

## The complaint

Mrs M complains about The Protection Specialist Limited's ("TPSL") handling of her claim for mis-sold Payment Protection Insurance (PPI). She says they didn't deliver the service expected and the claim was only successful because of her own actions. Mrs M complains that, despite this, they're chasing her for their fees.

## What happened

Mrs M instructed TPSL to look into PPI against Lender M. Lender M upheld the part of her complaint relating to undisclosed commission but not the part relating to mis-sale – so she asked TPSL to refer that part to our service. Mrs M says she needed to provide our service with further information, so she contacted TPSL to discuss this but the staff member was rude and unprofessional. Mrs M says our service upheld her complaint against Lender M and TPSL then issued her with an invoice for their fee. Mrs M says she was told by TPSL that Lender M had issued a settlement cheque, but later accepted this wasn't correct. Mrs M says she had to carry out a lot of the work herself and it was her personal effort which led to the successful complaint. Mrs M didn't feel TPSL provided her with the help and support she needed with the PPI mis-sale complaint, so she complained to TPSL.

TPSL responded and, in relation to Mrs M's concern about being chased for payment when she hadn't yet received her compensation from Lender M, they explained they have an expected timescale for when payment is usually made by Lender M. So, given that Mrs M hadn't at that point confirmed she hadn't received her payment, they chased her.

In relation to Mrs M's concern about receiving limited assistance from TPSL, they said when an adjudicator from our service didn't uphold Mrs M's complaint, TPSL said they shared this view with Mrs M and also discussed next steps with her. In relation to Mrs M's complaint about a staff member being rude and unprofessional, TPSL said this was a misunderstanding on what Mrs M was asking advice on. They apologised this situation occurred and, as the staff member was no longer working for them, they weren't able to provide her with feedback. They said they had asked managers in the team to give additional training to telephone based staff to avoid a situation like this reoccurring.

TPSL also addressed Mrs M's concern about them asking her to contact Lender M for an update. TPSL said it was Lender M who asked for Mrs M to contact them direct. And, in relation to Mrs M's complaint about being provided incorrect information, they said this related to an issue involving a cheque payment, and while this information was found to not be accurate after Mrs M had spoken with Lender M, it was based on the information they had at the time.

In relation to Mrs M's concern that her complaint about the service wasn't escalated during a call in November 2020, TPSL apologised and agreed they hadn't met their own expectations. They confirmed they'd asked team managers to reiterate TPSL's complaints procedure to staff based on telephones to avoid a similar situation occurring.

Our investigator looked into things for Mrs M. She thought TPSL had made errors and recommended they pay £100 compensation to Mrs M. TPSL agreed but Mrs M disagreed so the matter has come 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've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

*TPSL didn't provide the service they said they would but are asking for their fee*

My starting point is the terms and conditions. This says TPSL's services include investigation into whether a customer has a claim, making a claim on the customer's behalf and all associated services, which includes any referral to our service. And, it says their fees are 24% inclusive of VAT of any compensation awarded.

The information provided by TPSL shows they submitted Mrs M's complaint for mis-sold PPI to Lender M in August 2019. This was then followed up with a letter of complaint and a chaser asking for an update. Lender M responded and upheld the undisclosed commission part of the complaint but not the part about mis-sold PPI. TPSL then invoiced Mrs M for the part of the complaint which was successful and Mrs M paid their fee. Having informed Mrs M of Lender M's decision, TPSL then wrote to Mrs M to say they feel Lender M's response is unsatisfactory and they're referring the complaint to our service. They asked Mrs M to confirm whether the content of Lender M's final response letter seems consistent with her memory of the initial sale and if any information is inaccurate. They asked Mrs M if she had any additional information she'd like to add.

TPSL then submitted the complaint to our service and sent Mrs M a copy. TPSL then liaised with Mrs M and gathered further information requested by our service. An adjudicator at our service then issued a view not upholding Mrs M's complaint. TPSL then sent the view to Mrs M and said it's her decision on whether she would like to escalate this and they will act in line with her instructions. Mrs M then provided further information and TPSL then asked for an ombudsman to decide the complaint. The complaint was then upheld and Lender M wrote to TPSL with an offer of compensation.

Taking this all into account, I think TPSL have carried out the service they've agreed to, in line with the terms and conditions. The information shows they submitted the claim, gathered further information and referred Mrs M's complaint to our service. And, given that this has led to a successful outcome, I don't think it's unreasonable for TPSL to ask for their fee.

I understand Mrs M feels her complaint was only successful because she took the matter into her own hands. I've listened to a call between Mrs M and TPSL which followed our adjudicator's view to not uphold Mrs M's complaint against Lender M. During this call Mrs M asked TPSL their thoughts on how best to approach the complaint and the call handler says it's for Mrs M to provide any relevant information to support her complaint. I note during the call Mrs M said she feels she's having to carry out analysis of the evidence and it should be TPSL who, with their experience, should be taking a more leading role.

I do understand why Mrs M became frustrated at what she felt was TPSL not acting in her best interests. But, it's not uncommon for firms acting for clients to rely on their client to provide the information relevant to their case as they will be better placed to know what their financial circumstances were at the point they were mis-sold PPI. And, the terms and conditions do say customers agree to provide any information TPSL request.

I note Mrs M is concerned about the level of work carried out by TPSL and how this justifies their fee. I understand she's prepared to compromise and offer a lower percentage fee – and

an amount she feels reflects the work they've done and the service provided. TPSL charged a percentage success fee, not a fee based upon the amount of work they actually undertook. This means that any work done on any unsuccessful claims would be done for free. Where a claim was successful, TPSL's fee may be more or less than the value of the work they actually did. This is the risk taken by all parties in this type of agreement. Just because TPSL's fee might be higher than the value of the work they've done for Mrs M, it doesn't make their fee unjustified. In addition to this, I haven't seen any information which suggests the value of TPSL's work has been reduced so I don't think it's unreasonable for them to ask for their full fee.

I've also listened to recordings of calls between TPSL and Lender M during which TPSL ask for an update on payment following our service's decision to uphold the complaint. Lender M say Mrs M will need to contact them direct. There's a further call where TPSL again ask for an update and say they're looking at trying to get the cheque reissued and Lender M say Mrs M will need to get in touch with them to get that arranged. I understand TPSL then asked Mrs M to contact Lender M direct but I can see this was as a result of Lender M's insistence that Mrs M contact them.

I acknowledge Mrs M's point that TPSL's terms and conditions say a customer shouldn't contact a lender direct. I can see the terms and conditions say a customer shouldn't have any direct contact with a lender without TPSL's agreement. I can understand why Mrs M is concerned that she's been asked to make contact with the lender direct but I can't say this was through TPSL's own choice. It was Lender M who insisted on this on two occasions, so I can't say TPSL had any other choice but to ask Mrs M to contact Lender M to find out what was happening with the payment.

I can see Mrs M raises the point that TPSL's website refers to them guiding customers through the process and also their specialist in house team advising customers during the process. I acknowledge Mrs M feels this wasn't the service she received during a call in November 2020. I do understand why Mrs M feels this, and I've considered the issues arising out of this phone call later in my decision but I don't believe this means the fee should be reduced. Rather, this should be reflected in the upset and frustration caused to Mrs M.

I note Mrs M says the settlement of her complaint was in two parts. She's satisfied with TPSL's handling of the undisclosed commission part of her complaint and feels they did what they contracted to do – and Mrs M paid their fee for this. I can understand why, when comparing the two parts of the complaint, Mrs M feels the mis-sold PPI part of the complaint wasn't handled to the same standard as the undisclosed commission part of the complaint as the latter required more involvement from her. But, I think it's important to note the part of the complaint relating to mis-sold PPI went through the complete process – which involved our service. And, while the undisclosed commission part of the complaint was upheld following the letter of complaint, the mis-sold PPI part wasn't. So this, together with the adjudicator also not upholding the complaint, did require more involvement from Mrs M in order to challenge some of the points made.

### *Unprofessional and dismissive and not escalating Mrs M's complaint*

I've listened to the recording of the call between Mrs M and TPSL on 17 November 2020. This call follows the adjudicator's view so Mrs M asks what further information she can provide. The call handler says they've sent all information Mrs M has already provided. Mrs M says what she's expecting is advice from TPSL on what they feel were the weaknesses in her complaint and that's why she's paying them a fee for their experience. The call handler says "we're not financial advisors..." The call handler says they can refer

the complaint for an ombudsman decision but they can't say what the outcome will be. Mrs M asks how best she can challenge the adjudicator's findings and TPSL should know from their experience what she can provide. The call handler says that it's for Mrs M to provide the information that's relevant to her complaint.

Mrs M says she doesn't feel TPSL are representing her best interests and asks for details of a manager. The call handler gives the first name of a manager but not their surname or their email address. Later in the call, the call handler does give the manager's surname but not his email address. It's clear Mrs M is concerned about having to prepare all the further information herself and doesn't have confidence that everything she had already provided had been forwarded to our service. The call handler says she'll arrange for her manager to give Mrs M a call so she can go through her concerns. TPSL accept this call wasn't made.

I think there have been errors here in that the call handler didn't fully acknowledge that Mrs M wasn't asking for financial advice. She was pointing out that TPSL have expertise in this area and, given that she would be paying a fee if successful, she wanted to know what the areas of weakness were in her case and what additional information she could provide to help strengthen it. I don't think this was an unreasonable request on the part of Mrs M. Then, when asked, the call handler doesn't originally provide full details of her manager. It's clear Mrs M is very worried during the call and looking for some reassurance that her interests will be looked after and that a strong case will be put forward for an ombudsman to consider. So, I don't think it was unreasonable for her to ask for a manager's details. Even when Mrs M says she'd like to raise a complaint, and assured that a manager will call her, this doesn't happen. So, I think the service has fallen short of a reasonable standard here.

In addition to this, I can understand why this event has upset Mrs M. She feels her complaint was ignored when she first tried to raise it, but it was addressed at the point TPSL were seeking payment of their invoice. I do acknowledge this, and I think the complaints handling issue during the call on 17 November is an extension of the customer service issues experienced by Mrs M during this call.

### *Sending chasers for fees*

In June 2020, Lender M made an offer of compensation and TPSL then sent an invoice to Mrs M in July and asked for payment within 14 days. They said if Lender M hasn't yet settled the complaint then payment of their invoice isn't due so Mrs M must contact them immediately so they can amend their records. This is followed by three automated text messages in late July asking for payment. TPSL say they have a general expectation, based on experience, of when Lender M pays customers, so they send an invoice and chasers in line with that general expectation. They say if they're made aware a customer hasn't received their payment within their expected timescales, they adjust the timescales on their system to allow more time for the lender to pay. I've seen their text messages and they do ask Mrs M to let them know if she hadn't received payment, however it wasn't until 2 August that Mrs M told them she hadn't received payment so they didn't have any reason before this date to adjust the expected timescales. So, I don't think it was unreasonable, prior to 2 August, for TPSL to chase payment.

### *Incorrect information*

I've listened to a call recording where Mrs M contacts TPSL and they say they've contacted Lender M and were told that if Mrs M hasn't received a payment then she'll need to contact Lender M to get the cheque reissued. Mrs M queries whether Lender M have confirmed they've released the cheque and the call handler at TPSL says they have. Mrs M says that's unusual as she hasn't received it and the call handler says it might've got lost in the post and

if Mrs M calls them then they can reissue it. Mrs M then called Lender M who confirmed a cheque hadn't yet been issued due to a backlog.

I think this misunderstanding arose because TPSL, during the call with Lender M, say they're looking for the cheque to be reissued. I accept the call handler at Lender M doesn't correct TPSL and say the cheque hadn't yet been issued, but TPSL were already aware from a previous call with Lender M that they had limited the amount of information they were sharing with third parties. So, I understand why Lender M didn't correct TPSL and asked them to get Mrs M to call them. The fact remains however that the cheque being issued was an assumption made by TPSL based on their experience of the timescales Lender M works to when making payments. While I acknowledge it was TPSL's view based on their experience, there wasn't anything factual to suggest the cheque had been issued. So, I think Mrs M was given inaccurate information and TPSL could've suggested to her a cheque might've been issued, and this is based on their experience, but they can't say for certain.

Taking this all into account, I think there have been errors here. In particular, issues relating to the phone call in November 2020 – and not escalating Mrs M's complaint and not providing accurate information about the cheque. Mrs M has been left upset and frustrated and I can understand why she felt TPSL weren't providing her with the assistance she was expecting. So, to reflect the impact on Mrs M, I think TPSL should pay compensation of £100 – I think this is fair in the circumstances.

### **Putting things right**

I've taken the view that there have been errors by TPSL which have had an impact on Mrs M. So, TPSL should pay Mrs M £100 compensation for the upset and frustration caused.

### **My final decision**

My final decision is that I uphold the complaint. The Protection Specialist Limited must pay compensation of £100 to Mrs M, if they haven't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 April 2022.

Paviter Dhaddy  
**Ombudsman**