

The complaint

Ms L complains about the service she received from Throgmorton Private Capital Ltd (“TPC”).

In summary, she says:

- She’s unhappy about the poor service she received from her adviser (Mr A) after he left his previous employer – who I will refer to as BSC – and joined TPC. She’s unhappy about his conduct during a home visit.
- She’s unhappy Mr A withheld information from her and made comments during correspondence which were unclear, unfair, and misleading.
- She’s unhappy that Mr A sold £4,281.14 of her pension’s underlying funds to cash, in order to cover monthly income and fees up to August 2023.

To put things right, she’d like compensation for her financial losses and expenses, as well as compensation for distress and inconvenience caused.

She’s being assisted by her friend Mrs C, and her son-in-law Mr M.

What happened

Ms L’s relationship with Mr A began when he worked for BSC. He joined TPC in May 2022 and Ms L became a client of his again from October 2022.

Ms L complained on 26 June 2023. TPC issued its final response letter (FRL) on 16 November 2023. It didn’t uphold the complaint but offered a refund of all fees paid amounting to £2,548 as a gesture of good will.

Unhappy with TPC’s response, Ms L referred her complaint to our service.

One of our investigators considered the complaint but didn’t think it should be upheld. In summary, he said:

- He’s only considering Mr A’s conduct since he joined TPC and not when he was with BSC.
- Mr A visited Ms L on 14 October 2022 leaving her unhappy about the comments he made about her flat. Ms L says he ‘trashed’ her flat from the moment he walked into the building, going beyond anything that’s socially acceptable.
- On the face of the evidence – namely email correspondence and WhatsApp transcripts – it’s reasonable to conclude that Mr A merely offered his opinion about the décor of the flat which unfortunately caused Ms L offence.
- He’s unable to safely say that it was Mr A’s intention to be offensive. It’s likely Mr A was making what he thought were helpful comments. In any case, Mr A has apologized unreservedly if he caused any offence, which is fair.
- In the circumstances the investigator isn’t persuaded to award any compensation.
- In considering whether or not Mr A gave Ms L information that wasn’t clear, fair or

- misleading, he's unable to say that Mr A has done that.
- It seems Ms L's unhappy that Mr A didn't give her the opportunity to read the 'Client Agreement and Services Charter' ("the contract") – which outlines the terms of engagement between her and TPC, its commitments and charges – before signing it on 14 October 2022. But despite what she says, the investigator can't say that this was (more likely than not) the case.
 - Whilst Ms L maintains pages were turned over and she was just told where to sign, Mr A maintains that he gave her an opportunity to read the document over if she wanted to.
 - This was a standard document similar to the one Ms L would've signed with the adviser when he worked at the previous business. In other words, there were no surprises and there was nothing that was out of the ordinary, including the fees. Therefore, it's unlikely Mr A would've deliberately withheld the information disclosed within the contract.
 - Ms L signed the document on pages 11, 13 and 15. It's likely that Mr A would've given Ms L the opportunity to read this before signing it.
 - Ms L also has concerns about statements made by Mr A in emails dated 26 June 2023 and 29 June 2023, relating to advice he gave whilst employed by the previous business.
 - Whilst Ms L believes this should be considered as part of the complaint against TPC, the investigator disagrees because it related to advice given whilst he was employed by the previous business, BSC.
 - However, considering whether or not the information provided was clear, fair, or misleading he can't say that it was.
 - Mr A's explanation about the trust set up – which happened before the bonds were set up and the subsequent transfer into the trust – was clear, fair, and not misleading, and is the reason why the separate sub-accounts could be seen.
 - In any case, given that these matters relate to when he worked for a previous business, he can't comment upon the advice she received.
 - In relation to the email dated 29 June 2023, Mr A said the following:
 - "The reason for recommending a bond in trust was to gift the capital of the bond to L (name anonymised) whilst still retaining an income; In 5 ½ years' time the trust will be completely outside of your estate for Inheritance tax purposes, saving L 40% in tax, or £104,672.65."
 - Whilst the investigator can't comment upon the recommendation itself, he's unable to say that the information wasn't clear, fair, or was misleading.
 - It's correct that the amount invested in the bond held in trust would be outside of Ms L's estate after seven years – which means tax wouldn't be payable.
 - At the time of the 29 June 2023 email, the investment held in trust had a value of approximately £260,000 – 40% of that was roughly £104,000.
 - The investigator is persuaded that Mr A sold £4,281.14 of Ms L's pension funds to cash in order to cover monthly income and fees up to August.
 - In its FRL dated 16 November 2023, TPC provided a detailed breakdown confirming how Mr A came to the figure of £4,281.14 in line with Ms L's request.
 - It's standard industry practice for advisers to sell customer's underlying investment funds in order to ensure there is sufficient cash available to pay for any upcoming income and fee payments. This is done to prevent delays and accounts becoming withdrawn.
 - Based on the nature of the complaint, it would seem that the relationship between Ms L and her adviser has broken down. But despite this, he can't say that TPC has done anything wrong.
 - The above notwithstanding, the offer made by TPC as a gesture of goodwill is generous, fair, and reasonable.

Ms L disagreed with the investigator's view and asked for an ombudsman's decision. In summary, she said:

- It seems that on a balance of probabilities it has been decided that she hasn't told the truth. And she's being asked to accept the decision in return for cash.
- She simply can't accept that she lied.
- She can't have this case being used against her in any other complaint.

The investigator having considered the additional points wasn't persuaded to change his mind. In summary, he said:

- Despite what Ms L says, the accounts/investments which are the subject of the 26 June 2023 email are not something he can comment upon in this complaint against TPC.
- In relation to what was confirmed to Ms L in the email of 26 June 2023 he still can't say that the information was unclear, unfair, or misleading.
- Even if he was to find that the information was misleading, this wouldn't have had a financial impact on Ms L. The investigator feels the same about the email of 29 June 2023.
- Despite what Ms L says, the findings made by him aren't on the basis that Ms L has lied.

Ms L made the following final observations:

- She only repeated what Mr A told her, which was that he charged 1.5% but decided on the 1% - for the advice – as if he was doing her a favour.
- He didn't give her the contract to read or send her a copy until nine months after, which is unprofessional.
- Just because a previous contract might've been the same doesn't mean that she was offered the opportunity to read the contract.
- She didn't know TPC charged 0.75% until after. Mr A just toyed with the figures to demonstrate that he was in control.
- She was just a source of income he gave no further information.
- She's not going to accept this case for a sum of money because she didn't lie, Mr A lied.
- He suggested that the provider made a mistake in relation to the trust but that wasn't true.
- He wrongly stated that her flat was being renovated, it wasn't.
- She doesn't accept TPC's 'unreserved' apology and believes they've just fudged the complaint. She doesn't need Mr A's approval about the décor of her flat.
- Mr A knew exactly what he was saying about the flat. He's just trying to cover his back about the poor IHT advice (in relation to a separate complaint). On the day in question, he left the flat in a temper.
- She's grateful for the 40% (£104,627.65) clarification re the IHT, this wasn't made clear to her.
- He's not provided any advice about her risk level since the incident. He says he covered it off over phone calls. But he hasn't put anything in writing.
- She understands the need to take cash from her pension, but only after the details have been fully disclosed. She was entitled to know how the sum of £4,281.14 was made up.
- She's unhappy about the trust issue – in respect of which she has a separate complaint.
- It's problematic to understand why the investigator found Mr A was telling the truth

and she wasn't.

As no agreement has been reached the matter has been passed to me for review.

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 agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Ms L says, I'm unable to safely say that TPC behaved unreasonably.

Before I explain why this is the case, I think it's important for me to note I very much recognise Ms L's strength of feeling about this matter. I'm also sorry to hear the health issues that she's experiencing, and the bereavements she's suffered during covid. I acknowledge that this must be a difficult time for her.

Ms L has provided submissions to support the complaint, which I've read and considered carefully. However, I hope she won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made. My role is to consider the evidence presented by Ms L and TPC, and reach what I think is an independent, fair and reasonable decision based on the facts of the case. In the circumstances, I don't need any further evidence to make my decision.

I don't uphold this complaint, in summary, for the following reasons:

The flat

- I've considered the allegations regarding Mr A's behaviour as part and parcel of his conduct when advising Ms L during the flat visit.
- His comments alone are otherwise not something that I can consider in isolation, because they don't fall within the definition of a 'regulated activity' and as such don't come within the remit of our service.
- On balance, I think it's unlikely that Mr A would've behaved in a manner that would've got in the way of him advising Ms L in relation to the investment.
- I note Ms L says that he only saw her as a source of income, but despite what she says I don't think he would've behaved in a way that was contrary to his commercial interests.
- In any case, I note how Ms L says she felt, and Mr A has made clear that he didn't intend to cause any offence and is unreservedly apologetic if he did.
- I think it's possible that given what Ms L had been through with selling her previous home – where she'd lived for several decades – before moving to her new flat, Mr A's comments weren't received well at all. I note she also endured some challenges selling her previous home with several sales falling through which would've added to her dislike/discomfort.
- I note what Ms L says about 'redecorations', however, I think there was some suggestion from her that she'll need to do some alternations to the flat in due course

and redecorate. It's possible the comments about the flat were made after this and in relation to this.

Signing the document

- Despite what Ms L says, I think it's unlikely that she wouldn't have been given an opportunity to read the contract, if she wanted to, before signing it.
- I'm not suggesting that Ms L isn't (or wasn't) telling the truth, I think it's likely that there was a misunderstanding or oversight in terms of what should or shouldn't have happened. But I'm not persuaded that this means the complaint should be upheld.
- I note Ms L says if she'd read the contract, she would've realised that the previous advice she received in relation to IHT – when Mr A worked for a predecessor business – was unsuitable. But that's not something I can consider in the complaint against TPC.
- I'm satisfied that she was shown where to sign, and that she was happy to proceed with matters without going through the whole document there and then.
- If Ms L wanted to go through the document, I think it's unlikely that Mr A wouldn't have facilitated this. I'm mindful that Ms L is a retired lawyer.
- In the circumstances, and on balance, I can't say that that the body of the contract was (deliberately) withheld from her.
- Given the general wording of the document, I can't say that it was unfair, unclear or misleading.
- I note Ms L says the TPC fees were 0.75% and Mr A made out it was 1%. But on page 10 of 15 of the contract, under the heading Initial Advice Fess, it states that its typical fee for initial advice would be between '3-1%' of any monies invested. On page 13 of 15, the contract makes clear that for ongoing suitability review a charge of 0.75% of the value of the investments will apply for the investments that it manages.
- I note Ms L signed the document at page 15 making clear that she understood the fees. On balance, I think she wouldn't have done so unless she was broadly aware of what the charges/fees involved were.
- I note the overall terms and conditions were broadly similar to the agreement that Ms L previously signed under Mr A when he was at BSC, so it was unlikely to contain any surprises. I appreciate this doesn't mean that the contracts would be the same, but I can't say that Mr A would have anything to gain/hide by pushing the document through or that Ms L wouldn't have (generally) been aware of what the terms and conditions said already.

The emails

- I agree with the investigator's view that the complaint relating to the June 2023 emails isn't something that we can consider in this complaint against TPC. This is principally because it relates to advice that was given to Ms L when Mr A was employed by BSC.
- Even though Mr A was working for TPC at the time, TPC isn't in any way involved in this advice Ms L received in relation to IHT and hasn't taken responsibility for it.
- I understand the investigator has gone on to consider whether or not the information (separate to the advice) was clear, fair, and not misleading but I don't think it appropriate to do so, given that it relates to advice that was given when Mr A worked for a previous business.
- I note Ms L maintains that the service and advice provided by Mr A whilst at the previous business fell short of what she could expect which he then tried to conceal by providing misleading statements – but as I've explained this isn't something I can consider against TPC.

Sale of funds

- I understand that on this occasion some funds were sold to cash in order to ensure TPC's obligations and costs could be met.
- I note she was written to by the adviser on 10 February 2023 about what it was going to do – in relation to putting £4,281.14 of her pension into cash to cover her monthly income and fees up to August 2023.
- Like the investigator I can't say that TPC did anything wrong by selling funds within Ms L's pension in order to cover monthly income and fees. It's a common industry practice.
- Whilst I appreciate what Ms L says, I'm unable to say that she was made to do anything she didn't want to do.
- I'm mindful that a breakdown has since been provided and it's not something that Ms L has an issue with.
- Even if I was to find an error by the business, I note TPC has already offered a full refund of all the fees paid to TPC in the sum of £2,548.26.
- Whilst a breakdown might not have been forthcoming, I don't think it's a reason to uphold this complaint as I'm unable to say TPC did anything wrong putting some funds to cash to cover costs and so on.

Whilst I'm aware of Ms L's concerns, an adverse finding to her complaint doesn't mean that I think she's not telling the truth. My findings are based on what I think is more likely than not to have happened, and whether I have evidence to reach a particular conclusion. This isn't the same as saying that Ms L isn't telling the truth.

Despite what Ms L says about (effectively) being forced to accept the decision in return for cash, I don't think this is the case. I understand from recent correspondence that she's content to receive the money but wishes to pursue the complaint.

I understand that the offer made by TPC, despite rejecting the complaint, is by way of a goodwill gesture. But I've seen nothing to suggest that it would withdraw the offer if Ms L didn't accept the decision.

In any case, it's up to Ms L to accept or reject the offer made by the business. It's not one that I would've awarded.

I appreciate that Ms L will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what she wants to hear. Whilst I appreciate her frustration, I can't safely say that TPC behaved unreasonably such that this complaint should be upheld.

In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give Ms L what she wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 30 July 2024.

Dara Islam
Ombudsman