

The complaint

Mr H is unhappy that True Potential Wealth Management LLP (True Potential) refused to provide him with transfer advice.

What happened

Mr H held a Section 32 pension with Firm P. He received a document containing a cash equivalent transfer valuation (CETV) from them on 2 August 2022. This document explained that the option to transfer would only be available to Mr H until 3 January 2023 due to the Guaranteed Minimum Pension (GMP) which was attached to his policy.

Mr H got in touch with True Potential to ask them for pension advice. His details were passed to an adviser on 7 August 2022. Mr H provided a copy of the transfer pack to True Potential on 9 August 2022. The adviser let Mr H know that they would need to complete a fact find with him. On 16 August 2022 Mr H had a telephone call with the adviser. An email was sent to him the next day providing him with some documentation to read and it requested some additional information.

An email was sent from Mr H to True Potential on 20 August 2022 providing them with the requested information. On 8 September 2022 True Potential asked Mr H some further questions about the information he had provided during the fact find. Then on 6 October 2022 True Potential asked for more information about his pension – specifically what it would be invested into.

On 17 October 2022 Mr H asked for an update and reminded True Potential of the deadline he was working to. On 18 October 2022 True Potential ask for further information about the scheme, Mr H provided this information to them the next day. True Potential responded to Mr H to let him know that they thought they had all they needed, and the transfer team would look over everything.

On 1 November 2022 Mr H chased for an update and was advised that True Potential were awaiting some further information. On 15 November 2022 True Potential's transfer team let the adviser know that they would not provide advice in relation to Mr H's pension. This was relayed to Mr H on 21 November 2022. Mr H has provided part of a call recording with True Potential as they explained the reasons why advice had been declined. No fee was charged by True Potential to Mr H for the work they carried out in gathering information.

On the same day as Mr H's adviser was told that True Potential would not provide him with advice – 15 November 2022 - Mr H received an email from them entitled 'Analysis of Your Case' it said:

“(adviser's name) will now analyse your case based on your information from your Factfind meeting and your stated goals.

Once we have completed our analysis we will start to build your Suitability report which will explain the option we believe best meets your needs”

Mr H requested a copy of all of the information True Potential held in respect of his pension via a Subject Access Request (SAR).

On 22 December 2022 Mr H received a CEVT from Firm P. He was in contact with Firm P throughout December 2022 through to March 2023 as he was querying the options he had when taking his benefits.

He engaged a different financial adviser (Firm C) who emailed him to arrange a fact find meeting on 6 January 2023.

In March 2023 Firm P let Mr H know that they had changed their processes and there was no longer a deadline that he needed to meet in order to transfer his Section 32 pension.

Mr H transferred away from Firm P in July 2023.

Mr H was unhappy with the service he had received from True Potential and so raised a complaint with them. He said that he was told True Potential would provide him with advice and was reassured throughout that advice would be given. There was a deadline of 3 January 2023 which needed to be met, and True Potential were aware of that. He said that he was very worried about the deadline approaching. He also said that he has suffered financially as the adviser firm that carried out the advice charged a higher fee than True Potential were going to.

True Potential responded to his complaint in August 2023, they didn't uphold it. Unhappy with this decision Mr H referred his complaint to this service.

An investigator reviewed Mr H's complaint, they didn't uphold it. They said that True Potential had followed their terms and conditions and so had acted fairly.

Mr H was unhappy with the assessment and has asked for an ombudsman to review the complaint. He said that he is not complaining about the decision True Potential made not to provide him with advice. Instead, he is unhappy with the service that they provided to him.

I issued my provisional decision, both parties have agreed with it and no further information has been provided for my consideration. As such my findings largely repeat what I have said within my 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 done so I am to partially upholding Mr H's complaint. I'll go on to explain why.

Mr H has complained about the service he received from True Potential, he says that:

- They caused him considerable distress as he had a tight deadline to meet in order to transfer his pension away from Firm P.
- He was reassured that True Potential would provide him with advice throughout his interactions with them.
- He shouldn't be held to a term which he acknowledged at the start of the process (that advice may not be given) and that the email of November 2022 superseded these terms in any case as it set out that his case was being analysed.
- The suggestion that a charge would still have been levied is irrelevant as he had committed to paying it.

- True Potential should have assisted him in gaining an extension from Firm P.
- He has not received the call recordings as part of the SAR request.

Mr H would like compensation and for True Potential to reimburse the difference between the fee he paid to Firm C and what he would have paid to True Potential had they advised him.

True Potential's decision not to provide advice

Mr H has said that he is not complaining about True Potential's decision not to provide him with advice. However, he has asked that they refund him the difference between what he paid to Firm C for advice compared to what he would have paid them, had they provided him with advice.

So, I have considered this point. True Potential do not have to provide Mr H with advice, and so it is for them to decide whether or not they are willing to. The decision True Potential made was not to provide Mr H with advice. I'm satisfied that they acted correctly when considering whether or not to provide Mr H with advice.

Awarding the difference between the fee Mr H did pay and what he would have paid

Mr H has not paid True Potential an advisory fee.

Because True Potential declined to advise Mr H, he would always have needed to seek advice elsewhere irrespective of when True Potential let him know. So, I'm not awarding the difference between what Mr H paid Firm C compared to what he would have been charged by True Potential, as he would always have needed to pay a new firm for advice.

Mr H provided me with part of a telephone call he had with True Potential when they discussed the reason why advice had been declined. The adviser says that he isn't told the full details of why advice has been declined, but explained to Mr H that when True Potential are not confident on providing positive advice, they choose not to provide any advice. This is due to fee changes made by the regulator – the Financial Conduct Authority (FCA) in 2020.

In October 2020 the FCA implemented a ban on contingent charging. This is set out within their Handbook. What that means is that an adviser firm – such as True Potential, must charge the same fee for advice whether that advice is positive – so a recommendation to transfer away from Firm P in Mr H's circumstances, or against it, a recommendation to stay with Firm P.

So, it seems from this telephone call that True Potential base part of their decision to decline advice on the likelihood that they will make a positive recommendation. Had True Potential gone ahead and provided Mr H with advice, and if that advice had been a recommendation for his pension to remain with Firm P Mr H would have had to pay True Potential's fee.

Then he would likely still have needed to seek advice elsewhere, and incurred the second fee on top of True Potential's fee, in order to transfer out of the Section 32 pension. I am satisfied Mr H wanted to transfer his Section 32 pension, as he explained during the telephone call that he had found what he considered to be better options on the open market. And had discussions with Firm P about the options available to him through December and January – and he has now completed a transfer to another provider.

Therefore, if the reason, or part of the reason, True Potential decided to decline advice was due to them not thinking it would be positive advice, Mr H would likely be financially better

off. So, I don't agree that True Potential explaining that the fee would still have been payable had they provided negative advice disingenuous.

Service received

Mr H has complained about the service that he received from True Potential. Having considered the customer journey he had in full, I agree that he has been caused distress and inconvenience by their actions. So, I am awarding compensation.

Mr H has said that he was reassured throughout the process that he would receive advice from True Potential and that he was worried as the deadline for the transfer was approaching. I can see that there were delays in True Potential's actions and so they could have let Mr H know earlier that they were declining to advise him. For example, the decision had been made around a week before he was told. As well as delays and reassurances given to Mr H, he also received an email which said that his case had moved to the next stage of the process which I understand was confusing and misleading.

I asked True Potential for some additional information during my investigation and invited them to make an offer of compensation of £300 which they have agreed to. Having considered the distress that Mr H has described and the full circumstances of his complaint I think this is a fair and reasonable amount of compensation.

Mr H has said he has not received the call recordings as part of a SAR request he made with True Potential.

I'm unable to comment on what True Potential have provided to Mr H as part of the request he has made. If Mr H feels that his SAR request was not fulfilled by True Potential, he can raise a complaint about that with the Information Commissioner's Office (ICO).

Putting things right

True Potential are entitled to decline to provide advice to Mr H, and I'm satisfied they acted correctly when making that decision, so he would always have needed to obtain advice from another advisory firm in order to transfer his pension. So, I am not awarding the difference between the fee Mr H paid and what would have been charged by True Potential, should they have agreed to provide advice.

True Potential did not provide the service I would have expected to Mr H. Some examples of that are that they should have told Mr H they were declining to advise him sooner than they did, and they shouldn't have reassured him through the process that advice would be provided. Mr H was under time pressure to transfer his pension and so True Potential's actions caused him significant distress. As such I am awarding £300 compensation.

My final decision

I am upholding Mr H's complaint and direct True Potential Wealth Management LLP to pay him £300 compensation for the reasons set out above. This should be paid to Mr H within 14 days of them receiving acceptance of this Final Decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 August 2024.

Cassie Lauder
Ombudsman