

The complaint

Miss G complains about The Claims Experts Ltd trading as Impakt Claims ("Impakt") and the success fee they invoiced her following her 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 2022 Miss G instructed Impakt to pursue a claim for mis-sold lending against lender A on her behalf. But Miss G has said she received no contact from Impakt after this point, resulting in her engaging with lender A directly, through their scheme of arrangement, to secure a successful refund. So, when she received an invoice from Impakt requesting their success fee based on this refund, Miss G felt unfairly treated and raised a complaint about it.

Impakt responded to the complaint and didn't uphold it. They stated they had submitted Miss G's claim to lender A and had engaged with lender A and the scheme of arrangement on Miss G's behalf, providing her with updates during this process until she unsubscribed from these. So, they thought the work they completed resulted in the refund Miss G received and because of this, they felt they were fair when invoicing Miss G for their fee, which remained payable. So, they didn't offer to do anything more. Miss G remained unhappy with this response, so she referred her 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 that showed Impakt had submitted Miss G's claim to lender A, or that they had completed work of value that led to the refund Miss G received. So, based on what information they did have, they recommended Impakt waive their invoice.

Miss G accepted this recommendation, but Impakt didn't. And Impakt provided further information they felt supported their position. Our investigator considered this information and requested further evidence which included evidence to show a claim was submitted and the work Impakt completed on the claim including correspondence with lender A and Miss G. But Impakt failed to provide this evidence, despite several requests. So, our investigators original opinion remained unchanged. As Impakt didn't respond, we must assume they continued to disagree with the original recommendation 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 services request.

In this situation, I note it's not in dispute by either party that Miss G instructed Impakt to pursue a claim for mis-sold lending against lender A in 2022. And this is supported by a letter of authority that Impakt has provided. But crucially, this letter of authority 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 Miss G 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 it was this and Impakt's resulting work that led to the refund Miss G received.

In this situation, while Impakt have provided a summary and chronology of what they believe happened during the lifetime of the claim, crucially they haven't provided evidence to show the actual submission they made to lender A, including when, how and where the claim was submitted. And while they have provided a chronology in a typed table, they haven't provided evidence such as screenshots of system notes to show where, and how, any of this correspondence was sent. Specifically, the chronology Impakt have sent doesn't evidence that Miss G or lender A was sent, or received, this contact.

This is despite our service requesting this evidence on several occasions, both before and after our investigators original view. So, in line with our services approach, I must assume that this evidence isn't able to be provided. And because of this, I'm not persuaded that Impakt completed work of value on the claim that satisfies me they have acted fairly when invoicing Miss G for their success. So, as I think Impakt have acted unfairly, I've then turned to what I think they 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 Miss G back in the position she would've been in, had Impakt acted fairly in the first place.

In this situation, had Impakt acted fairly, I don't think Miss G would've been invoiced for a success fee, as I haven't been persuaded the work Impakt completed was of value to the refund she received. So, I'm directing Impakt to waive the outstanding invoice Miss G is being chased for, to place her back in this position.

I note Miss G accepted this initial recommendation as resolution to her complaint. And part of our role is to act independently, and impartially, to both parties during our process. So, as Miss G accepted this recommendation, I don't intend to recommend anything further on this occasion.

I recognise this isn't the outcome Impakt were hoping for. 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 have been made available to me. It may be that Impakt feel they have additional evidence that hasn't been provided, that support 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 Miss G's complaint about The Claims Experts Ltd trading as Impakt Claims and I direct them to take the following action:

- Waive any outstanding invoice related to Miss G's successful claim, so she has nothing further to pay.

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

Josh Haskey
Ombudsman