

The complaint

Mr G complains True Potential Wealth Management LLP unreasonably delayed informing him it was declining to advise on the transfer of his defined benefit pension, meaning he lost out on a higher transfer value, which caused a financial loss.

What happened

Mr G had deferred benefits in two defined benefit (DB) occupational pension schemes. The larger was from his employment with a firm I'll refer to as "U", and a smaller one from his employment with firm "B", which is the main subject of this complaint.

Mr G was receiving income from rental properties and was also working part-time. He wanted to transfer both his DB schemes to his workplace defined contribution plan so he could take the benefits more flexibly and pass any residual funds to his son. At the time he was 58, so would receive the state pension in eight years' time.

On 3 December 2021 Mr G met with Mr J from True Potential Wealth Management LLP ("True Potential") for a free initial consultation. Mr J took some general details about Mr G's circumstances, and about the two schemes he was interested in transferring.

On 23 December 2021 Mr J requested a cash equivalent transfer value ("CETV") from the trustees of the B pension scheme, and details of the retirement benefits Mr G would be entitled to. As it was a DB (final salary) scheme, it came with valuable guaranteed benefits, so transferring might not be recommended.

In February 2022 B issued a CETV of around £47,583 (CETV1) guaranteed until 30 April 2022 but hadn't provided the early retirement quotes Mr J had requested. The guarantee period of CETV1 expired before the analysis was complete, so Mr J requested a new CETV from B and messaged Mr G on 27 May to say there had been "*a bit of a problem*". On 7 June 2022 B provided a new CETV of just under £37,607 (CETV2), guaranteed until 7 September 2022. Although he was disappointed at the fall in value, Mr G still wanted to proceed with the transfer of his B pension as quickly as possible.

For regulatory reasons, DB transfers can only be recommended by a properly qualified pension transfer specialist, which Mr J wasn't. So once he'd completed the initial information gathering, he had to submit Mr G's proposal to True Potential's specialist transfer team for formal assessment. Prior to submission at the end of June 2022 Mr J had an initial discussion with a colleague, who told him it was unlikely True Potential would accept such a low CETV. In the meantime Mr G chased progress several times, conscious of the approaching 7 September deadline.

Finally on 21 July 2022 Mr J told Mr G his firm had declined to provide advice because the CETV was too low. Mr G was shocked and asked for a proper explanation. But True Potential only gave generic reasons against DB transfers, not all of which were relevant to Mr G.

Mr G complained to True Potential in August 2022, pointing out if the CETV of the U scheme was included, the total would exceed the £100,000 threshold. He thought Mr J should have said at the outset True Potential couldn't help him, allowing Mr G to seek advice elsewhere

before CETV1 expired. True Potential explained Mr J didn't hold the necessary qualifications to advise on DB transfers, which are complex and require specialist knowledge. As a wealth management partner working remotely on True Potential's behalf, his role was to obtain the relevant initial information about the transfer for consideration by the pension transfer specialists. A CETV doesn't provide all the information needed to assess a transfer, and True Potential said B hadn't responded to Mr J's enquiries in a timely fashion. The second CETV was lower, due to external factors beyond True Potential's control, such as rising interest rates and gilt prices.

True Potential only considers propositions where at least eight weeks remain of a CETV guarantee period and will routinely decline to advise when less than two weeks remain. This is due to the complexity of the work required, and the regulatory requirement for clients not to be rushed into making such an important financial decision. True Potential said it wasn't obliged to provide detailed reasons for declining to advise Mr G, as expressing any opinion risked breaching the regulatory threshold of providing advice. However it recognised Mr J could have done more to keep Mr G updated, so offered £100 to reflect the inconvenience this caused.

Mr G subsequently engaged another financial firm of pension transfer specialists ("P") which recommended both transfers, based on a third CETV from B of £33,684 (CETV3), and from U with a CETV of around £92,000. But Mr G considered he'd lost around £10,000 between the highest and lowest CETVs from B, so didn't accept the response to his complaint.

I issued a provisional decision on this complaint in September, explaining why I was thinking of upholding it.

Provisional findings

I made the following provisional findings (in summary)

In assessing this complaint I considered the relevant rules and regulatory guidance, and what was good industry practice at the relevant time. Even though it ultimately didn't provide Mr G with advice, True Potential was still required to follow the regulator's Principles for Business ("PRIN"). In particular: Principle 2 which requires a firm to conduct its business with due skill, care, and diligence.

Mr G said he'd made Mr J aware of his "*wishes and requirements*" from the outset. He wanted to transfer the B pension as he didn't need to rely on it for retirement income as he had other sources of income. He couldn't pass the spouse pension to his son, meaning any residual benefits would die with him.

But an adviser's role isn't simply to facilitate someone's wishes, no matter how strongly or clearly they are expressed. They must provide a recommendation based on a detailed evaluation of the client's financial circumstances, objectives, and attitude to risk. Transfers from DB pensions are highly regulated and time consuming to complete, and progress depends on a number of factors outside the adviser's control. Since 2001 the FCA has required such requests to be considered from the standpoint that they are unlikely to be suitable due to the loss of valuable guaranteed benefits. As both Mr G's DB pensions were valued at more than £30,000, it's a legal requirement that he received regulated financial advice, regardless of the merits of the proposal.

Mr G had approached Mr J (his partner's wealth manager), who was acting on True Potential's behalf on a self-employed, restricted basis. His role was to gather sufficient information from Mr G and the ceding schemes to enable an adviser with the appropriate qualifications and permissions to assess the suitability of the transfer. I didn't think it

would've been Mr J's decision whether True Potential took Mr G on as a client or provided him with advice. True Potential wasn't obliged to provide advice to Mr G, or to explain its reasons. But as it had an advertised minimum CETV of £100,000 for advising on DB transfers, I thought as soon as it was clear the CETV was below this limit, Mr G should have been told, giving him the option to go elsewhere.

This warning is included on True Potential's website, "*Please note: we are only able to review Final Salary Pensions with a cash equivalent transfer value of at least £100,000*". which Mr G was given a link to, and did visit to check their FCA authorisation. But it wasn't drawn to his attention, and was quite hard to find, so I didn't think it was surprising Mr G missed it.

Mr G was also given a copy of True Potential's terms of business including its fees and charges. Section 4 covers the services it provides. And under the heading "*Occupational Pension Transfer Business*" it gave the following reasons it may decline to provide advice:

- *On assessment of your current and future circumstances, needs and goals, or*
- *If we do not receive sufficient information from the scheme trustees within a reasonable timescale to make a recommendation*".

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So although Mr G was put on notice it was possible True Potential may decline to advise him, the terms of business didn't mention the £100,000 limit, so I didn't think he had enough information at that point to seek another adviser.

True Potential says it couldn't assess the transfer within the initial guarantee period for CETV1 as they hadn't received all the information Mr J requested from B. The benefit statement from February 2022, showed Mr G could expect an annual pension at his normal retirement age of 65 in 2029 at around £1,187. Or he could select a tax-free lump sum of around £5,799 and a reduced annual pension of £970. But it didn't include the early requirement quote Mr J had requested from B.

CETV1 from B of just over £47,583 (calculated on 31 January 2022, guaranteed until 30 April 2022) is clearly below True Potential's minimum. So I said Mr J should have been aware in February that True Potential would be likely to decline to advise Mr G, regardless of anything he was waiting for from B. At the time of drafting the provisional decision, I hadn't seen the March 2022 CETV for the U scheme, which Mr G said was around £128,000. But even if Mr G had wanted both transfers considered together, it wasn't certain True Potential would agree, if one was below £100,000.

So had Mr J referred the proposal to the specialist team in February 2022, I thought it likely that's when Mr G would've been told True Potential wasn't prepared to advise him, giving him the opportunity to seek advice elsewhere much earlier. I also mentioned that due to the complex and time-consuming nature of the analysis, True Potential prefers at least eight weeks remaining of the CETV guarantee period and will routinely refuse to advise if less than two weeks remain. Which is another reason I thought Mr G should have been warned True Potential might not be able to help him as soon as the CETV was received.

Based on what Mr G actually did once he'd been told in July 2022 that True Potential had declined to advise him, I thought it's more likely than not he'd have taken the same action, but earlier. A month after being notified True Potential couldn't help, Mr G sourced new advisers through the "*Unbiased*" website, and that firm introduced him to a pension transfer specialist firm "P". The initial discussions with P took place in mid-September 2022, the suitability report and application for the transfer of the B scheme were issued in November 2022, and that transfer was completed in February 2023. Following a similar timeline from February 2022, Mr G would've started looking for new advisers in March, and engaged P in April, by which time there'd be less than a month remaining of the guarantee period for

CETV1. So I wasn't persuaded even if Mr G acted quite promptly, he'd have been able to secure the regulated advice based on CETV1, so I thought a new CETV would always have been necessary. B issued CETV2 on 7 June 2022, which was guaranteed to 7 September 2022.

I thought it was reasonable to assume P would've recommended the transfer based on CETV2, having done so based on CETV3 which was even lower. So Mr G would've transferred out of B based on CETV2 valued at £37,607, and CETV3 wouldn't have been necessary. I couldn't say for sure when the transfer would have happened as there are simply too many variables. But as I thought it's more likely than not it would have been within the guarantee period which ended on 7 September 2022, for the purposes of this decision I thought it fair to say the transfer would've happened on that date.

I appreciated Mr G said his intention was always to transfer both DB plans, but I didn't consider any alleged loss arising from the transfer of the U scheme. The original CETV of £128,000 from March 2022 and the non-statutory transfer value and deferred benefit statement U issued on 11 January 2022 would've showed values above True Potential's minimum. So had these been available to Mr J he would've had no reason to warn Mr G True Potential might decline to advise him. In March 2022 U said it had made an error, so needed to carry out a recalculation and issued a new CETV guaranteed until 8 June 2022. It wasn't clear if or when Mr J actually accessed the quote. But even if Mr G engaged P and provided them with the new CETV shortly after it was produced, P's assessment of the U scheme took around three months, so I couldn't say it's more likely than not it would've been completed within the guarantee period of the March 2022 CETV. The trustees of the U scheme had told Mr J it only issues one CETV a year, so although P requested a new one in October 2022 it wasn't issued until 28 March 2023, P's suitability report for the transfer of the U scheme was issued in May 2023 and that transfer completed in July 2023.

While the B scheme was relatively unimportant in terms of Mr G's retirement planning, the U scheme, being almost three times the value, was more significant. Bearing in mind the FCA set out in COBS 19.6.1G that it expects advisers to approach any DB transfer from the standpoint that it will not be suitable, a full analysis would always have been necessary to ensure the transfer was in Mr G's best interests. While it looks like P recommended the transfer of both Mr G's DB schemes to his workplace pension, I'm not persuaded it's more likely than not he could have benefitted from the higher CETV of the U scheme which expired at the end of June 2022. And as U will only issue one CETV per year, I think Mr G would always have needed another CETV for U.

So in summary, while True Potential was entitled to decline to provide advice to Mr G and wasn't obliged to tell him why, the unreasonable delay in letting him know meant he was prevented from seeking advice elsewhere and transferring the benefits of the B scheme at a higher CETV than he eventually did.

So I provisionally uphold the complaint and set out how True Potential should put things right.

Responses to the provisional decision

The response deadline was extended as both parties requested more time.

Mr G responded in detail. His key points are summarised below:

- A CETV is an industry standard and should be worked to, unless there's a good reason for the failure;

- He didn't understand why True Potential couldn't explain its reasoning, and how doing so might "*stray into advice*"
- I'd said a recommendation is based on an analysis of his objectives and circumstances, but True Potential carried out no such analysis, and he was never spoken to by the pension transfer specialists;
- His initial conversation with Mr J was in December 2021, he could've told him about the £100k limit then, allowing him to find someone else to "*facilitate*" the transfer;
- The delays were caused by True Potential, not the trustees of B;
- He wanted to transfer for good reasons, describing it as a "*no brainer*", and has been unable to plan for over two years;
- He holds True Potential responsible for his losses, which he thinks should be based on him transferring based on CETV1 of the B scheme and the March 2022 CETV of the U scheme;
- True Potential's systems failed him, and they won't change unless they pay his full £50,000 loss;
- The firm should be investigated by the FCA as their failings put clients at risk;
- The £200 compensation is on the low side, due to the time and effort it's taken to seek justice;

Mr G also provided a copy of the March 2022 transfer pack CETV for the "U" scheme valued at £128,430 with a guarantee period from 9 March 2022 to 8 June 2022.

True Potential had no comments to make in response to the provisional decision. Although they confirmed they had no evidence Mr J had seen the March 2022 U CETV referred to above.

Neither party disputed my assumption that Mr G is likely to be a basic rate taxpayer in retirement.

So I'm now in a position to issue the final 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.

I thank Mr G for his comprehensive response, and I appreciate his strength of feeling that True Potential should be held responsible for him not being able to transfer both schemes at the highest valuation. I can see he has many unanswered questions, but I won't be responding to every query or point. I hope he'll understand I mean no discourtesy by this. Instead I'll focus on giving my reasoning as to why I'm still not going to uphold his complaint to the extent he'd like.

Mr G says he had the misfortune of entrusting True Potential with the transfer and makes much of his misfortune at being dealt with by Mr J, and his status as a self-employed adviser working on behalf of True Potential. But Mr G explained his partner had recommended he approach Mr J direct, and I'd seen no evidence Mr J represented himself as a pension transfer specialist. So while Mr G might regret his choice, I can't hold True Potential responsible for that. Mr G had his initial discussions with Mr J in December 2021, Mr J requested the CETV from B on 23 December 2021, but B didn't issue it until February 2022. So at the initial meeting Mr J didn't have enough information to know if True Potential might decline to advise Mr G. I still think it was only when Mr J received CETV1 in February 2022

that should have prompted the conversation with True Potential's pension transfer specialists in relation to the £100,000 minimum CETV.

Mr G's main point is that he made his wishes clear to Mr J and True Potential and they failed to deliver, causing him a financial loss. As by the time he'd been referred to P, a specialist firm which was prepared to recommend the transfers, the value of both CETVs had fallen. I explained in the provisional decision I thought the initial value of the B scheme was enough for Mr J to have checked with True Potential's pension transfer specialist team, and if they declined to advise, to have informed Mr G straight away. But I also explained that if that had happened, and Mr G took the same action as he did in July, I didn't think it would've been possible for the advice process to be completed in time to secure CETV1 from the B scheme before it expired.

I understand why Mr G wants the redress based on transferring both schemes together, which he now has done via P, and he's provided a copy to show he did have a valid CETV for the U scheme. But I've explained that in February 2022 Mr J could only consider CETV1 from B, as the corrected CETV for the U scheme wasn't issued until 22 March (although it was dated 9 March). Mr J might have seen the January CETV from U, but that wasn't valid as it contained an error so had to be recalculated. So at the point in February when I said Mr G should've been told True Potential might decline to give advice as the CETV was too low, he didn't have a valid CETV for the U scheme. If Mr G had been told to go elsewhere in February, he'd have secured the services of P and had the initial discussions with them in April, and by that time he might have valid CETVs for both schemes. But while he'd have almost the full guarantee period for the U scheme, there'd be less than a month left of the CETV1 of the B scheme. And it had taken around nine weeks between Mr G's initial consultation with P to the transfer application being issued. So I'm not persuaded Mr G could have secured CETV1 even if he'd acted very promptly, and there had been no delays, particularly with the added factor that March/April is a busy period for financial advisers as it coincides with the end of the tax year.

The trustees of the U scheme confirmed to Mr G that on 11 March 2022 they'd emailed the corrected CETV to Mr J and he had called to request the password, but it's not clear if he had accessed it. True Potential didn't think he had. But in January 2022 Mr J had received an indicative quote and an email from U which said they only issue one CETV a year and so a new one couldn't be issued until July 2022. In fact, due to an error U issued a replacement for the January quote in March 2022, with a guaranteed period, but Mr J wouldn't have known that was going to happen in February.

And I've explained that if Mr J had known the value of the U CETV, then it's not so straightforward to say he should've warned Mr G True Potential might decline to advise him, as it was over the £100,000 and there was around eight weeks left of the guarantee period. So if I were to base my findings on Mr J having access to valid CETVs from both schemes, I couldn't fairly expect him to have been concerned that the value was below True Potential's limit and referred to the pension transfer specialists at that point. Or to have warned Mr G that True Potential might decline to give advice, prompting him to go elsewhere. I think it's more likely Mr J would simply have carried on with the preparation work and submitted the proposals, either together or separately to the specialist team, at which point True Potential could still decide not to provide advice to Mr G. Or they might have been prepared to only advise on the U scheme, meaning Mr G would still need to go elsewhere with the B scheme. A third possibility is that True Potential could've advised Mr G *against* transferring one or both. I think the mismatch in the guarantee periods of the two schemes makes it unlikely Mr G would've been able to transfer both and benefit for the higher CETV for each scheme.

Mr G may have considered the transfer of both his DB pensions to be a "*no brainer*", but that's not how the regulator expects financial advisers to view them. As I explained, the FCA

expects an adviser to start from the presumption that a DB transfer will not be suitable. A pension is designed to provide an income in retirement which might need to last for several decades. So giving up a guaranteed income for life, however modest, isn't generally recommended, as it becomes subject to investment risk and being exhausted far too early. I've seen these risks were set out in P's recommendation report in May 2023.

Mr G complains that True Potential's actions (by not facilitating his transfer or informing him sooner that they couldn't do so) put clients' interests at risk. But transferring a DB pension is much more likely to put a client's interests at risk, hence the "*presumption of unsuitability*". And from a firm's point of view, advising on a DB transfer entails risk, which is why they are so highly regulated and require specialist advisers. Firms are aware that if they recommend the transfer of a DB pension meaning the consumer loses valuable guaranteed benefits, they risk that advice being complained about in the future, which may expose them to paying substantial redress. And if the result of their advice is that the transfer is not suitable, then they risk upsetting their client, who may not be happy to pay a fee for advice which didn't result in the outcome they hoped for.

I've already said True Potential weren't obliged to advise Mr G, nor did they need to explain their reasons. I realise this is unsatisfactory from his point of view. But other than provide the generic reasons why a DB transfer might not be recommended (some of which weren't relevant to Mr G's own situation), any specific reasons which relate to Mr G's particular circumstances have the potential to be considered as a personal recommendation, which could be construed as regulated financial advice. I think this is why True Potential said it had to be careful not to say anything which may "*stray into advice*". Mr G was frustrated not to have had any direct contact with the pension transfer specialists. I presume that would only have been necessary if True Potential had actually given advice. So I don't think it made a difference here.

I've explained that if Mr J had accessed the March 2022 U CETV he'd have no reason to think True Potential wouldn't assist Mr G. So I still think the only error I can hold True Potential responsible for, is that Mr J should have checked whether True Potential would be prepared to advise on transferring the B scheme given the CETV was below £100,000. As he didn't do that, Mr G was denied the opportunity of seeking advice elsewhere, until after July 2022. Sometimes a delay can work in a consumer's favour as a later CETV may be higher or not much different, but unfortunately in this case, each CETV was lower. I don't think Mr G could have secured CETV1, but I think he ought to have been able to benefit from CETV2, and CETV3 shouldn't have been necessary.

So I uphold this complaint and will set out below how True Potential should put things right.

Putting things right

I require True Potential to pay compensation to put Mr G as close as possible to the position he'd be in, if the transfer of the B scheme had been completed on 7 September 2022, based on the second CETV of £37,607.

Tax-free cash

- True Potential should calculate the difference between CETV2 issued in June 2022 and CETV3 issued in September 2022 (Value A).
- I understand Mr G took the maximum tax-free lump sum, so calculate 25% of Value A being the additional tax-free cash he would have had (Value B)

- As I think Mr G would have had this on 7 September 2022, add 8% simple interest to Value B from 7 September 2022 to the date of my final decision and pay this (Value C) to Mr G in cash.
- *Income tax may be payable on any interest paid. If True Potential deducts income tax from the interest, it should tell Mr G how much has been deducted. True Potential should give Mr G a tax deduction certificate in respect of interest if Mr G asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.*

Investment loss

- True Potential should obtain a notional value of Mr G's workplace pension held with Legal & General as if CETV2 (less the tax-free cash figure mentioned above) was transferred in on 7 September 2022 and compare this with the actual value of his plan after CETV3 was transferred in on 24 February 2023.
- The difference between the notional value and actual value represents Mr G's financial loss.
- This loss should then be brought up to the date of my final decision in line with the performance of Mr G's workplace plan.
- True Potential should pay the loss into Mr G's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If True Potential is unable to pay the compensation into Mr G's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for the income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr G won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age. I think it's reasonable to assume Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Mr G didn't pay any fee to True Potential, so there's nothing to refund. If Mr G's new provider's advice fee was based on the transfer value he would have paid a slightly higher fee based on CETV2. But for simplicity I'm not going to adjust the compensation in this respect.
- In addition, True Potential should pay Mr G £200 to reflect the worry and inconvenience he has experienced.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
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L&G Workplace pension	Still exists and liquid	The actual investments within the plan	7 September 2022	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)
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Income tax may be payable on any interest paid. If True Potential deducts income tax from the interest, it should tell Mr G how much has been deducted. True Potential should give Mr G a tax deduction certificate in respect of interest if Mr G asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Your text here

My final decision

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 Mr G to accept or reject my decision before 24 December 2023.

Sarah Milne
Ombudsman