

The complaint

R, a limited company, complains through their director Mr K about poor service they received from True Potential Wealth Management LLP (TPWM) when transferring their investment portfolio to TPWM from another business.

What happened

R wanted to move their general investment account from another business (B1) to TPWM. Mr K spoke to a representative of TPWM who accidentally set the transfer process to start on 18 March 2020. TPWM called Mr K and explained the error and queried what Mr K wanted them to do. It was decided that the transfer should be allowed to go ahead as Mr K wanted to mitigate any additional costs that might be incurred by rebuying any holdings that had been transferred.

TPWM advised Mr K that R would be compensated for any potential loss of growth caused by the error. Unfortunately, there was a further error, TPWM had sent B1 a message asking for the transfer to be paused. The transfer was eventually completed on 20 April 2020 after TPWM discovered the error and restarted the transfer process.

After a few months of discussion, TPWM paid R £24,530 in compensation. They calculated that this covered the loss in growth of the portfolio if it had been transferred on 18 March 2020. Mr K didn't think that the compensation was sufficient as R had also incurred additional costs such as accountancy fees, capital gains tax (CGT), costs for his time spent looking into the matter and additional lost growth on the portfolio. He thought that R was due additional compensation of c.£11,100.

TPWM didn't think additional compensation was due to R so the complaint was brought to this service where it was considered by one of our investigators. The investigator looked into the concerns that had been raised but wasn't persuaded that TPWM needed to do anything else to resolve the complaint. He thought that TPWM had given Mr K the option of switching back after the error had been made but he'd chosen to proceed due to concerns about capital gains liability.

The investigator thought that there wouldn't have been any CGT issues as any buyback of holdings would have taken place within 30 days of the initial sale. He appreciated that Mr K believed the transfer should have taken place on 20 April 2020, but he didn't think there was anything to suggest that the intention was that the transfer would have taken place then.

Mr K didn't agree and said, in summary:

- R remained far from the position they would have been in if TPWM hadn't made multiple mistakes. He hadn't agreed for the funds to be transferred on 19 March. Instead, his instruction was to pause any transfer while he waited on the return of market stability at which point he would have decided whether or not to proceed. He'd wanted to stop any transfer back in order to mitigate the tax and accountancy costs that would arise from rebuying holdings within B1.

- The approach to compensation wasn't correct as the funds wouldn't have been with TPWM between 19 March and 20 April. Instead, they would have still been with B1 so the compensation should be calculated on that basis. This was evidenced by the call he had with TPWM on 19 March and the subsequent correspondence.
- He disagreed that any CGT would have been incurred if errors hadn't been made. The CGT incurred was caused by the error and TPWM weren't aware of any plans that were in place to mitigate R's potential tax liability.
- He was aware of this 30-day allowance regarding CGT. But because of the errors R was out of the market from 19 March to 20 April - at least 32 days. Therefore, the additional costs would still have arisen.

The investigator didn't change his opinion so the complaint was passed to me to make a decision. I issued a provisional decision where I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.'

TPWM have accepted that they made an error in starting the transfer of R's holdings before they should have. Therefore, my role is to determine if the compensation they've offered R is fair and reasonable. Having done so, I don't think it is and I will now explain why.

Mr K sent TPWM a secure message on 18 March 2020. He said that given the recent falls in the market he was thinking of pausing the transfer. He then spoke to a representative of TPWM who explained that the transfer had been started in error. The representative offered the option of reversing the process, but Mr K agreed for the transfer to go ahead in order to avoid any potential complex tax issues. So, while I appreciate what Mr K has said about pausing the transfer and waiting for market stability, I'm persuaded that the available evidence shows that he was happy to start the transfer after he spoke to TPWM.

However, during the call Mr K expressed concerns at R's holdings being held in cash during the transfer and potentially missing out on any gains. The representative agreed that R would be covered for any loss in growth caused by the transfer being made early. TPWM have calculated the loss based on how much the portfolio would have grown under their management as opposed to the growth if it had remained with B1.

I've reviewed the secure messages sent and I can see that the representative said:

- *'But once the transfer is complete I will check with B1 what the cost of being out of the market during this period is, if it turns out that you have missed out on some growth during this period. Then True Potential will cover this loss, so either way you won't your funds won't suffer for being out of the market during this period.'*
- *'We will have to wait until it's invested to get the growth figures from B1 to check to see the performance over that period. Obviously if the performance figures are positive then you are due a reimbursement.'*

I think that the implication in the call and the subsequent secure messages between Mr K and the representative was that the compensation figure would be calculated based on potential growth with B1 not TPWM. Therefore, I agree with Mr K and think that TPWM should compensate R based on how much the portfolio would have grown with B1, not how much it would have grown under their management, as this was what Mr K was promised. They should also calculate how much this figure would have subsequently grown by to ensure that R hasn't lost out.

I've then considered if TPWM should cover the accountant's fees and CGT costs that R incurred. I've noted Mr K's comments, but I think that the fees would have been incurred regardless of the errors that TPWM made. I say this because even though Mr K's intention was to pause the transfer, he's said that he would have proceeded once the market volatility had subsided. At this point the transfer would have gone ahead and R would have then incurred the CGT and accountant's fees. So, because these costs would have been due irrespective of the errors, I don't think I can fairly ask TPWM to compensate R for them.

I've also considered Mr K's request to be compensated based on his hourly rate for the time he's spent trying to resolve the matter. But I can only compensate the eligible complainant who in this case is R and look at the inconvenience they've suffered because of TPWM's actions.

I think it's a reasonable expectation that someone will have to spend some time and effort in running a business. But it's clear from his submissions that Mr K has spent a considerable amount of time dealing with R's complaint which would undoubtedly have diverted his attention away from the running of the business. Therefore, I think R has been inconvenienced and I don't think the £250 compensation offered by TPWM is sufficient. Having considered everything, I think that compensation of £500 would be fair and reasonable in the circumstances.

Putting things right

In order to put things right TPWM should:

Calculate $A - B = C$ where

A = how much R's portfolio would have grown if it had been with B1 between 19 March 2020 and 20 April 2020.

B = how much R's portfolio would have grown if it had been with TPWM between 19 March 2020 and 20 April 2020.

If C is a positive sum then the figure should be paid to R. TPWM should also calculate the growth on C from 20 April 2020 to date and pay that figure to R less any compensation they've already paid for growth during that time.

They should also pay R an additional £250 for the inconvenience they've suffered due to the error.'

Responses to the provisional decision

Mr K responded and said, in summary:

- The transfer was started by TPWM, and he accepted this provided that R received compensation in accordance with what TPWM had said as opposed to initiating a transfer back, with all the additional indicated costs that would incur.
- He reiterated that his intention was that the funds stayed with B1 given the ongoing market instability at the time. Therefore, the accountant's fees and CGT costs wouldn't have been incurred.
- R, as the eligible complainant, had been inconvenienced by the need to divert his attention away from the running of the company. The compensation for inconvenience of £500, while appreciated, fell short of the £4,608 he'd calculated

using R's usual chargeout rate of £50 per hour plus VAT.

- He requested that any compensation for inconvenience and fees be adjusted to include standard commercial 'statutory interest' between date of incurring, and date of reimbursement.
- He requested £100 debt recovery costs, separate from the time incurred in compiling our responses.
- Regarding the $A - B = C$ calculation, he remained of the view that the figures were $£24,048.85 - £21,128.37 = £2,920.48$.
- He noted that the remaining out of pocket costs had grown since the interim payment from TPWM. Including lost growth on remaining outstanding monies, and the other items he'd outlined within his submissions.

TPWM responded and said, in summary:

- They agreed with the comments in respect of the CGT liability and accountant's costs. They didn't object to increasing the additional compensation from £250 to £500.
- They were however concerned that the proposed resolution placed R in a better position than they would have been had the error not occurred. The reason for this was twofold - one being the time period over which compensation was calculated and the second being the performance comparison required.
- Mr K agreed to the transfer on 19 March 2020 and didn't complain about the error. The transfer proceeded on 7 April, with funds invested on 20 April. The transfer and investment process took eight working days, accounting for two bank holidays. Disregarding the error, for the transfer to proceed, there would always have been a period the funds were out of the market to enable the sale, transfer of funds and re-investment. Therefore, R's losses should be based on the additional period out of the market. If the transfer proceeded correctly on 19 March 2020, it would have settled eight working days later. The funds would then have been invested in their portfolio, hence their calculation being based on the performance of their product not the B1 product.
- To reach a satisfactory conclusion and given what was said on the call with Mr K, they'd made a generous offer that covered the losses for the entire period out of the market based on the performance of their funds. This was more than fair as it meant R had been compensated for the full time out of the market. Had Mr K declined the option to transfer, they'd agree that compensation should be based on the entire period from 19 March 2020 to 20 April 2020 based on the B1 portfolio performance, but that wasn't what happened.
- Mr K appeared to have stated that the CGT could not be mitigated through a buyback within 30 days, noting that he was out of the market for 32 days. Had he declined the transfer, TPWM would have contacted B1 that day requesting that the transfer was cancelled and the same units purchased, which would have removed any CGT liability.
- They also noted that Mr K had repeated his belief that he would have delayed his transfer until markets were more stable. Given markets generally rose for almost two years from March 2020, if he'd delayed the transfer to some later point in that two

year window then the likelihood is that R would have suffered some market losses when the transfer was actually instructed, as it would have been in cash for eight working days when the transfer took place – this again supported their belief that the proposed compensation placed R in a better position than they would have been had the error not occurred, which wasn't the aim of the redress process.

- They acknowledged that the secure messages sent to Mr K referenced contacting B1 to calculate losses, however this was a misunderstanding and was based on the assumption that the transfer would proceed on a normal transfer timescale, i.e. not considering the second error where an incorrect message was sent to B1.

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 reconsidered the complaint, taking into account the comments by both parties, I'm not persuaded to depart from the outcome in my provisional decision and I will now explain why.

I don't think I should depart from the redress methodology I've previously proposed. While I note what TPWM have said about their representative's comments being a misunderstanding, they made an error and gave Mr K assurances on how they would put it right. I think it is therefore fair that TPWM compensates R based on what they said as this was part of the reason why Mr K chose to proceed with the transfer at the time.

I accept that the portfolio would have been out of the market for a period of time, but Mr K specifically raised concerns about R's portfolio being out of the market and was told *'But once the transfer is complete I will check with B1 what the cost of being out of the market during this period is, if it turns out that you have missed out on some growth during this period. Then True Potential will cover this loss, so either way you won't your funds won't suffer for being out of the market during this period.'*

I appreciate that the adviser didn't envisage that a further error would occur and delay the transfer. However, it did occur, and it doesn't seem fair to penalise R for an error that wasn't their fault. It therefore follows that TPWM should adhere to what they agreed and compensate R based on the growth of the portfolio had it remained with B1 between 19 March 2020 and 20 April 2020.

I've also thought about what Mr K has said regarding the compensation for CGT, fees and inconvenience. I'm not persuaded that the CGT and accountant's fees wouldn't have been incurred. Despite what Mr K has said about the transfer not going ahead because of the market instability - I still think that the intention was that the transfer would go ahead at some point and therefore the CGT and accountant's fees would've been incurred. I think this is evidenced by the language used in the message he sent TPWM where he said *'..I'm thinking given the recent enormous falls in investment values of "pausing" making any further transfer from B1 to True Potential'*.

I've also considered Mr K's comments about the compensation for inconvenience but our awards for inconvenience are typically modest and aren't usually based on an hourly rate. As I've previously said, it's a reasonable expectation that someone will have to spend some time and effort in running a business. In this instance, I'm satisfied the award I've proposed reflects the considerable time Mr K has spent dealing with the matter.

We don't usually award interest on top of compensation awards - we only do so where a

complainant has been deprived of money - and I see no reason to do so in this instance. And because I'm satisfied that the £500 award fairly compensates R for the inconvenience they've suffered in trying to resolve this complaint, I don't think I should make an award for debt recovery costs.

In summary, I'm satisfied with the outcome I reached in my provisional decision and my decision is that TPWM should award redress as detailed below.

Putting things right

In order to put things right TPWM should:

Calculate $A - B = C$ where

A = how much R's portfolio would have grown if it had been with B1 between 19 March 2020 and 20 April 2020.

B = how much R's portfolio would have grown if it had been with TPWM between 19 March 2020 and 20 April 2020.

If C is a positive sum then the figure should be paid to R. TPWM should also calculate the growth on C from 20 April 2020 to date and pay that figure to R less any compensation they've already paid for growth during that time.

They should also pay R an additional £250 for the inconvenience they've suffered due to the error.'

My final decision

My final decision is that I uphold this complaint, True Potential Wealth Management LLP should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 13 January 2023.

Marc Purnell
Ombudsman