The complaint

Mr C complains that his adviser at Julian Harris Financial Consultants provided poor advice, failed to invest his pension fund following its switch, and as a result of it remaining in cash, he has lost out financially. Mr C also complains that he has subsequently been unable to obtain advice on the transferred fund due to the low value.

What happened

In September 2022, Mr C met with his adviser in order to discuss his pension provision. He was employed as an accountant, in addition to running an accountancy business with his wife which he intended to grow over the following months with the ultimate plan of leaving his employment. He held a small workplace defined contribution pension of approximately £4,200, which he was open to reviewing with an adviser.

At that time his objectives were to have a financial plan for retirement and understand any shortfalls. He also wished to include his wife in the plans in order for them to retire together. Julian Harris recommended that he transfer his workplace pension with True Potential into a SIPP with AJ Bell. A suitability report was provided which recommended that his monies be invested into a combination of funds with the intention of making regular contributions of £200 per month. An application form was completed on 24 October 2022 for the transfer and the regular contributions, and the transfer went ahead, with the funds invested in cash. An initial advice fee of £400 was charged, and ongoing adviser charges of 1% of the fund. Both were shown in the suitability report and the application form.

Following the recommendation, the fund was transferred into the AJ Bell SIPP (in line with the application form) however agreement for the investment to proceed was not confirmed, and the fund remained in cash. Mr C's adviser attempted to contact Mr C to follow up on the investment by email on 28 December 2022, to which Mr C responded on 11 January 2023 and said he would "*make a conscious effort to get the forms over to you in the morning*." On 13 January, a meeting was arranged for the following day, although it is unclear whether this meeting took place. Mr C's adviser subsequently left Julian Harris, however there was no handover to a new adviser.

On 5 May 2023, Mr C received an email from AJ Bell, referencing a previous email of 9 March 2023 (which was attached to the May email) regarding the removal of his financial adviser from his SIPP. It is unclear when Julian Harris was removed as adviser from the SIPP. The email stated that as they had not heard from Mr C regarding appointing a new adviser, an additional quarterly administration fee of £50 plus VAT would be charged to reflect the work involved in AJ Bell running the account. The email stated that as an adviser led platform, the service was for those who use a financial adviser, and they encouraged him to appoint one. Mr C says he contacted AJ Bell following receipt of the email in May, and discovered his investment had not been invested, and remained in cash.

Later in May 2022, Mr C complained to Julian Harris. They responded in July 2022 stating that at the time of the recommendation, Mr C had requested time to confirm that he wanted to proceed with the investment strategy recommended. Julian Harris stated that Mr C's adviser attempted to contact him in the subsequent weeks, however the agreement to proceed was not received prior to the adviser leaving the business. There was no handover with a new adviser. Julian Harris recognised that Mr C had not been provided with the level of service and offered a refund of the initial advice fee of £400 charged, plus three quarterly advice charges of £50, charged by AJ Bell. The total offered was therefore £550.

Mr C was did not agree that this was reflective of the loss of potential investment he had incurred, as well as the stress and inconvenience caused by the money not having been invested. As a result, he brought his complaint to this service.

The investigator considered the submissions made by both parties. She concluded that the advice to transfer his pension to the AJ Bell SIPP was not appropriate for Mr C due to the additional costs incurred within the AJ Bell SIPP, and recommended that Julian Harris carry out a calculation with the intention of putting Mr C back into the position he would have been had the incorrect advice not been given. She also recommended that Julian Harris pay an additional £200 to reflect the distress and inconvenience caused to Mr C by their error.

Julian Harris did not agree with this. They stated that when disregarding the adviser charge, the charges for the SIPP are actually lower, and that the choice of funds was better in a SIPP than in the arrangement held with True Potential. They reiterated that the value of paying for advice was clear to Mr C at the time of the advice, and due to his occupation, he could be expected to understand that a professional service costs money.

Mr C did accept the findings, although stated that he wasn't sure whether the £200 compensation recommended was fair as the situation had been stressful and embarrassing to him.

Because the parties didn't agree, Mr C's complaint has been forwarded to me for a decision.

<u>Provisional findings</u>

I issued my provisional decision on 21 November 2023. It said:

"I have considered all of the evidence and arguments provided to decide what's fair and reasonable in the circumstances of this complaint. Subject to any further information I receive, I intend to disagree with the view of the investigator in relation to the decision to uphold Mr C's complaint for the following reasons.

Mr C's complaint comprises two elements – firstly the suitability of the transfer recommended by Julian Harris, and secondly the fact that when transferred, his pension fund was not invested as intended, but remained in cash.

The investigator considered the suitability of the transfer and found that it was unsuitable because of the increase in charges due to the receiving scheme being a SIPP.

Prior to the transfer, Mr C held a True Potential pension, invested in the Balanced 5A fund. This carried an annual management charge (AMC) of 0.35%, as well as a platform charge of 0.40% per annum. The total charges were therefore 0.75% per annum. Mr C's adviser recommended that the pension be transferred to a Retirement Investment Account with AJ Bell (a SIPP), to be invested in Cash (3%), HSBC American Index C Accumulation (48.5%) and Royal London Corporate Bond (48.5%). The aggregate charges for the funds were 0.39% per annum, with a fund management charge of 0.25%. The total charge for the new pension recommended was stated to be 1.64%, an increase of 0.89% per annum.

However, having considered this, the reason for the increased cost is due to the addition of the ongoing advice charge of 1% per annum. When disregarding the ongoing advice charge, in order to make a like for like comparison of the pensions, it can be seen that the recommended pension was a less expensive investment.

The reasons for the recommendation were stated to be to provide access to a range of investment opportunities, the facility to manage the investment online, access to a range of model investment portfolios and discretionary fund management, and offered "true value for money". The receiving scheme would allow regular contributions to be made, as intended by Mr C, and for an ongoing advice fee to be facilitated within the plan.

I have considered whether it was appropriate for Mr C to incur advice charges, thus increasing the overall cost of the transfer. In the suitability report it was confirmed that Mr C had set up an accountancy business with his wife and intended to grow the business and leave his employment, which he hoped would be within the next year. He planned to make contributions when possible to top up his pension, with an initial intention of contributing £200 per month. In his submissions to this service, Mr C has confirmed that when he met with the adviser at Julian Morgan he wanted to "understand any shortfalls based on my requirements, this giving me an insight into the work required to reduce that shortfall." I think it is fair to consider that Mr C's intention, at least in September 2022, was to commence a plan towards his retirement, which was previously not in place.

Is it therefore reasonable to consider that ongoing advice would have been of benefit to him, in order to deal with his pension provision over the coming years and ensure that he could effectively manage any shortfalls based on his requirement for his retirement.

As an accountant, Mr C would have been aware of the benefits of paying for a professional service. There is no evidence of Mr C questioning the advice charge, which was outlined in both the suitability report provided in September 2022, and the application form signed by Mr C. If he was not happy to commence this "paid for" relationship, I would have expected Mr C to question the charges at that time. There is no evidence of him doing this.

When considering the product itself without taking into account the advice charge, (in order to make a fair comparison) it can be seen that the new product has lower charges, and availability of a wide range of funds. Considering Mr C's objectives, I am satisfied that the transfer of his True Potential Pension to the AJ Bell SIPP was in line with his requirements at the time of the advice, and do not uphold this element of his complaint.

It is not in any doubt that whilst the intention was for the fund to be invested in the HSBC American Index C Accumulation and Royal London Corporate Bond funds, this did not happen, and the funds remained in cash. The information I have been provided suggests that this is the result of a breakdown of communication and a failure to follow up the investment following the departure of Mr C's adviser by Julian Harris. Julian Harris have stated that following the recommendation, Mr C requested time to consider the investment strategy before proceeding with the investment of the funds. Following this a meeting was scheduled which was cancelled by Mr C, and another arranged. It appears that this meeting did not happen before Mr C's adviser left Julian Harris, and the funds remained in cash. Mr C states that he was not aware of this until the emails from AJ Bell in March and May 2023 when he subsequently made contact with Mr C.

Julian Harris have accepted that their service fell short of what would be expected by Mr C, and offered to refund the initial advice charge, and the three quarterly advice charges levied by AJ Bell. Having considered the facts of the case, I am of the opinion that this is a fair settlement offer, however note that the AJ Bell quarterly charges are subject to VAT which does not appear to be included. Julian Harris should therefore increase their offer by the *amount of the VAT, meaning that the total that should be paid to Mr C is £400 plus £180 (three quarterly payments of £50 (£150) plus VAT at 20% (£30).*

When completing their view, the investigator recommended an additional £200 to be paid to Mr C, as compensation for the additional distress caused by the funds being left uninvested and Mr C's efforts to communicate with the adviser. I have considered carefully whether this is appropriate, and do not agree that it is. In terms of communications with the adviser, and the funds being invested, I have to take into account Mr C's own role in the process. It is clear from the emails and texts in the complaint submissions that Mr C did not respond promptly to emails or return forms as required as a priority to ensure that his investment went ahead as intended. Mr C apologised in an email that he had not returned the required forms, due to the fact he had been busy. There is a text apologising for missing a meeting which he had forgotten about. I have therefore concluded that Mr C was at least partially responsible for the initial delays in his investment moving ahead prior to his adviser leaving Julian Harris.

Mr C was aware that he had not given his confirmation that he wished to go ahead with the investment, and although I agree that it was primarily Julian Harris' role as the adviser to push the process forwards, Mr C did have an element of responsibility for his own financial affairs. I have considered the timescales involved. There is an email on 13 January 2023 arranging a meeting with the adviser for the following day – so I am satisfied that both parties were aware that the investment process had not been completed at that time. AJ Bell first wrote to Mr C on 9 March via email, at which point I believe it would have been reasonable to question the content of the email either with AJ Bell or Julian Harris. It therefore seems that the maximum amount of time that the funds were invested in cash when Mr C could have been under the understanding that it was invested within the recommended funds was less than two months. Due to the value of the transferred pension fund, as well as the length of time until Mr C's earliest possible retirement age, I have considered whether the money not being invested for this amount of time could reasonably be considered to have caused a significant level of distress or inconvenience. As detailed above, Julian Harris have offered a refund of the initial advice fee charged, in addition to a payment to cover AJ Bell's charges. I believe that this is an appropriate settlement, and do not instruct Julian Harris to make any additional payment, unless they wish to do so.

Mr C has added to his complaint the fact that he has been unable to engage a new adviser due to the low value of the fund that was transferred to AJ Bell. I have considered whether this can be attributed to any error on the part of Julian Harris, and am not persuaded that it can. At the time of the recommendation, it was the intention that the existing pension fund would be transferred, with additional contributions of £200 per month being paid with the intention of growing a pension fund towards achieving Mr C's retirement requirements. Julian Harris were set up on the SIPP as being the adviser. I do not believe that it could have been foreseen that the investment would not go ahead as recommended, that the contributions would not be made by Mr C as intended, or that a new adviser would be required. I therefore do not uphold this element of Mr C's complaint."

Responses to my provisional decision

I have received a response from Mr C. He states that although he disagrees with some of the comments made by Julian Harris, he does not believe that they would make a difference to the outcome of the complaint and he has not added anything further. Julian Harris have not responded to the provisional 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.

Having taken into account the response from Mr C, as no new information or arguments have been provided I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision. It follows that I uphold this complaint in part.

Putting things right

Julian Harris Financial Consultants should make a payment of £580 to Mr C, which should be paid directly into his pension. This represents a refund of the initial advice charge paid by Mr C, and the quarterly charges applied by AJ Bell.

My final decision

For the reason given above, I uphold Mr C's complaint in part. Julian Harris Financial Consultants will be required to pay the compensation stated above to Mr C in line with my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 February 2024.

Joanne Molloy
Ombudsman