

## The complaint

Mrs M and Mr B bring this complaint on behalf of the estate of their late mother, Mrs B. They say that True Potential Investments LLP ('TPI') acted unreasonably with the administration of Mrs B's investments by failing to freeze them upon notification that Mrs B had passed away. Mrs M and Mr B also feel that TPI caused unnecessary delays in liquidating the investments and that it didn't provide any material updates throughout the process.

## What happened

Mrs B held a stocks and shares ISA and a general investment account (GIA) with TPI. She received financial advice from an adviser from True Potential Wealth Management ('TPWM'). The latter is a separate business, though TPI takes responsibility for the complaint as a whole.

In early 2022, Mrs M contacted the adviser in relation to the bank account where the proceeds of Mrs M's investment were paid. Mrs M was in the process of simplifying Mrs B's financial affairs in her capacity as attorney for Mrs B.

On 22 April 2022, Mrs M emailed the adviser to notify him that Mrs B had passed away. The adviser explained the same day that he was on leave, and he would assist Mrs M the following week. On 26 April 2022, the adviser called Mrs M. She says he told her that the investment proceeds would not be released until probate was granted. Later that day, Mrs M emailed the adviser a copy of Mrs B's death certificate.

On 29 April 2022, the adviser emailed Mrs M values of the investments as at that date, which were £147,493.42. Mrs M required this valuation for the probate application.

Thereafter, Mrs M says she and Mr B realised they may have an inheritance tax liability, so they instructed a solicitor to assist them in completing probate.

In September 2022, the solicitor contacted the adviser, asking for information relating to Mrs B's investments including valuations, information about dividends and details on how to settle the investment account. The solicitor also said that a Grant of Probate would be sent across in due course. The adviser forwarded the communications to TPI.

The following day, TPI sent information about the holdings as at 29 September 2022, along with the values from the date Mrs B passed away and a deceased client requirements document. The adviser wasn't able to open the document, so it was reissued on 5 October 2022.

A Grant of Probate was issued naming Mrs M and Mr B as executors for Mrs B's estate on 18 November 2022.

On 6 December 2022, the solicitor supplied the Grant of Probate to TPI, along with a letter of instruction and Mrs B's death certificate. The following day, TPI asked for proof of identity for the named executors, whereby they needed to supply two forms of identification.

The documents were sent to TPI by the solicitor on 6 January 2023 and processed on 10 January 2023. The settlement value for the investments was paid to the estate one week later, on 17 January 2023.

On 2 February 2023, Mrs M says she received the estate accounts for review via the solicitor and noticed that the final value for the surrendered investments was £141,327.92 – that was £6,165.50 less than the quoted amount from April 2022. She then contacted the adviser, as it became apparent the investments had continued to trade, despite her having notified TPWM of Mrs B's death. The adviser said he would raise the matter with TPI on Mrs M's behalf.

Mrs M also queried a typographical error with Mrs B's name, to which TPI's bereavement support team apologised on 10 February 2023. It also explained to Mrs M that in the intervening months it had liaised with the adviser and the solicitor, as this was the process used when notification of a customer's death is made via a third party.

On 9 March 2023, TPI's bereavement support team contacted Mrs M, and supplied her with deceased client requirements information. It also explained how the invested funds remained subject to market movement until the account is closed down following probate.

In July 2023, Mrs M complained via email. She said that the investment settlement value the estate had received was over £6,000 less than the value given to her and Mr B's solicitor in April 2022. Mrs M said she had been under the impression that the investment was frozen as at the date she notified TPWM of Mrs B's death based on her interactions with the adviser.

Initially, TPI supplied a return email from its bereavement team, explaining again how its process worked in the event that one of its account holders were to pass away.

Thereafter, Mrs M made a subject access request in line with data protection requirements. Mrs M also remained unhappy and formalised her complaint on 21 July 2023. She explained how she felt that communications ought to have gone through her directly.

On 5 August 2023, Mrs M emailed TPI following its acknowledgement of her complaint. She said that the complaint had been set out inaccurately by TPI. In summary, she said:

- The TPWM adviser never sent her documentation relating to deceased client requirements – this was only sent to the solicitor in October 2022.
- As Mrs B's executor, Mrs M should have been sent the same information that was sent to the TPWM adviser from TPI's bereavement team.
- TPWM and TPI contradicted each other – the adviser said he will not liaise with the solicitor regarding probate and the bereavement team said it wouldn't correspond with the deceased customer's family or executor(s).
- If the deceased client requirement leaflet issued to Mrs M by email after the complaint had been set up had been sent earlier, the probate valuation would have been acted upon immediately and no loss would have been occurred.
- The complaint was actually made in February 2023, but she was unable to progress it further until July 2023 because of wider family issues.
- The TPWM adviser knew Mrs M had a lasting power of attorney for Mrs B.
- When Mrs M notified the adviser that Mrs B had passed away in April 2022 and received the investment valuation, the adviser could have passed Mrs M to the bereavement team at TPI – but he didn't do so.
- Either the adviser or the bereavement team is at fault.

- TPI is the only business that Mrs M and Mr B have dealt with whilst administering their mother's estate that didn't issue a letter of condolence.

On 19 September 2023, TPI issued a final response letter to Mrs M in which it rejected the complaint.

The letter gave significant detail about the timeline of events and covered ten pages. I shan't set out that history here, as it is summarised in the background to this complaint. Overall, TPI concluded that its bereavement team hadn't made any mistakes with closing Mrs B's investments. It also explained how its terms and conditions made clear what would happen in the event that an account holder passes away. It also pointed out terms and conditions which explained that instructions could be taken from the adviser on the estate's behalf.

TPI apologised again to Mrs M for having made her feel that it lacked compassion or understanding. It reiterated that it had given comprehensive consideration to all of Mrs M's issues but it was satisfied that all correct procedures had been followed.

Mrs M disagreed and set out to TPI that it had failed to properly grasp her complaint.

In the interim, Mrs M pursued a separate complaint with the Information Commissioner's Office ('ICO') about TPI's handling of her subject access request. That is a distinct matter from this service, so I will not address that further here.

On 12 October 2023, TPI issued a second final response letter, addressing the missing points. It offered Mrs M its condolences on her loss, noting it had done so previously. Having taken the additional submissions into account, TPI still rejected the complaint. It reiterated that both the TPWM adviser and TPI's bereavement team completed everything as required and when instructed to do so by Mrs M and Mr B's solicitor. Since it didn't believe any process has been carried out unfairly it could not agree that the complaint should succeed.

Mrs M brought the complaint to this service. She said she and Mr B remained unhappy with the outcomes issued by TPI. She provided detailed written submissions of the background to the complaint. I have read these in full, so will not reiterate them again here. However, the key points Mrs M made were:

- The information sent by the bereavement team in March 2023 could have been sent back in 2022.
- The adviser told her in February 2023 that the bereavement team would correspond with executors as required once a death was notified but this didn't happen.
- At no time until February/March 2023 had she been told that the investments would remain with their funds invested.
- TPI now acknowledges that TPWM's adviser was told what to do to close the accounts, but he didn't update Mrs M or Mr B about that.
- She maintains that TPI ought to have corresponded with her directly, not the adviser.
- It took TPI two attempts to answer the complaint in full.
- TPI acknowledges that the adviser should have told Mrs M of the correct position – but the adviser saying he informed Mrs M is patently untrue.
- The adviser had never received authority to act on Mrs M's behalf.
- The only communication she had from TPWM was the one email of 29 April 2022 and the adviser didn't send on the relevant details about the fact the investments would not be frozen.
- TPI as told Mrs M and Mr B that Mrs B knew this would be the situation if she died – but that is upsetting and distressing to hear.
- They remain of the view that TPI caused a loss and an inability to receive dividends.

- They could have issued an instruction to sell the investments down to cash at that time, as they had that ability as executors.
- However, the adviser denied them of that opportunity.

An investigator reviewed the complaint, but he did not believe it should succeed. He explained the limitations of this service in respect of any awards we can make to representatives for the estate of a late consumer. To that end, he was only able to consider whether Mrs B's estate had suffered any financial loss due to delays or other inactions, not any award to Mrs M as an executor. Firstly, he noted that TPI could not freeze the accounts as Mrs M had believed, and the investments could only be surrendered once the solicitor representing the estate had supplied appropriate evidence of probate. Dividends had continued to be earned and reinvested – and these were not lost. Furthermore, the estate hadn't been disadvantaged by any delays in sending paperwork by TPI, because it had replied promptly to the adviser and the solicitor after it had received any communications.

Mrs M disagreed. She reiterated that at no time had the adviser told her the investments were not frozen – she was merely told the funds could not be released until probate was granted. The adviser's actions since that time had borne this out, as he'd queried the drop in value with TPI as well. Mrs M said she feels that the adviser has since lied, and this is unacceptable.

Mrs M said she appreciated the investigator explaining how the complaint brought to this service was on behalf of Mrs B, and not her own complaint. However, she believed TPI had confused matters by referring to her at times as a client, and by falsely claiming the adviser hadn't misled her.

However, in March 2024, Mrs M was given information from TPI following her referral to the ICO. She said this new evidence supplied following her data protection subject access request clearly showed that the adviser had lied about his actions.

In respect of the estate, Mrs M said she felt that it had suffered financially – because she could have considered applying for probate without the help of the solicitor, if she and Mr B had been correctly told by the adviser that the investments would not be frozen. As it was, TPI did not know about the solicitor's involvement until September 2022.

Mrs M also questioned her position in receiving compensation, because TPI's terms and conditions set out how any personal representatives for an estate are treated as the account holder, if the account holder passes away. If that was the case, they were a client of TPI and could be compensated for its actions.

Our investigator was not minded to change his view on the complaint. However, Mrs M said she remained steadfast in her view that the estate had been detrimentally impacted by the actions of TPI. She reiterated again that the adviser could have made her and Mr B aware that the investments were not in fact frozen – and they might have taken a different course of action in respect of probate. Accordingly, Mrs M said she and Mr B wanted the complaint to be passed to an ombudsman.

Whilst the complaint was awaiting decision, TPI offered Mrs M (on behalf of Mrs B's estate) £200 to reflect the upset that she felt its actions had caused. It said it could not otherwise compensate for a loss of value to the investments, as it had followed a fair process. Mrs M said that the offer was unacceptable, and only the investment loss of £6,165.50 would amount to an appropriate settlement.

The complaint was thereafter referred to me.

## 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.

I thank the parties for their patience whilst this matter has awaited an ombudsman's decision, and I thank Mrs B for her considerable effort in providing submissions during the course of this complaint. I'd also like to extend my condolences to Mrs M, Mr B and their family. I can see from Mrs M's correspondence how she feels strongly about this matter, which has been particularly upsetting during a time of bereavement. Though I know my decision will be disappointing for Mrs M and Mr B, I too have reached the conclusion that this complaint should not succeed. I'll explain my reasons for reaching this conclusion below.

I've included a particularly detailed chronology of the complaint in the 'what happened' section of this decision. I have done so to assist Mrs M and Mr B and to recognise the depth of their ongoing concerns about TPI. However, I won't be addressing every individual submission Mrs M as a representative for the estate has made in turn.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

So I am mindful of the points Mrs M has made about the requirements placed upon TPI in respect of how it deals with its customers. I should note that we are not the regulator; that role falls to the Financial Conduct Authority. So, I won't be making findings on the fairness of TPI's processes themselves in relation to deceased account holders. Nonetheless, I have reviewed all of the policies and relevant terms relied upon by TPI to determine if it followed the procedures it had set for itself.

Having looked carefully at the timeline of events, I believe TPI's bereavement team and the TPWM adviser provided timely replies to all correspondence from Mrs M, or her solicitor.

TPI's documentation also expressly explains how "*our main form of communication will be through [Mrs B's] financial adviser*" and it was for that reason that the adviser informed the bereavement team that Mrs B had passed away. Again, he did this promptly following confirmation from Mrs M.

The main point of dispute from Mrs M is that she says the adviser didn't actively inform her about the policy terms (part of the deceased client requirements information applying to Mrs B's investments) which confirmed how only advice fees will be frozen and sets out that certified copies of the death certificate and Grant of Probate are needed to release the invested funds.

TPI's terms also set out how "*the funds will remain invested until such time as we received an original Grant of Probate (or a copy certified as a true original by a solicitor, barrister, notary public or Court official) and until [the estate's] personal representatives provide further instructions*". The instructions relate to evidence of identification so payment can be made.

The adviser says he informed Mrs M about the requirements and the steps with the investment via telephone – including noting how the investments would be frozen only after probate was complete. Mrs M disputes this, and says she was only informed about the need for her and Mr B to supply a death certificate and a Grant of Probate, once obtained.

Nonetheless, the adviser's role was to continue as a representative for Mrs M and Mr B on behalf of the client - the late Mrs B – by passing on TPI's communications as required via the appointed solicitor. Both TPI and TPWM's adviser did efficiently correspond with Mrs M's solicitor during and following probate.

I hope Mrs M can appreciate that without any evidence of a call recording from April 2022, I cannot reach a conclusive finding as to what the adviser did or didn't say. I accept her submissions in relation to the fact the adviser did not email her a copy of the deceased client requirements right away, and these were only issued to her later by TPWM. It is also clear that the adviser was confused about the relevant steps between his role at TPWM and TPI's overall role. He told Mrs M in September 2023 (after the complaint was raised) that the bereavement team had 'taken over' once the death certificate was supplied – and that was not entirely accurate, as both he and TPWM liaised with the solicitor.

However, though Mrs M has identified these issues with the adviser, I cannot agree that these actions caused the loss she is seeking to be reimbursed on behalf of the estate.

Mrs M says she would have done something differently if she had been told directly by the adviser that the investments were not frozen upon notification of Mrs B's death. However, Mrs M would still have had to apply for a Grant of Probate along with Mr B – the only difference is that she says this would have meant they didn't use their appointed solicitor.

I am not persuaded that – whether Mrs M was or wasn't made aware about the position with invested funds – the perceived change to seek probate themselves rather than using their chosen solicitor would have had any material impact on the timeline of events. I've seen no objective evidence of that; and I am also not of the view that the provision of this information was central to Mrs M and Mr B's decision to appoint a solicitor to undertake their probate application. Moreover, Mrs M expressly confirmed that the solicitor was appointed in relation to establishing if any inheritance tax was due from Mrs B's estate.

The investments could not be frozen in the way Mrs M believed they could. The funds remained uninvested until TPI was supplied with a certified copy or an original Grant of Probate. Though I realise Mrs M is unhappy with the adviser's role in communications about this, I do not believe that his actions or inactions added any additional time to the process. Probate was still required. And once it had been granted, TPI acted promptly at all times in replying to both the solicitor and the adviser. I do not find TPI caused any delay, such that it should otherwise be accountable for any loss on the investments between April and December 2022.

In the event of considering a business's actions or inactions, I will also determine if I think any compensation is due for distress or upset as well as whether I believe it was liable for any financial loss (which I do not find it was). This is because I am able to make separate awards for the impact of any mistake or omission by a business, where appropriate.

Even if I were able to award compensation, I cannot do so to the representative of an estate; our rules do not permit it. We are bound by the Dispute Resolution ('DISP') rules which apply to this service as set out in the FCA Handbook. An ombudsman is not able to avoid the rules or apply discretion to certain rules. Complaints made to this service must be pursued by an 'eligible complainant' (for example, a consumer or a micro-enterprise) and those complaints must be about acts or omissions by businesses when carrying out certain 'regulated activities' – in this case, TPI processing the release of the funds for the late Mrs B's investment ISA and GIA.

DISP rule 2.7.2 R allows a third party to bring a complaint on behalf of an eligible complainant (such as an investor) to this service, for example from a representative or an executor of an estate for an eligible complainant that has since passed away. But that doesn't mean the representative is an eligible complainant in their own right. Mrs S is a representative and not a complainant in her own right – she is not party to the investment relationship Mrs B held with TPI; instead she is one of the executors for Mrs B's estate.

Though this service can make further awards for the distress a business has caused in relation to a complaint (DISP 3.7.2 R), and whilst a complaint can be made to this service by a representative on behalf of an eligible complainant - or the estate of a complainant that has passed away - that doesn't confer the right to receive a money award to the representative.

That means I even if I were minded to do so, I cannot make an award for upset, distress or anguish caused to Mrs M or Mr B in respect of their view on the perceived administrative burdens caused by TPI in these circumstances. I realise Mrs M believes that compensation should be given– but our rules do not allow me to consider it. If Mrs M requires, our investigator can send her the link to access the relevant part of the FCA Handbook online.

Finally, I note that TPI did offer Mrs M £200 compensation. I am not able to endorse that offer or direct TPI to pay it, for the reasons I've set out above. Mrs M remains free to liaise with TPI to enquire if that offer is still open to her, if she wishes to do so.

### **My final decision**

I do not uphold this complaint.

I don't find True Potential Investments LLP to have acted unfairly or unreasonably in allowing the funds in Mrs B's GIA and ISA to remain invested in line with the relevant terms and conditions until such time as it received the required probate information. Accordingly, I don't consider TPI has caused any financial loss to the late Mrs B's estate.

Though I realise Mrs M as a representative for the estate feels the wider process has been carried out unfairly, I cannot award compensation (even if appropriate) for any impact to her directly, as she is not an eligible complainant in her own right but rather, a representative for Mrs B's estate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 12 September 2024.

Jo Storey  
**Ombudsman**