DRN-3590519

The complaint

Mr T complains that True Potential Investments LLP (TPI) caused delays when drawing down funds from his personal pension plan.

What happened

I issued a provisional decision about this complaint on 22 March 2023. In it, I set out the background to this complaint as follows:

In November 2020, Mr T was advised by True Potential Wealth Management (TPWM) to invest into a True Potential Personal Pension plan. Mr T's plan is held on TPI's investment platform and TPI is responsible for processing any drawdown requests Mr T makes.

On 6 September 2021, one of TPWM's advisers sent a message to TPI as Mr T wanted to request a pension drawdown payment from his SIPP. TPI replied to say it had made this possible for Mr T to do this on its client site. And on 8 September 2021, Mr T submitted a request to drawdown £10,000 from his SIPP. The next day, TPI messaged one of the TPWM advisers to say the drawdown request had been actioned. TPI said it completed trades of assets held within Mr T's pension on 15 and 16 September 2021 – the drawdown payment was later paid to Mr T on 24 September 2021.

On 20 September 2021, one of TPWM's advisers asked TPI for the dates of all pension drawdown payments Mr T had received since he'd withdrawn his tax free cash, the amount of payments, the trade dates of each request and the date each payment was paid. TPWM told TPI Mr T was querying the timing of his latest drawdown request and whether he'd received the best pricing.

TPI responded the next day:

> *"Hi, that is no problem, after the PCLS [Tax Free Cash] we had requests on the 15/01/2021, 09/02/2021, 17/06/2021 and the 08/09/2021 and we paid to the client the gross amounts of £4375, £29000, £7000, and £10000 on the 29/01/2021, 26/02/2021, 02/07/2021 and the 24/09/2021 respectively.*
>
> *The date of the trades are as follows, and again respectively; 25/01/2021, 24/02/2021, 25/06/2021 and 16/09/2021 with each of the settlement dates 2 working days after the trade dates."*

TPWM queried the difference between the trade and settlement dates. TPI said the trade dates are the dates that the payments left the TPI Platform and the settlement dates are the dates that the sale of assets settled with TPI's Pension Banking team and were available to be paid to Mr T's nominated account. TPI also said the payment dates vary because tax free payments are usually paid out on the working day after the settlement date and taxable payments are paid on the next working Friday after the settlement date as payroll for taxable income payments is ran once a week, on a Friday.

Unhappy with this response, Mr T complained to TPI. TPI sent its final response to Mr T's *complaint on 9 November 2021. TPI said it understood Mr T's complaint to be that he believed he hadn't received a fair value on the sale of the assets of his Pension Drawdown payment, which had potentially impacted him by an estimated £4,000.*

TPI said it reviews all pension drawdown requests to ensure it has all the information needed to process the requests. It then places trades to sell assets held within the SIPP in order to make the pension drawdown payment in cash, which can take up to five working days. Taxable income payments need to be run through its payroll because tax must be deducted and paid – this process happens every Friday. Taxable drawdown payments were then paid to Mr T after tax had been deducted. TPI thought it had actioned Mr T's drawdown requests within a reasonable timeframe. TPI provided a copy of the relevant section of its terms and conditions:

> *"1.5.2 Withdrawal instructions*
> *You can elect, by way of a valid instruction, to have withdrawals paid to your Nominated Account on a single or regular basis, subject to any applicable contractual, legal or regulatory restrictions and to such Instruction being for no less than any minimum that might apply. Withdrawal proceeds will normally be paid into your bank account within 10 working days from the date we receive a valid instruction, but in certain circumstances it may take longer."*

TPI added that the valuation information Mr T saw on TPWM's client site was not live – it gets daily reports on the value of assets held in Mr T's SIPP that it submits to TPWM, who in turn add this information to its own systems overnight. So, the information shown on TPWM's client site could be two days behind, which TPI said was an industry standard. TPI said its trades were placed in line with its Best Execution Policy. In summary, TPI didn't uphold Mr T's complaint.

Mr T referred his complaint to our Service to consider. Mr T said he normally requested drawdowns when the value of his funds were higher. He felt the value of his fund was higher on 8 September 2021, so he requested a drawdown. But he felt the process for drawing down funds from his SIPP took a lot longer than normal with the trade being placed on 16 September 2021 – and the value of his funds had dropped by around £4,000 since 8 September 2021, causing him a loss.

One of our Investigators looked into Mr T's complaint. He thought the drawdowns requested on 15 January 2021, 7 June 2021 and 8 September 2021 were made within the 10 working days set out in TPI's terms and conditions. Our investigator noted TPI began processing Mr T's drawdown request on 8 September 2021 the very next day, so he didn't think there was a delay here.

However, our Investigator thought the 9 February 2021 drawdown request, which was paid on 24 February 2021, took 13 working days to be paid – three days outside of TPI's usual timescales. TPI acknowledged it made a mistake and missed Mr T's initial request, which it should have actioned on 12 February 2021, alongside other drawdown requests made on 9 February 2021. Instead, it didn't action Mr T's request until 18 February 2021 – outside of its usual timeframe of five working days to place trades. Because of this, it offered Mr T £100. Our Investigator recommended TPI pay Mr T its offer of £100. He also recommended TPI pay Mr T interest at 8% simple on the £29,000 drawdown for three days – as it was paid three days outside of TPI's usual timescales. TPI calculated the interest to be £19.06 and it agreed to pay Mr T £119.06.

Mr T didn't accept our Investigator's recommendation, saying that when he makes a drawdown request, it should be taken from the current market value at that moment in time and TPI should not be providing him with information that is out of date. So, this has come to *me for a decision.*

My provisional decision went on to say why I thought this complaint should be upheld and what I thought TPI should do to put things right. TPI accepted my provisional decision. Mr T said TPI produced a document which showed his balance before drawdown and what he would have left after drawdown – but he had around £4,000 less than TPI stated. He says TPI was unfair and misleading.

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.

As I said above, TPI accepted my decision. Mr T has commented on my provisional decision, but I'm not persuaded to depart from the findings in my provisional decision. I'll reiterate these below, as I feel these address Mr T's comments.

The drawdown Mr T is particularly unhappy about was requested on Wednesday 8 September 2021. The necessary trades were completed by Thursday 16 September 2021. It appears TPI didn't manage to put this taxable drawdown through its payroll by Friday 17 September 2021, so the payment was made a week later on 24 September 2021. Mr T is unhappy about the delay in TPI completing the trades, as the value of his fund had fallen since 8 September 2021. But I don't think there was an unreasonable delay in TPI placing the trades. Whilst it's unfortunate the value of Mr T's fund had since fallen, I don't think TPI is obliged to compensate Mr T based on his fund value on 8 September 2021 because I think it began the process of completing the trades within a reasonable timeframe. And whilst there was up to a week's delay in the funds being paid to Mr T, TPI's terms and conditions state it's not always possible to process drawdown payments within 10 working days of receiving a request. Given this drawdown payment needed to be put through its payroll to ensure the correct tax was paid, I don't think the delay here was unreasonable.

I note Mr T is unhappy the fund value he saw on TPI's platform on 8 September 2021, and the fund value shown on his drawdown request, may have not been the 'live' current fund value. He has reiterated this point in response to my provisional decision. But for the reasons outlined above, TPI has explained it's not possible to display live fund values. Whilst TPI's terms and conditions say Mr T will have access to valuations of his pension 24 hours a day, these do not say that the valuation will be 'live'. It follows the information Mr T saw was the most up to date fund value TPI had – and the figures presented to Mr T on his drawdown request were right at the time, based on the most recent information held.

I've explained TPI's process for drawdown requests above. I've not seen anything in TPI's terms and conditions that say TPI will honour the price of units held in Mr T's fund until the drawdown process is completed. As Mr T is aware, the value of investments can fluctuate up and down constantly. If it were to honour the unit price on Mr T's assets at the time the drawdown was requested, but it was later able to sell the assets for less, it would incur a loss. Overall, I think TPI placed trades within its usual timescales, which I don't think were unreasonable. It's unfortunate the value of units held in Mr T's pension fell since the drawdown was requested and I've reconsidered this point in light of Mr T's response to my provisional decision, but I still don't think TPI has done anything wrong on this occasion.

However, I agree with our Investigator that the drawdown request made on 9 February 2021 was paid outside of TPI's usual timescales and it's admitted it made an error and should have placed trades on 12 February 2021 instead of 24 February 2021. So, I think TPI needs to ensure Mr T hasn't been caused a loss as a result of this delay. But I think TPI needs to put this right in a different way to that recommended by our Investigator and I've set this out below.

As the matter has caused Mr T some distress and inconvenience, I think compensation for this is warranted. However, I think the £100 offered by TPI is fair and reasonable, so I'm recommending TPI should also pay this to Mr T if it hasn't already done so.

Putting things right

I think TPI should carry out the calculation below to ensure Mr T hasn't been caused a loss by its failure to place his trade on 12 February 2021 to complete his drawdown request.
To compensate Mr T fairly, TPI must compare the actual value of Mr T's personal pension with the value it would have had if TPI had placed trades to complete his drawdown request on 12 February 2021 (the fair value).

Any withdrawal, income or other distribution out of the pension should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if TPI totals all those payments and deducts that figure at the end instead of deducting periodically.

If the fair value of Mr T's personal pension would've been higher, there is a loss and TPI should pay into Mr T's pension plan to increase its value by the amount of the compensation.

The amount paid should allow for the effect of charges and any available tax relief.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid - presumed to be 20%.

As I understand Mr T has taken his full tax-free cash entitlement from his plan, so there wouldn't need to be any further adjustment to the notional tax deduction TPI makes to the compensation. However, if this isn't correct, Mr T should let me know.

If payment of compensation is not made within 28 days of TPI receiving Mr T's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If TPI deducts income tax from the interest, it should tell Mr T how much has been taken off. TPI should give Mr T a tax deduction certificate in respect of interest if Mr T asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

In addition, TPI should pay Mr T £100 offered in its final response letter. I think this reflects some inconvenience has been caused to Mr T as a result of TPI's delays. If this has already been paid, I don't think TPI need to pay any further compensation for the distress and inconvenience it caused.

My final decision

For the reasons explained above, True Potential Investments LLP should do what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 April 2023.

Victoria Blackwood
Ombudsman