

The complaint

Mr M's complaint is about a second charge secured loan he has with Lender E, and which is administered by Kensington Mortgage Company Limited trading as Acenden. He is unhappy that Ascenden started legal action to repossess his home as he believed the loan should have been paid since 2019 by the Payment Protection Insurance (PPI) he was sold alongside the loan and which Ascenden should have made a claim under.

What happened

In the autumn of 2006 Mr M took out an interest-only loan with Lender S for £30,000 (plus the premium for a PPI policy) over a term of 15 years. The loan was subsequently transferred to Lender E. As Lender E is not authorised to administer mortgages and secured loans, it appointed Acenden to do so on its behalf.

After March 2016 Mr M started having financial difficulties and stopped making payments to the loan. Acenden unsuccessfully attempted to contact Mr M on numerous occasions during 2016, 2017, 2018 and 2019 and became aware that Mr M was no longer living in the property the loan was secured on. On each visit Acenden arranged to be made to the property to attempt to contact Mr M thereafter, it was confirmed the property was tenanted. The last of these visits was in September 2021.

Acenden started legal action because of the arrears on the loan, which prompted Mr M to contact it in July 2019. It asked him for information about his income and expenditure, and when he told it of his medical situation, details of that too. Mr M provided Acenden with medical evidence in August 2019, which he explained meant that he could not work. There was no mention of the PPI policy in Mr M's correspondence. However, he did raise its existence in a telephone call and Acenden provided him with all the information it had about the policy, including details of the broker that had sold it and the product provider, with the addresses for both businesses. Mr M was very clearly told that Acenden could not assist him with the PPI policy and he would need to speak to the broker who sold it to him or seek advice from a financial adviser.

A payment arrangement was also entered into in August 2019, whereby Mr M would pay the monthly contractual payment plus an additional lump sum every six months. The arrears and fees balances totalled just under £20,000 at that time. The legal action was stopped in light of this agreement. However, the payment arrangement failed almost immediately and it appears that Mr M didn't respond to Acenden's requests for him to contact it thereafter.

Acenden started legal proceedings again in 2021. The term of the loan also ended in November 2021, which meant Mr M was due to repay the capital balance – he didn't do so. In the autumn of 2022 a possession hearing occurred and the Court issued a suspended possession order.

Mr M complained to Acenden about the action it was taking as he believed the payments to the loan should have been covered by the PPI policy. Acenden responded to Mr M's complaint in its letter of 18 November 2022 and explained to Mr M that the loan and PPI policy had been sold to him by an independent broker. Although the amount of the PPI

premium had been added to the amount borrowed, the PPI policy was completely separate from the loan and any documentation relating to it would have been sent directly to Mr M. Acenden went on to confirm that its records of conversations with Mr M from 2016 when his financial difficulties began didn't involve mention of the PPI policy. The first record it had of the policy being mentioned was 2019, when it confirmed details of the broker that had sold the policy, the insurer and the premium that had been charged. It was then not until 2022 that the PPI policy was raised again, when Mr M had said that he thought it should have covered the payments on the mortgage. Acenden didn't consider that it had done anything wrong, and the complaint was not upheld.

Mr M was not satisfied with Acenden's response and asked the Financial Ombudsman Service to consider his complaint. Acenden paused the legal action at this point.

When Mr M referred his complaint to this service, he added in some additional complaint points regarding the litigation process and communications, the outstanding balance and said that he wanted to set up a repayment plan. Acenden dealt with these as a separate complaint and provided Mr M with its response in a letter of 20 January 2023. Those issues don't form part of this complaint.

One of our Investigators considered the complaint, but she didn't recommend that it be upheld.

Mr M didn't accept the Investigator's conclusions. He said he believes that Acenden could have told him in 2019 that his PPI policy was with another company and provided him with details of the provider, as it had in 2022. He said that he hadn't received the information Acenden had sent him in 2019 and so he'd only been given this information after significant arrears had built-up and the term had expired. In addition, Mr M said that he had been told on a call in 2019, when he made a payment, that he didn't need to do anything further in relation to the PPI policy.

Mr M also highlighted that the loan had changed owners many times since the original sale and Acenden had also become involved with it – he had assumed that the PPI provider had changed when the owner of the loan had changed. He was not told otherwise until 2022. As such, Mr M believed that the Investigator had been unfair in her judgement as he had been misled by Acenden many times.

The Investigator considered Mr M's further comments, but she wasn't persuaded to change her conclusions. As agreement couldn't be reached, it was decided the complaint should be passed to an Ombudsman for consideration.

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.

Mr M has said that he was told in a telephone conversation in 2019 that he didn't need to take any action in relation to the PPI policy. He confirmed these comments were made following him making a payment. Not all of the telephone calls between Mr M and Acenden are available due to the passage of time. However, we do have the notes made at the times of each call. I have examined these notes and while there was one occasion that Mr M tried to make a payment over the telephone on 2 September 2019, no payment was able to be made. It was detailed that he would try to make the payment via Acenden's website. The only discussion recorded at that time was about this payment – there was no mention of the PPI policy. I also think it is unlikely that there would have been at that stage as a month earlier Mr M has specifically asked for information about the PPI policy to be sent to him,

having been told Acenden couldn't help him in relation to the PPI policy.

Acenden sent Mr M the information he asked for. I note that he's said he didn't receive it, but given he had specifically requested the information, I would have expected him to have chased this up when he spoke to Acenden the following month if it had not been received. It would also appear that the address Acenden sent its correspondence to was accessible to Mr M, despite him not living at the address, as it's clear he responded to some of the letters sent. In addition, I note that Mr M confirmed the address Acenden addressed its letter to was the correct one to send the information about the PPI policy to.

While Mr M has said that he was confused about who was responsible for the PPI policy, given the number of times the loan had been transferred between lenders, and he assumed the same thing had happened with the policy, I am not persuaded this was a reasonable assumption. Firstly, any letters he would have been sent about the change in ownership of the loan would have referred to only the loan, not it and the PPI policy. In addition, Acenden clearly told him it wasn't responsible for the PPI policy in 2019 and he needed to speak to the selling broker about it. He was then provided with details of the broker and the product provider.

I am satisfied that Acenden was not responsible for making a claim on Mr M's behalf on the PPI policy. Indeed, it is unlikely that it would have been able to do so even if it had tried, given it was not the policyholder and would not have been considered to have Mr M's authority to do so. Furthermore, I consider that had Mr M wanted to make a claim under the policy in 2019, Acenden had provided him with all of the information it was able to do so in order to assist him. I have seen no evidence that Acenden misled him about the policy, what he needed to do to make a claim, or of it having made a claim on the policy on his behalf.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 11 September 2023.

Derry Baxter
Ombudsman