

The complaint

Mr W is unhappy that True Potential Wealth Management LLP (“TPWM”) provided him with unsuitable advice to transfer his pensions, causing him a financial loss.

What happened

In 2018, Mr W engaged the services of a financial advisor (“the advisor”) to provide advice in relation to the transfer of his workplace pension (“OPS”) to a private pension. Following advice, Mr W agreed to transfer his OPS benefits, valued at just over £393,000, to a new private pension with a pension provider I’ll refer to as “RLL”.

In September 2020, the advisor started working as an appointed representative (AR) of TPWM. By that time, the value of Mr W’s RLL fund had decreased to approximately £187,000, essentially due to income that had been drawn from it. The advisor wrote to Mr W (and all of his existing clients) on 6 October 2020, advising them of his move to TPWM.

The advisor spoke with, and also met with Mr W at his home, and on 9 October 2020, Mr W signed a declaration authorising True Potential Investments LLP (“TPI”) to undertake the day-to-day discretionary management of his investments that were to be held within the True Potential Portfolio – the assets he’d chosen within the portfolio having been set out in Personalised Illustration Documents provided to him.

TPI received £186,813.62 from Mr W’s RLL fund on 5 November 2020, with this sum being applied to the four chosen TPI funds the following day. A small fund rebalancing exercise took place on 19 November 2020. Thereafter, monthly advisor and platform admin fees were applied to the funds until 24 January 2022, when Mr W transferred the remaining funds – which had grown to £192,978.24 – to a new provider and closed the account soon after.

Mr W (via his representative), complained to TPWM in May 2023. He said that they were negligent in the service they provided to Mr W. In particular, the recommendation to transfer into the TPI funds wasn’t in Mr W’s best interests, the charges were higher than Mr W’s existing scheme, and the yield would need to grow by an additional 1.57% to achieve the same return as Mr W’s existing pension. Mr W concluded TPWM had breached its regulatory obligations by not conducting its business with due skill, care, diligence, and integrity.

TPWM responded, explaining that Mr W had transferred his funds from RLL on a ‘non-advised’ basis. No advice was provided by TPWM’s advisor, and Mr W made his own investment choices. No advice fee was charged by TPWM when the transfer to their platform took place, which helped evidence this. They also referred to the fact Mr W would have signed and accepted terms and conditions on their digital portal, which made clear that:

“...his financial adviser has not assessed [Mr W’s] individual circumstances to enable individual financial advice to be provided in respect of this transaction... 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 also referred to the fact that Mr W did raise his concerns with them in March 2021 about the performance of his chosen funds, but Mr W didn't take up their offer to discuss his concerns with a financial advisor. Mr W also didn't take up TPWM's offer for him to discuss his concerns with their customer care team. And TPWM also said they had tried to contact Mr W a few times in June 2021 but weren't successful in reaching him.

Unhappy with this, Mr W's representative brought his complaint to this service. However, one of our Investigators also didn't uphold his complaint, for essentially the same reasons. Mr W's representative then asked that his complaint be considered by an Ombudsman, so his complaint was passed to me to consider further and issue a Decision accordingly.

However, upon reviewing the evidence available, I felt it necessary to seek further information from both parties. Responses were provided, and I detail these below.

Further enquiries with, and information provided by, TPWM

I asked TPWM about terms and conditions, and in particular their 'Personal Pension Key Terms & Conditions' document (and the following extract from Section A – Key Features, which says as follows:

"Your commitment:

- *Where instructions are placed online via your TP account, the TP Platform take in good faith that you placed them personally, and*
- *Before opening a TP Pension, your financial adviser will discuss whether you have sufficient experience of investing and decide whether you are prepared to be responsible for the investment decisions you make"*

I asked whether any such discussion had taken place, and if so, what were the details of that discussion - questioning whether the above terms would suggest their advisor should have taken some proactive steps to discuss whether Mr W had "*sufficient experience etc*" before the TP pension was opened. In response, TPWM said:

- Repeating their initial stance, Mr W received a direct marketing offer (DMO) only, and this was not an advised sale.
- Such DMOs are, on occasion, sent to new or prospective clients when an adviser is about to join TPWM, advising they can transfer their investments to them if they wish.
- The adviser, whilst still at his previous firm, would make clients aware of TPWM, and what they offer, and seek agreement to provide client details to TPWM.
- TPWM "*often send, where appropriate*" a DMO to such clients, providing an opportunity to transfer their investments to them – explaining that clients can equally chose *not* to transfer their investments to a TPWM portfolio, instead simply transferring the servicing of their existing investments to TPWM instead. The wording of the DMO makes it clear it was optional to transfer.

TPWM also provided copy screenshots that Mr W would have received as part of the transfer process. They highlight the first page of the transfer process contained a disclaimer which stated an adviser had not assessed his circumstances – which Mr W would have agreed to in order to proceed with the transfer. TPWM portfolio fund sheets would have been provided, with it being left to Mr W to read these and make an informed choice regarding whether he wanted to proceed. An 'Expected Fund Purchase' document was generated which highlighted that any transfer would take place on a 'execution only' basis.

TPWM also referred to a survey they'd have sent to Mr W after the transfer was completed which, amongst other things, would have asked:

- If it was Mr W's decision to transfer, did he complete the transfer himself
- Did he choose the portfolio himself without any influence from others (other than the provision of factual information)
- If disagreeing with these, details of who assisted him
- Other questions relating to charges, risk levels, and exit fees from any previous investment.

TPWM advised Mr W didn't respond to this questionnaire. They further explained Mr W would have had access to his online platform from that point on and did in fact access it on 276 occasions – without raising concerns – which they believe indicated he was comfortable with the status of his investments.

Further enquiries with, and information provided by, Mr W's representative

Conscious of the very specific claims made by Mr W's representative in their complaint letter to TPWM, I asked them to provide further detail regarding the advice they believe was provided to Mr W – what was the advice, when and where did the advice take place, was it in person or by phone, conscious that Mr W appeared to open the TPI product only three days after receipt of the advisor's October 2020 letter.

Mr W's representative provided the following information:

- The advisor provided advice to Mr W between the end of September and beginning of October 2020, over a period of about one week. The process seemed "*quite rushed*".
- That advice was provided during one meeting at Mr W's home, with all other correspondence by telephone.
- Initial contact was instigated by Mr W, calling the advisor for an update immediately after having spoken directly with RLL – Mr W having called RLL to discuss why the value of his pension with them had fallen. Mr W was concerned by this, and by not having heard from the advisor for over 12 months.
- In this call, the advisor told Mr W he'd moved to TPWM, and how good TPWM's pension platform was compared to RLL.
- The advisor suggested a meeting at Mr W's home, to discuss his options in more detail.
- At this meeting, the TPWM application form was completed.
- During the meeting, the advisor also told Mr W that a lot of his other RLL clients were transferring their pensions to TPI – the rationale being a lot of the investments in the RLL portfolios were property investments which the advisor said were not great for growth in a pension plan.
- And whilst not going into great detail about Mr W's investment choices, instead speaking generically about Mr W's investment strategy, the advisor said a move to TPI would be more beneficial and would grow Mr W's pension funds.

The advisor also provided a TPWM headed factsheet, containing specific comparison between the performance of Mr W's RLL funds and the TPI funds that Mr W would subsequently choose to invest in.

Provision of this information to TPWM for their consideration and comment

TPWM advised the factsheet was not a document that had been prepared by, or authorised by them. However, based on the information contained within that factsheet, and the sequence of events involving the advisor and Mr W, they confirmed they would be willing to

settle Mr W's complaint by calculating whether he had experienced any financial loss as a result of transferring his funds to the TPI platform. They also said they'd offer him £250 for any distress and inconvenience (D&I) he'd experienced as a result of this matter.

Mr W's representative advised that no such offer had been made to date and confirmed they'd still like an Ombudsman to issue a Decision on the matter. Having reviewed the information subsequently made available, I agreed that Mr W's complaint should be upheld. However, in order to properly assess and comment on the key facts in this complaint, which had not been addressed by our Investigator, I decided to issue a Provisional Decision, in which I said as follows:

My Provisional Decision

Notwithstanding TPWM have now made an offer to undertake a loss calculation in respect of the TPI transfer, I think it would be appropriate to consider what has happened here and, if I conclude TPWM (or their advisor) has done something wrong, make a finding telling TPWM precisely what I think they should do to put matters right.

TPWM were initially adamant that they had (or their advisor had) not provided any advice to Mr W recommending that he transfer his existing RLL pension funds to the TPI platform. It seems apparent that TPWM weren't aware that the advisor had met with Mr W at his home (they have no records of any such visit), nor what was discussed and recommended by the advisor. And they had no knowledge of the 'factsheet' which the advisor provided to Mr W at their meeting. I've no reason to doubt what TPWM are saying here.

However, TPWM (correctly) accept they are liable for the actions of their advisor and, in this case, for his actions notwithstanding TPWM were seemingly unaware what those actions were when the advisor met/spoke with Mr W. But TPWM have stopped short of specifically commenting on/accepting that their advisor's actions amounted to regulated advice – an important issue because our Service is limited to only being able to consider complaints about 'regulated activities', as defined in the FCA's Rules and Regulations (and actions ancillary to those). That being the case, I think it's important that I address that issue first.

Did TPWM/their advisor provide regulated advice to Mr W to switch his pensions?

I need to begin by referring to the relevant rules and guidance contained in the Financial Conduct Authority (FCA) Handbook:

COBS 2.1.1 – this sets out how any firm must act honestly, fairly and professionally, and in accordance with a client's best interests.

COBS 9 – this refers to the suitability of any advice provided – "*personal recommendations*", which are defined as "*a recommendation that is...advice on conversion or transfer of pension benefits...and is presented as suitable for the person whom it is made, or is based on a consideration of the circumstances of that person*".

PERG 8.28 – this provides guidance to help differentiate between the provision of information as opposed to advice. It says, at PERG 8.28.2G(3) & (4):

"regulated advice includes any communication with the customer which, in the context in which it was given, goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell".

And

“Key to the giving of advice is that information: (a) is either accompanied by comment or value judgement on the relevance of that information to the customer’s investment decisions, or (b) is itself the product of a process of selection involving a value judgement so that the information will tend to influence that decision”.

As mentioned above, TPWM have no records from the advisor to confirm a meeting took place, or any advice was provided. As such, I need to consider what Mr W told us, together with the information he has provided. I’ve set out above the nature of the conversations that took place between Mr W and the advisor, both at his home and also by phone. I’m satisfied, based on Mr W’s testimony, that a meeting *did* take place at his home, and that the purpose of that meeting was for Mr W to discuss the performance of his existing RLL pension which was causing him a degree of concern. In that regard, I also accept the meeting was likely instigated by Mr W, rather than the advisor.

It’s not clear, in the absence of evidence, what the precise sequence of events was between the end of September and beginning of October 2020. And it’s not clear which exchanges occurred before the advisor became an AR of TPWM on 25 September 2020. This is important because TPWM wouldn’t be liable for the advisor’s actions before he joined them.

That said, I’m satisfied the TPI application form was most likely completed during the meeting that took place at Mr W’s home. The form was completed on 9 October 2020, so about two weeks after the advisor became an AR of TPWM. And Mr W has said the advisor provided advice to him at that meeting, which seems plausible and likely.

I’m also mindful Mr W had an existing relationship with the advisor, as he’d provided advice to Mr W previously – to transfer his pension funds from an occupational scheme to RLL in 2018. I’ve seen documents relating to this previous advice/transfer. Put another way, Mr W’s relationship with the advisor was one based on the advisor providing advice on Mr W’s pensions. Mr W had a long-standing relationship which, I think, makes it far more likely that the meeting was intended for the purposes of seeking/providing a recommendation/advice – as opposed to simply providing information only (for which there’d be no need for a meeting).

Furthermore, the advisor provided a ‘factsheet’ to Mr W, which contained a number of statements that seem particularly designed to influence the decision making of clients with similar existing pension portfolios to Mr W. As well as mentioning in general terms the services that TPWM were able to provide, the factsheet also said:

“Other recent issues with your current provider [RLL] have hastened our desire to move clients to a DFM proposition. Recent investment performance has been very poor...in part due to their continued inclusion of their own commercial property fund within the portfolios...Our feeling is that commercial property should no longer be held in any client portfolio, especially during periods of extreme volatility...”

“We have therefore [carried out due diligence on various DFM providers] and will be offering all our existing clients the opportunity to move into True Potential portfolios over the next few months”

“The tale below demonstrates the defensive qualities of the [TP] Cautious Portfolio against the comparable [RLL] portfolio. Both annual and 6-month performance are far superior...”

| | Aug 19 – Aug 20 | 6 months to 31 st August 20 |
|--------------------------|-----------------|--|
| TP Cautious Portfolio | 0.50% | 2.70% |
| RLL Governed Portfolio 1 | -3.50% | 0.66% |

“TP are an example of how much the industry has evolved over the last 10 years. Old style companies, such as [RLL] have been left behind...the legacy issues these older companies have...create huge overheads and an innate inability to adapt quickly in an industry that is constantly changing”.

The factsheet also outlined the cost of the TP offering (Total between 1.61% and 1.70%), and that clients were being moved across as nil initial cost. It concluded by confirming the advisor was planning to *“move our existing clients via a Direct Offer proposition”* and because no fee is charged, the FCA treat it as a non-advised transaction and *“we therefore do not have to do all the compliance work associated with full advice”*.

The key question is, therefore, did the advisor (and TPWM) go beyond merely providing information that would allow Mr W to make an informed choice about whether to accept the TP DMO? Or did the sum of the exchanges between Mr W and the advisor go beyond that to the point that advice was provided. Based on what I’ve already said here, I’m satisfied it was the latter.

I should be clear here that I’ve considered the content of TPWM’s DMO, which is clearly intended as an offer without advice. That fact is made very clear in the communications that TPWM sent to Mr W. And were it not for the exchanges and communications that the advisor had with Mr W (without their knowledge and/or approval), I may agree that the DMO didn’t amount to regulated advice.

But here, I’m satisfied Mr W initially approached the advisor to discuss the performance of his RLL pension, and that the advisor met with Mr W in order for those discussions to take place. During that meeting, I’m satisfied the advisor very likely provided advice to Mr W to transfer away from RLL to TPI, and that he assisted Mr W with the online application.

I think the ‘factsheet’ was clearly designed to influence Mr W’s judgement and choices – making specific reference to poor RLL performance and future prospects, as opposed to the better returns he’d get from the TPI platform. It was tailored to reflect Mr W’s specific past and future investment strategy/products chosen.

I should also say the absence of any documentation from, or following, the meeting – for instance, a new fact-find document or suitability report – doesn’t mean the advisor didn’t provide advice. Rather, it just shows there was no written evidence (per COBS 9) to record the nature of the advice provided. Whether advice was provided depends on the FCA rules and guidance that I’ve already mentioned, and I’m satisfied that is what TPWM’s advisor did in this case. That being so, I also need to consider if Mr W was treated fairly by TPWM.

Did TPWM treat Mr W fairly?

As I’ve already mentioned, the advisor was already aware of Mr W’s financial circumstances, having advised him to transfer his occupational pension to RLL in 2018. I’ve seen that a full fact-find was undertaken then. However, there’s no evidence that any effort was made by the advisor to undertake a new fact-find in 2020 as part of the TPI transfer. It may have only been two years since the 2018 advice, but Mr W had withdrawn significant sums from his RLL pension during that period, and a proper understanding of his current financial circumstances would have been in order/required before providing advice to transfer again.

And Mr W’s testimony, that the whole process appeared ‘rushed’, lends further weight to a conclusion that Mr W’s circumstances weren’t considered.

The ‘factsheet’ does imply that the TPI offering would grow at a faster rate than Mr W’s existing RLL pension. But TPWM’s charges were higher than RLL’s – 1.61% combined as

against 1.35% combined. The absence of a suitability report means that Mr W had no illustration to show the effect of the higher charges, the extent to which the TPI investments would need to outperform the RLL ones to enable Mr W's fund to grow at a faster rate – and so no information on which he could base a reasoned judgement on whether the TPWM offering was in his best interests. I don't think this was treating Mr W fairly.

The suitability of the funds invested in

Prior to Mr W's initial 'RLL' transfer, his attitude to risk (ATR) was identified as being cautious by the advisor. His funds were invested accordingly. Whilst there was no evidenced fact-find in this case, it seems apparent that Mr W invested his pension funds in cautious funds on TPI's platform. As such, I'm satisfied that his TPI investments appear to have been in line with his previous ATR. And comments subsequently received from his representative appears to confirm that his ATR remained cautious throughout, and so I don't think there was anything inherently wrong with the investment mix suggested by the advisor here.

Conclusion

I think TPWM's advisor met with Mr W, and for the reasons explained above, provided him with regulated advice. However, there's no evidence that Mr W's circumstances at the time were considered. Notwithstanding investment products with a broadly similar risk profile appear to have been chosen, the effect of the extra charges associated with the TPWM offering weren't assessed. Accordingly, I can't be sure that Mr W would have agreed to the transfer had he been given full and proper advice. On that basis I think it's appropriate to uphold Mr W's complaint here. And I think TPWM should undertake a loss calculation, as they've offered to do, to ascertain whether Mr W would have been better off had he remained with RLL as opposed to transferring to TPI.

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 haven't received any further material comment from TPWM on the substance of this complaint, other to question why I'd issued a Provisional Decision after they'd agreed to carry out a loss calculation. In answer to that, I'd repeat what I'd said previously. Mr W's representative had asked that this service continue with its investigation and issue a Decision accordingly. And, given what I'll update below, a Final Decision – assuming it remains accepted by Mr W - will provide both parties with clarity regarding how the loss calculation, and redress, should be paid.

Mr W's representative accepted my Provisional Decision, also confirming that Mr W has transferred his pension again, in June 2023. In other words, Mr W's pension funds were transferred away from TPI in January 2022, only to be transferred to another provider about 18 months later. This could have the potential to add an extra layer of complexity to any redress calculations that TPWM would need to undertake – arguably creating a situation where they'd first need to approach RLL for past performance calculations, then approach the first 'new' provider to obtain more calculations, and then approach the 'recent' provider to obtain even more calculations. I don't think that would be fair or appropriate in this situation. It would also add considerable extra delay to Mr W receiving redress, as it's inevitable multiple enquiries – which would need to be done separately and in a strict order – would take time. It would also be at odds with one of the fundamental drivers of our Service – to provide an informal and timely dispute resolution service.

So, I'll now set out below how I now think TPWM should calculate and pay any redress that is due to Mr W.

Putting things right

- Firstly, TPWM will need to ascertain what the value of Mr W's pension would have been, on 24 January 2022, had he remained invested within RLL's 'Governed Portfolio One' plan (the plan invested in at the time of transfer). TPWM should request that RLL calculate this value.
- If this value is *lower* than what his TPWM/TPI pension was worth when he transferred it away on 24 January 2022, then there has been no loss, and no loss redress is payable as part of this complaint.
- However, if the value is higher, Mr W experienced a loss – equivalent to the difference between the two amounts ("the loss amount"), and redress will be payable.
- Because TPWM is not required to undertake further multiple enquiries with Mr W's subsequent pension providers, and accordingly is unable to pay any total loss amount into Mr W's current pension plan, it should pay any loss amount direct to him.
- But had it been possible to pay into his pension(s), it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any 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 W won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr W is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr W would have been able to take a tax-free lump sum – which appears unlikely given he'd taken his full 25% tax free cash upon transferring his pension to RLL in 2018 - the reduction should be applied to 75% of the compensation.
- TPWM must also add 8% simple interest to the loss payment, calculated from 24 January 2022 to the date any such sum is paid to Mr W.
- Income tax may be payable on any interest paid. If TPWM deducts income tax from the interest it should tell Mr W how much has been taken off. TPWM should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Finally, TPWM offered to pay Mr W £250 compensation for D&I. I think this is a fair offer in these circumstances. The amounts this Service awards for D&I are fairly modest in value. Our D&I awards are not designed to punish a business, but rather to put a monetary value on the distress a business' actions have caused. Guidelines setting out our approach to such awards can be found on our website. So, taking account of what I've said above, and having careful regard to our guidelines on this subject, I think a D&I award of £250 is appropriate here – and is an amount I'll be asking TPWM to pay to Mr W.

My final decision

I uphold this complaint. My Decision is that True Potential Wealth Management LLP should pay Mr W the amount calculated and set out above, which includes £250 compensation for Distress and Inconvenience caused.

TPWM must provide Mr W with details of its calculations in a clear format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 October 2024.

Mark Evans
Ombudsman