

The complaint

Mr G complains that True Potential Wealth Management LLP (TPWM) gave him unsuitable advice to transfer his pension to True Potential Investments. He says he has suffered a loss as a result.

What happened

Mr G had a pension with a provider I'll refer to as provider R. And an existing adviser, who I understand he also knew personally.

On 1 June 2021, that adviser wrote to Mr G on TPWM headed paper to tell him that he'd accepted an offer to take up a position within TPWM. He said it would now take over the servicing of Mr G's pension. The letter also explained what the TPWM service offer was, including stating that the ongoing annual fee would be 0.5%. Mr G disputes receiving this letter.

The letter said that once Mr G had signed up to TPWM's proposition he would be sent details of how to access his investments anytime online. It also said that Mr G's adviser would continue to support him. And that as part of the transfer process, he'd provided TPWM with access to the information he held about Mr G so that it could continue to provide ongoing financial advice.

TPWM said that before such a letter would be sent, an adviser who planned to join it would make his clients aware of TPWM, and check whether their clients consented and were happy to have their information shared with it. It said that only then would a welcome letter be sent to clients to let them know about the services it could provide.

TPWM said that after a welcome letter, it would also send some clients a Direct Marketing Offer (DMO) if they held a similar and simple product.

TPWM said that it issued an email to Mr G on 1 June 2021 about a DMO. It said that that email was system generated, so it couldn't provide a copy of the specific email Mr G would've received. But the following shows what that email would've said.

"Your Direct Offer Opportunity

Dear [name]

As a client of TPWM you have been given unlimited, 24/7 access to your investments and pensions online and by app. In addition we're delighted to now also offer you the opportunity to transfer your pension policies by Direct Offer.

To access this online service, all you need to do is follow the simple instructions below to create your account and access your personalised offers."

I understand that Mr G met with his adviser on 10 June 2021. A personalised illustration summary dated 10 June 2021 had been produced to show what benefits Mr G might get if he transferred his pension to True Potential Investments. This had the financial adviser listed

as TPWM. This document stated that Mr G should read the information it contained so that he could make an informed decision about whether or not to invest.

Following discussions with his adviser, a digital application to transfer Mr G's pension with provider R was completed on 10 June 2021. Mr G said that his adviser had completed all of the documentation for the transfer of his pension on his computer.

TPWM said that it sent Mr G a customer care survey on 10 June 2021, to ask him a specific set of questions about his experience of completing the DMO process online. It said this included the following questions:

"Was it your decision to transfer your investment and did you complete the process by yourself?"

Did you choose the portfolio yourself with no influence from anyone else, other than the provision of factual information?"

If you have selected no to either of the above questions, please confirm who assisted you?"

Did you read and understand all relevant documentation available to you on the website?"

Are you happy with the level of risk associated with the Portfolio you selected?"

Did you understand the charges associated with your transfer, and that these charges would be applied on an ongoing basis?"

Did you contact your previous provider to check that no exit/transfer charges would apply?"

A direct offer transfer is intended to be a decision made by yourself only. Are you happy to proceed on this basis?"

TPWM said that Mr G didn't respond to the survey, despite having opened the email several times on seven different days. And that he hadn't raised any concerns with TPWM at the time. It also said that when Mr G spoke to TPWM by phone on 15 July 2021 he hadn't raised any concerns. During the call between Mr G and TPWM, TPWM said that it wanted to double check how things would move forward with the transfer, which it said would include the servicing. The agent explained that the transfer was taking place.

Mr G said that he became concerned with the performance of his pension and its charges. So he complained to TPWM that he'd been incorrectly advised to transfer his pension to it.

TPWM issued its final response to the complaint on 1 November 2022. It didn't think it'd done anything wrong. It said Mr G hadn't been advised on his transfer to TPWM, as the transfer had been arranged on a non-advised basis through a DMO. It felt that Mr G's adviser hadn't carried out any evaluations or risk questionnaires with him, or followed any sort of regulatory process for the transfer. And said this showed that it had been a non-advised sale, with no formal recommendation provided.

TPWM acknowledged that Mr G said that the application to transfer had been completed on his adviser's computer. It said that the DMO had been sent to Mr G's personal email address and that it had required him to use his own personal log in information to complete the application. It also said that it had been entirely optional for Mr G to have changed his pension's servicing to TPWM. And that he also hadn't needed to transfer in order to become a client of TPWM.

Mr G brought his complaint to this service in November 2022. He felt that his adviser had complete control of the setup process for the transfer. And that he hadn't been aware of what he was doing. He also said that when he'd met his adviser in June 2021, he hadn't mentioned that he could simply move the servicing of his pension to TPWM without the need to transfer his pension. He said he'd trusted his adviser to act in his best interests. But now felt that the adviser had wanted to do what was best for himself, by maximising his own fees.

Mr G said that he'd been happy with the growth of his pension when it was with provider R. And that his pension had been suitable for his needs. But he was now unhappy with the performance of his pension after the transfer. He wanted to be compensated for any financial loss caused by the miss-selling of the transfer.

TPWM issued a further response to address Mr G's further concerns on 12 December 2022. It said that when a client was offered a DMO, he would be sent an email telling him that an offer was available on the client website. And that it would include a unique link for the client to access the client website and view the offer. It said that a client would need to use their own log in details to access their client website, from where they review the transfer offer on a non-advised basis.

TPWM said that even if Mr G had completed the DMO while he was at his adviser's office, he would've needed to use his own log in details to access his client website so he could review the transfer offer on a non-advised basis. It said the email it'd sent to him to tell him about the offer wasn't available to his adviser. Therefore it felt that Mr G had reviewed and agreed to the transfer offer himself, on a non-advised basis.

TPWM didn't agree with Mr G that his adviser had advised him on the transfer. It said that the adviser had told it that he only provided factual information to Mr G, not advice. It also said it had no documentary evidence that any advice was provided.

Our investigator asked TPWM to clarify how Mr G would've received his security questions and password when his account was being set up. TPWM said that he would've created them himself. It said he would've first received a text message and/or email to create an account. Then he would've been prompted to create his own password and passphrase.

Our investigator then asked Mr G to help him understand how the adviser had got his secure details, given TPWM had sent Mr G a unique username and passphrase. Mr G said that he'd told his adviser when he met him at his office.

A new investigator took over the complaint in October 2023. He discussed the complaint with Mr G, who again said that the transfer application had been completed by his adviser.

Our investigator didn't think that the complaint should be upheld. He felt that the transfer was on a non-advised basis.

Mr G didn't agree with our investigator. He said that he knew other people who had the same issue with his adviser. And that TPWM had been ordered by this service to compensate them.

Our investigator told Mr G that this service investigated each case on the unique circumstances and facts. And asked him to confirm what he didn't agree with in his view.

Mr G made the following points:

- The illustration for the transfer had used £144,000, rather than the correct £146,662.64. He wanted to know what had happened to the difference.

- He didn't know when he met his adviser on 10 June 2021 that the adviser was now working with TPWM.
- Mr G felt that his adviser had completed the transfer application without his knowledge. He said the adviser had only needed his password. He said that the application form for the transfer was electronically signed with a shortened form of his name that he didn't ever use. Mr G felt that this showed that his adviser had completed the transfer process, not him.
- Mr G said he was happy with his pension with provider R and with its charges and investments. He felt that his investments in the new pension were medium to high risk, whereas his investments in his pension with provider R had been medium risk. And that this meant that the investment recommendation he felt his adviser had made was unsuitable. He also said that his pension with provider R had been lower cost. He said he didn't ask for a change to be made. Mr G felt that the new pension wasn't suitable for him.

TPWM said it would be happy to provide a comparison of the previous and new funds. But that it didn't have a record of Mr G's previous investments. It asked him to help it to access the information from provider R, or to provide it himself so it could carry out the required analysis.

Mr G provided his agreement for TPWM to request what it needed from provider R. But as of 23 January 2024, TPWM told this service it was still waiting for the information it had requested.

Our investigator then asked Mr G if he could send his last statement from provider R showing the value and funds held within it. Mr G provided this service with provider R's transfer letter, showing that the value was £146,662.64 on 14 June 2021. But this didn't meet our investigator's requirements.

Mr G then provided this service with his provider R annual reviews from 2019 and 2020. These showed that Mr G had been invested in provider R's Governed portfolio 4, with majority equity assets over the period covered by the statements. And that his adviser didn't recommend any changes to those investments. The 2020 review showed that Mr G's investments were rated as 5 out of 10 for volatility, so medium risk at that time. But he didn't provide any information about the risk rating in 2021.

TPWM told this service that it had a high level of monitoring on all non-advised transfers, with every single client receiving a survey and potentially a follow up call to identify whether an adviser was involved in a transfer. It said it hadn't found any indication of a pattern of wrongdoing in respect of Mr G's adviser.

As agreement couldn't be reached, the complaint has come to me for a review.

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 done so, I'm not going to uphold it, for largely the same reasons as our investigator. I know this will be disappointing for Mr G. I'll explain the reasons for my decision.

I acknowledge that Mr G considers that his complaint is very similar to another complaint about the same adviser which this service upheld. As our investigator noted, each complaint

is considered on its own merits. Having said that, I have briefly reviewed the case Mr G referenced. In my view, a significant difference between that complaint and Mr G's is the survey that TPWM sent Mr G on 10 June 2021 and which it can evidence that he accessed. My decision will cover this later.

I first considered Mr G's point that he didn't know when he met his adviser on 10 June 2021 that the adviser was now working with TPWM.

Had Mr G's adviser told him that he was working with TPWM?

TPWM said that Mr G's adviser wrote to him on 1 June 2021 on TPWM headed paper to tell him that he'd accepted an offer to take up a position within TPWM. Mr G said he didn't receive this.

The evidence shows that a personalised illustration summary dated 10 June 2021 had the financial adviser listed as TPWM. Mr G said he hadn't understood a lot of the information in this document. I think this shows that he received it.

From what I've seen, the adviser at least tried to tell Mr G on 1 June 2021 that he was now working with TPWM. Regardless of whether Mr G received that letter or not, I consider that he would've realised that his adviser now worked with TPWM when he met with him on 10 June 2021. I say this because I'm satisfied that the personalised illustration summary made this clear.

Mr G said that this illustration used the wrong transfer amount, as it had used £144,000, rather than the correct £146,662.64. But from what I've seen, the document stated that this amount was: "*an indicative investment amount*". When Mr G transferred very shortly after the illustration was produced, provider R confirmed in its 14 June 2021 closure letter that it would pay £146,662.64 to True Potential Investments on Mr G's behalf.

Therefore I can't reasonably say that TPWM did anything wrong when it used an approximate figure in the illustration. And, while I'm sorry that Mr G didn't understand the personalised illustration, I've no evidence that he told his adviser, or that he asked for clarification that he didn't receive.

I next considered Mr G's point that the application form included an adviser declaration which his adviser had electronically signed to state that he had advised Mr G on the transfer.

The adviser declaration

TPWM told this service that the application form, which had been automatically generated by the system, had in error referred to Mr G as having received financial advice. It said this was a technical issue with the system. And noted that as the form was automatically generated, it didn't distinguish between the manner in which the pension was applied for. It provided a letter from True Potential Investments which had admitted that it was responsible for the fault on the application form.

Therefore, while I understand why this caused additional confusion about whether advice had been provided, I can't fairly say that this shows that it had.

I went on to consider whether there's any other evidence that Mr G was advised to transfer his pension.

Was the transfer advised?

I can see that Mr G felt that his adviser, whom he trusted, had recommended the transfer. So I've gone on to consider whether the evidence shows that the transfer was advised.

I went on to consider Mr G's other points, as follows:

- His adviser had completed the application form for the transfer on his office computer. Mr G said he hadn't seen any of the information the adviser had entered, nor had he completed any of the information himself. And that the application form had been electronically signed with a shortened form of his name that he never used. Mr G also said that his adviser had already prepared some of his security details before the 10 June 2021 meeting. Mr G said he'd given his adviser his security questions and password during that meeting, and that the adviser had then used that password to complete the application.
- Mr G had been happy with his existing pension's charges and investments.
- Mr G didn't believe that the transfer was non-advised. He said he'd used his adviser because he didn't understand pensions. And that he'd understood that his adviser had advised him to transfer.

I've carefully reviewed the content of the DMO TPWM sent to Mr G. This stated: *"In addition we're delighted to now also offer you the opportunity to transfer your pension policies by Direct Offer"*.

I consider that this wording makes it clear that it was optional to transfer.

TPWM said that the DMO offer could only be accessed through a unique link in an email it'd sent Mr G. And that he'd have to log in using his own log in details to review the transfer offer. It said that once he'd done this, and had accessed TPWM's website portal, the following risk warning was given:

"Your financial adviser has not assessed your individual circumstances to enable individual financial advice to be provided in respect of this transaction, nor whether your existing investments are higher charged than those available from True Potential Investments. This offer is designed for investors who wish to make their own investment decision – If you are unsure of whether this is suitable for you, you should contact your financial adviser and request a personal recommendation."

TPWM said that Mr G had ticked a box at the bottom of the page containing this risk warning to confirm that he accepted this statement and the terms and conditions. And that he couldn't have proceeded without confirming he'd read and understood the terms and conditions. So it felt that Mr G had been aware that the offer had been made on a non-advised basis. It also said it had no record of Mr G requesting a personal recommendation from his adviser. And that as no suitability report, fact find or other required analysis had been done at the time, this showed that the transfer had been carried out on a non-advised basis. It also said that there'd been no initial advice charge on the transfer.

TPWM said that once Mr G had accepted the terms and conditions, he had progressed to pages providing factual information on the products available if he transferred, including the available portfolios and Fund Fact Sheets. It said that as these Fact Sheets outlined the types of funds held in these portfolios; their historical performance and risk level; and the relevant costs and charges, this provided Mr G with enough information so that he could make an informed choice about whether to proceed with the transfer and what to invest in. It also said that all of this information was automatically uploaded to Mr G's Client Site once he'd made his choices.

TPWM said it had sent Mr G a survey on 10 June 2021 about the DMO. This stated the following:

“...These forms were sent directly to you and the transfer is considered a “direct client offer”, where no formal financial advice has been sought by or given to the client. What we mean by this is that you made the decision to transfer without your financial adviser giving you a personal recommendation.”

TPWM felt that the survey had clearly outlined the difference between advice and a non-advised sale. And that if Mr G had been concerned about the process at the time, he would've raised those concerns when he'd received the survey. It also said that although Mr G didn't respond to the survey, it could evidence that he'd opened the email it was sent in several times on seven different dates. It also said that when he'd spoken to it by phone on 15 July 2021 he hadn't raised any concerns about the transfer.

Mr G says that he shared his security details and password with his adviser at the meeting on 10 June 2021. And that his adviser had then submitted the application without his involvement. Mr G noted that various aspects of the completed application form show that it wasn't him who completed it.

TPWM acknowledges that Mr G's adviser's computer might've been used to submit the pension switch application. But it said that Mr G would've seen some disclaimers about the pension switch being a non-advised sale when he signed up on the portal.

However, if, as I think is most likely from the evidence and testimony I've seen, Mr G's adviser submitted the application for the transfer on Mr G's behalf, he wouldn't have seen any of the disclaimers on the application at the time of the application. But I'm not persuaded that this means that the transfer was advised.

I say this because Mr G said he gave his adviser his security details and password. I consider that he would've only done this if he was comfortable that he knew what these were going to be used for.

I also say this because of the survey which TPWM sent to Mr G the same day that the application was set up. I consider that this clearly asked Mr G if it'd been his decision to transfer. And if he'd chosen his investment portfolio himself.

Although Mr G didn't complete this survey, I'm satisfied that he received it. And that he opened it on more than one occasion. Therefore, while I can't be certain whether or not Mr G ever read the survey in full, I'm persuaded that he was aware of the questions that it asked.

I also note that the factual information that had been provided during the application process was automatically uploaded to Mr G's Client Site. And that TPWM has provided evidence that Mr M has regularly logged into his Client Site on many occasions since. Therefore I'm satisfied that Mr G's fund choices and the relevant costs and charges were available to him after the application.

In my view, if Mr G had been concerned that he hadn't himself made the decision to transfer, or hadn't chosen his own investments, he would've complained to TPWM after receiving the survey. I say this because I'm satisfied that the survey itself, and the cover letter that came with it, clearly explained that he'd made the decision to transfer without his financial adviser giving him a personal recommendation. Therefore, if Mr G had felt that he'd been advised on the transfer, I think he would've complained at that time.

I've also listened to the call from 15 July 2021 and I consider it shows that Mr G was aware

that the transfer was progressing. If Mr G had any concerns about how the transfer had been carried out, I would've also expected him to have raised those concerns at this point. But he didn't ask any questions about the transfer or express any concerns about it.

While I acknowledge that Mr G used his adviser because he didn't understand pensions, and felt that his adviser had advised him to transfer, I've not seen any evidence that advice was provided. From what I've seen, TPWM provided Mr G with the information he needed so he could make an informed decision about whether to transfer. It also provided him with enough information so that he could make an informed decision about his investments if he transferred.

I'm sorry that Mr G is unhappy that he transferred his pension. I acknowledge that he was happy with his previous pension and feels that he's suffered a loss because he transferred. But I've not found sufficient evidence that he was advised to transfer. So I can't fairly uphold the complaint.

My final decision

For the reasons explained above, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 April 2024.

Jo Occleshaw
Ombudsman