to help identify his account details. I haven't seen any evidence that shows Brazier took any follow up action to establish the details of the loan account Mr M said he'd with his lender in 1990. CMCOB 6.1.4 R says:

*“The firm must pass on to the customer:*

*(a) any information received from a third party which is addressed to, or meant for, the attention of that customer; and (b) any request received by the firm from a third party for the supply of information by the customer that the firm does not already hold.*

Also

*“The firm must pass on the information or request:*

*(a) promptly, and in any event within ten business days of receiving the information or request; and (b) in a durable medium.*

CMCOB 6.1.9 says:

*“A firm must provide each customer with an update on the progress of the claim at least once every six months, in a durable medium.”*

Mr M has shown that Brazier sent a general update notification to him in February 2020 about the high volumes of complaints received by lenders before the August 2019 deadline and that this would cause some delay. I think Mr M would take from this that Brazier had submitted his claim to his lender before the August 2019 deadline. And that Brazier were waiting for his lender to investigate his claim. I can also see an automated acknowledgement sent to Mr M after he emailed Brazier in August 2022, But I haven't seen any updates to Mr M about the status of his mis-sold PPI claim, requests for information, or to say his claim had been submitted too late or couldn't be investigated.

So, on balance I think Mr M would have instructed Brazier to submit a letter of authority to his lender before the August 2019 deadline. As Brazier haven't provided any evidence of the actions they took I think its most likely they've caused Mr M to lose the opportunity for a mis-sold PPI complaint to be investigated as they either submitted his mis-sold PPI complaint after the August 2019 deadline. Or they'd failed to seek sufficient information from Mr M about the loan account he'd with his lender for them to locate his loan account.

### **Putting things right**

I can't know or speculate whether Mr M would have had a successful mis-sold PPI claim with his lender or not as there are several factors that lenders would have needed to consider.

But Brazier haven't provided any evidence to show they acted fairly and reasonably. And on the evidence, I've seen I'm not persuaded Brazier carried out Mr M's instructions to pursue his mis-sold PPI claim with his lender. And I think this means Mr M's lost the opportunity for a mis-sold PPI claim to be fully investigated as its now over three years since the deadline has passed for these claims to be made. I think Brazier should compensate Mr M £250 for this.

I understand Mr M probably won't feel as though this addresses his potential financial loss or feeling of being let down by Brazier. But I hope he can understand my thinking for reaching my decision.

### **My final decision**

I uphold this complaint. And ask Brazier Consulting Services Ltd to compensate Mr M for the distress and inconvenience caused by paying him £250 for loss of opportunity.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 May 2023.

Anne Scarr  
**Ombudsman**