

The complaint

Mr G and Ms M complain about The Protection Specialist Limited trading as The Fair Trade Practice (TPS) and the settlement fee they are being charged for work they think was completed by another Claims Management Company (CMC).

What happened

On 9 August 2019, Mr G and Ms M signed a letter of authority (LOA) instructing TPS to pursue a claim for mis-sold payment protection insurance (PPI) against lender H on their behalf. As the fee TPS is charging relates to an account in Mr G's sole name, I've referred to Mr G only where necessary throughout the decision.

Following this authority, TPS submitted a Data Subject Access Request (DSAR) to lender H on 20 August, with lender H responding on 17 December. TPS asked Mr G to complete a PPI questionnaire, which he did and returned to TPS on 14 January 2020. TPS then submitted Mr G's claim to lender H on 20 January.

But Mr G has explained he authorised another CMC, who I'll refer to as "W", to submit this claim on his behalf before TPS. And following W's work, the claim was upheld by lender H on 30 December 2019, with Mr G receiving his refund on 16 January 2020 and paying the associated settlement fee to W on 23 January, a week later.

Despite this, Mr G and Ms M continued to chase TPS for updates on the status of the claim. And in the summer of 2021, TPS were notified by lender H that Mr G's claim had been successful in January 2020. So, TPS invoiced Mr G for their settlement fee for this claim. Mr G was unhappy about this, so he raised a complaint.

Mr G didn't think TPS were fair to invoice him for a settlement fee as the claim had been successful due to the work completed by W in 2020. And Mr G explained he'd already paid W for this. So, he wanted TPS to waive their fee and cease chasing him for payment.

TPS didn't agree. They thought they'd acted in line with the terms of the agreement Mr G entered into when invoicing him for their fee. As the claim had been successful, they thought they were entitled to charge Mr G this fee and didn't think it was their fault Mr G had instructed two CMC's for the same claim. So, they didn't think they needed to do anything more and maintained the fee was payable. Mr G was unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They recognised TPS had been instructed by Mr G to pursue the claim that had been successful. And they appreciated that TPS had pursued this claim in good faith. But they were satisfied the claim was successful due to the work W completed, not TPS, as the claim was upheld before TPS submitted a full claim. So, they didn't think the fee was payable and thought it should be waived. But they did think TPS could invoice Mr G for the work they'd completed on the claim and explained due to the length of time since Mr G received the refund, TPS should act positively and sympathetically to any problems Mr G may have when paying the new invoice.

Mr G responded and accepted our investigator's recommendation but did query what TPS' new invoice was likely to be.

TPS rejected our investigator's recommendation, reiterating their belief they'd acted fairly, and in line with their terms and conditions by charging Mr G a fee based on the refund he'd received from lender H. They referred to other complaints our service had investigated and felt our investigators recommendation didn't fall in line with these. They also reiterated their point about lender H not making them aware of W's involvement when they received a response to their DSAR. So, TPS thought the fee remained payable. As TPS didn't agree, 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 to explain how I've considered the complaint. I'm aware TPS have referred to a previous decision we've made and explained why they think this supports their view the complaint shouldn't be upheld. But our service is an independent, impartial service where each complaint we receive is based on its own merits, considering that complaints individual circumstances. So, there are situations where a similar complaint can have very different outcomes. Because of this, I haven't thought about any previous decisions that have been made and instead focuses solely on the evidence I have available that relates directly to this complaint.

And for me to say TPS have acted fairly when invoicing Mr G for their fee, I need to be satisfied of two things. First, I need to be satisfied the fee they've charged falls in line with the terms and conditions of the agreement Mr G entered into. And if I think it does, I also need to be satisfied that the successful refund Mr G received resulted from the work TPS completed on the claim. And I don't think that's the case in this situation.

It's not in dispute that Mr G instructed TPS to pursue a claim for mis-sold PPI against lender H. And by signing the LOA, Mr G was agreeing to be bound by the terms and conditions of that agreement. I've seen the fee TPS are charging Mr G for and I'm satisfied it's been calculated in line with the fee information shown within those terms and conditions. So, I can't say TPS acted outside of these terms when issuing their invoice.

But as I've explained above, I also need to be satisfied TPS' decision to invoice Mr G was fair. And for me to agree this is the case, I need to be satisfied the work TPS completed resulted in the successful refund Mr G received. And I don't think it did.

I can see TPS submitted a full claim to lender H on 20 January 2020, after Mr G had provided them with a PPI questionnaire detailing why he believed the PPI was mis-sold. But I can see the month before this was sent, on 30 December 2019, lender H issued a final decision letter upholding Mr G's claim. And this letter was sent to, and contained a reference number of, W.

I've also seen Mr G received the refund into his account on 8 January 2020 and W's fee was paid to them on 16 January, all before TPS had submitted a claim to the lender. And I've seen TPS have calculated their fee based on the refund Mr G received in January 2020,

after lender H made them aware of this in the summer of 2021.

So, I don't think the work TPS completed led to the PPI refund Mr G received. And because of this, I don't think it's fair for them to charge Mr G that's based on a refund their work didn't secure.

I understand TPS won't agree with this. And I have thought about the fact lender H didn't make them aware a claim had already been submitted on the account when they responded to TPS' DSAR. But crucially, I don't think this impacts my decision. Even though lender H didn't make TPS aware a claim had already been submitted, I'm satisfied it had. And I don't think lender H's error in informing TPS means that Mr G should then have to pay TPS' fee as I'd essentially be asking Mr G to pay for lender H's mistake. And I don't think this is neither fair nor reasonable.

So, as I don't think TPS have acted fairly, I've then thought about what I think TPS should do to put things right.

Putting things right

I've already explained why I'm satisfied Mr G's claim was successful due to the work completed by W, not TPS. And I've explained Mr G has already paid W the associated for this work. So, I don't think it's fair for TPS to invoice Mr G for a fee calculated on a refund received following from another company and so, I think TPS should waive it.

But any direction or award I make must be fair to both parties. And in this situation, I think it's clear TPS acted in good faith, based on the instruction Mr G provided. I don't think TPS had any way of knowing the claim had already been successful and I think Mr G had a responsibility to understand which claims were being worked by each company. Although I appreciate Mr G has clearly been confused by this, I do think Mr G could've done more to prevent TPS from completing work on a claim that had already been successful.

So, I think TPS are entitled to invoice Mr G for the work they've completed on the claim as they were unaware it'd be of no value. But this invoice should not be based on the fee Mr G received in any way. And considering the length of time that's passed since Mr G received the PPI refund, I think it's reasonable for me to assume this refund has most likely been spent. So, if Mr G is unable to afford TPS' new invoice once it's been calculated, I'd expect TPS to act positively and sympathetically towards Mr G and look to agree an affordable way of paying the invoice. This would be between TPS and Mr G to agree and isn't something our service is able to mediate or comment upon.

My final decision

For the reasons outlined above, I uphold Mr G's complaint about The Protection Specialist Limited trading as The Fair Trade Practice and direct them to take the following action:

- Waive the outstanding invoice calculated on the PPI refund Mr G received.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Ms M to accept or reject my decision before 15 March 2022.

Josh Haskey
Ombudsman