

The complaint

Mr C complains about The Claim Experts Ltd trading as Impakt Claims (“Impakt”) and the success fee they invoiced him following his successful claim for mis-sold lending.

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 2020 Mr C instructed Impakt to pursue a claim for mis-sold lending against lender A on his behalf. But Mr C has stated he didn’t receive any further contact from Impakt after this and so, he dealt with lender A directly and it was this contact that led to his successful refund. So, when Mr C received an invoice from Impakt requesting a success fee calculated on the refund he received, he felt unfairly treated and raised a complaint about this.

Impakt responded to Mr C’s complaint and didn’t uphold it. They were satisfied it was their submission to lender A that resulted in Mr C’s claim being included in lender A’s scheme of arrangement. And because of this, they thought they were fair to invoice Mr C for their success fee of £266.94, which was based solely on the cash refund Mr C received rather than the total financial award, which also included a balance write off. So, they didn’t think they needed to do anything more. Mr C remained unhappy with this response, so he referred his complaint to the Claims Management Ombudsman, a Financial Ombudsman service.

Our investigator looked into the complaint and upheld it. They didn’t think they had been provided with evidence to show Impakt submitted a claim to lender A that resulted in the refund Mr C received, nor did they think they had satisfactory evidence to show Mr C was contacted between 2020 and being invoiced for a fee. So, they recommended Impakt refund Mr C the amount he paid of £266.94 and pay him £150 compensation to recognise the distress and inconvenience he was caused by the invoice itself.

Mr C accepted this recommendation. But Impakt didn’t and they provided further information they felt supported their position. Our investigator considered this information, and they requested further evidence to show emails were sent to Mr C specifically, as well as evidence to show exactly when a claim was submitted. Impakt didn’t provide this information and so, our investigators opinion remained unchanged. As Impakt didn’t respond, we must assume they continued to reject our investigators original conclusion and so, 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 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.

Before I explain why I've reached my decision, I think it would be useful for me to set out what I've considered and more importantly, how. In line with our service's approach, which is documented clearly on our website, any decision I reach must be based on the evidence provided by both parties. And crucially, where evidence hasn't been provided despite it being requested, in line with our approach I must make adverse inferences to this failure to comply with our service's request.

In this situation, I think it's clear, and not in dispute, that Mr C did instruct Impakt to pursue a claim on his behalf in 2020. And I've seen a letter of authority to support this. But crucially, an instruction alone isn't enough to satisfy me that a success fee should be payable, or that Impakt acted fairly when invoicing for one.

For me to be satisfied that Impakt were fair to invoice Mr C for a fee, I must also be satisfied that they completed work of value on the successful claim. And for me to be satisfied of this, I would need to see evidence that Impakt did submit a claim to lender A, and that they then engaged with lender A, and Mr C, during the claim process.

In this situation, while Impakt have provided a letter they feel evidenced the claim they made, this letter isn't dated, nor is it addressed. And Impakt haven't provided any screenshots of system notes that align with this letter to show where it was sent, when it was sent, and to whom. Nor have they provided any direct contact received from lender A about Mr C's claim, despite our service's request. So, because of this, I don't think this letter is enough to satisfy me Impakt did make a claim to lender A on Mr C's behalf.

And I note that while Impakt did send copies of bulk emails they say were sent to several customers, including Mr C, I can't see Impakt responded to our investigators request for evidence to show Mr C was included as part of the mailing list these e-mails were sent to.

So, based on the evidence I have available to me, I don't think I've been satisfied that Impakt submitted a claim to lender A, or that they completed any work of value to the successful claim and refund Mr C received.

Because of this, I'm unable to say Impakt were fair or reasonable to invoice Mr C for their success fee. So, I've then turned to what I think Impakt should do to put things right.

Putting things right

When thinking about what Impakt should do to put things right, any award or direction I make is intended to place Mr C back in the position he would've been in, had Impakt acted fairly in the first place.

In this situation, had Impakt acted fairly, I don't think Mr C would've been invoiced for a success fee, as I haven't been persuaded that Impakt completed work of value to justify this fee. So, I'm directing Impakt to refund the £266.94 fee Mr C paid to them, to place him back in the financial situation he should've been in.

And had Impakt not invoiced Mr C for their fee, I think this would've prevented the confusion and worry Mr C would've felt when he received an invoice, and unexpected contact, from a business I can't be satisfied he had received any contact from for years prior. So, I think Mr C should be compensated for the stress and worry this would've caused him.

Our investigator recommended Impakt pay Mr C £150 to recognise this impact. And having considered this recommendation, I think it falls in line with our services approach and what I would've directed, had it not already been put forward. I think it is significant enough to recognise the emotional impact to Mr C, alongside the fact he's been without access to the

amount he paid Impakt for a period of time. So, this is why I won't be directing Impakt to pay interest on this refund. But I think it also fairly reflects the size of the fee Impakt requested and their rationale about the fee and that it was based solely on the cash refund Mr C received when Impakt's terms and conditions allowed them to calculate the fee based on the balance write off as well. So, this is a payment I'm directing Impakt to make.

I note our investigator also recommended Impakt waive their fee. But the directions I've set out above place Mr C in this same situation, as he will receive the amount he paid Impakt back to him meaning no success fee is paid on the refund he received from lender A.

I recognise this isn't the outcome Impakt were hoping for. And I want to make it clear again that my decision is based solely on the evidence that has been made available to me. It may be that Impakt feel they have additional evidence that hasn't been provided, that supports their position. But crucially, Impakt have been given a fair opportunity to provide this, in line with our services approach, and my decision makes the relevant inferences to this failure to provide this information.

My final decision

For the reasons outlined above, I uphold Mr C's complaint about The Claims Experts Ltd trading as Impakt Claims and I direct them to take the following action:

- Refund Mr C the £266.94 fee he paid them; and
- Pay Mr C £150 compensation.

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

Josh Haskey
Ombudsman