

The complaint

Mr W complains about lack of advice from True Potential Wealth Management LLP (TP) regarding taking his pension. He said he had to pay tax as a consequence of taking his pension.

What happened

Mr W complains about lack of advice from TP regarding taking his pension. He said he cancelled the whole policy and had to pay tax as a consequence of taking it.

Mr W said he didn't think about transferring his pension as he was concerned about performance and had a lack of confidence in his financial adviser (FA) and TP and the whole financial services sector. He was never informed prior to the withdrawal that he had the option to cancel it nor to speak with a head office adviser. He felt that if he had received advice at the time there would have been a different outcome.

TP said Mr W complained that due to lack of advice he had paid tax on money he withdrew from his pension. Mr W wanted TP to refund that amount to him. It said Mr W first called on 9 November 2023 regarding a withdrawal. Mr W said that due to a lack of advice he submitted his request on a non advised basis. It said Mr W's financial adviser wasn't TP. It said that his calls with TP were not with a financial adviser. The TP staff member warned on the first call that he may be subject to tax. TP said it would attempt to contact his FA. On the second call it confirmed it had activated the functionality to allow a full withdrawal. It had not been able to contact his FA. Due to miscommunication Mr W had not been onboarded to TP and remained a client of his FA. Mr W was continuing to pay fees to the FA. These were later refunded. He was later given the option to speak to an adviser at TP. Mr W asked for the forms to cancel his pension. In the final call Mr W said he wanted to take all of his funds and he was helped through the process from a technology perspective. He ticked boxes to confirm he had not received financial advice and was aware that funds in excess of his tax free cash amount would be taxed as income. Mr W was fully aware of the tax position and opted to withdraw on a non advised basis and was aware of the tax implications. It offered £500 for the miscommunication around who was acting as his financial adviser.

My provisional decision

I issued a provisional decision and said the following:-

There were two parties that have been assisting Mr W, firstly the FA that has worked with him for many years and secondly TP.

The records show that the FA joined TP in around mid 2021. The Financial Conduct Authority (FCA) Register shows that TP accepts responsibility for the FA. I had asked TP to comment on this and it had confirmed that the FA is a wealth management partner which is their term for a Financial Adviser. Based on the records it therefore seemed that TP was responsible for the actions or inaction of the FA in this complaint.

Following the move to TP and advice from the FA Mr W transferred his pension to TP. But it

seems that there was an incomplete client handover process from the FA to get Mr W onto the TP system. But I don't think the breakdown in the transfer was Mr W's fault. I say that because it was clear he wanted to and did transfer his pension to TP. Whatever internal requirements were then needed should have been resolved between the FA and TP. I don't think it was fair or reasonable for TP and the FA to blame each other and leave Mr W without the support. Nor did I think it was fair or reasonable to hide behind their online status as a reason for one of TP or the FA not to follow up and ensure the onboarding process was completed.

I had considered the events surrounding the withdrawal of pension by Mr W. He made contact with his FA in November 2023 and is referred to TP. TP in turn say that the FA should advise and offers to speak to him. They later say the FA has refused to speak to Mr W. The result is that Mr W proceeds to withdraw without advice. While he may have confirmed he was proceeding without advice having listened to the calls it is clear he is not happy about this particularly as he is paying an advice fee. While I note TP said it would refund the fees I don't think that absolves it of responsibility for the provision of advice and the failure to give it.

I considered what difference it might have made had Mr W received advice from either another TP adviser or the FA as follows:-

- I think Mr W would always have withdrawn his pension and not transferred it. I say that because he initiates contact with his FA to ask for this and follows the process to achieve this. His early emails to the FA make no mention of dissatisfaction with performance which is only mentioned later. Further TP did warn about tax consequences and that these could be avoided by a transfer and offered to refer him to an adviser to discuss transfer. But Mr W remained clear he wanted to withdraw. He also said he had lost confidence in the financial industry. So on balance based on the evidence I thought he was determined to withdraw his pension.
- I thought Mr W would always have had to pay some tax. I said that because:
 - o he is clear he wants to withdraw his pension.
 - o he is warned by TP on more than one occasion that this could incur significant tax liabilities.
 - o on one call he expressly confirms he is aware he will need to pay tax.
 - o Mr W has also confirmed that he was a basic rate tax payer working part time and in receipt of his state pension of £815.40 per month, at the time. He said that after the 25% tax free amount he believed he paid tax on the rest (he believes at 40%). So as he was already a taxpayer he would always have been taxed on the amount in excess of the 25% tax free amount as he would have used up his income tax free personal allowance.

It is clear Mr W could have paid less tax had he managed the withdrawal of his pension for example by phasing it over a number of tax years to avoid paying any or as much higher rate tax. I didn't think the fact he proceeded on a non advised basis meant that he didn't want advice. I had listened to the calls and I thought it was clear he is exasperated that he cannot get advice but decides to proceed because he isn't getting anywhere. While he could have contacted free advice agencies such as Pension Wise he should not have needed to do so as he was paying for and entitled

to financial advice about the withdrawal.

- I thought that had Mr W received the financial advice on balance it was likely that he would have phased the withdrawal over more than one tax year and paid less tax than he did and therefore he had lost out. As Mr W seemed keen to take his money I thought it was reasonable to assume that he would have phased the payment over the 2023/24 and 24/25 tax year and not any longer period.

In the light of my conclusions I proposed that TP should calculate and pay him for the additional higher rate tax he had paid.

I noted that Mr W may have paid tax at 40% on the amount in excess of the 25% tax free amount. I noted also that Mr W was directed by TP to seek to recover any overpaid tax from HMRC. However he tells me had not done this and wasn't aware he was able to do so – despite this having been pointed out to him by TP.

I therefore proposed that TP should:-

1. Provide Mr W with reasonable assistance that he requests to help him complete the relevant forms to reclaim any overpaid tax from HMRC in respect of his pension withdrawal in the 2023/24 tax year.
2. Subject to Mr W providing TP with relevant information about his personal tax position in the 2023/2024 tax year and current 2024/25 tax year (and whether or not he makes a claim for overpaid tax in the 2023/24 tax year), TP must calculate:-
 - a. the amount of income tax that Mr W would have been liable to pay had he taken such amount of his pension in the 2023/24 tax year as would have meant he wasn't a higher rate tax payer in that tax year with the remainder in the 2024/25 tax year.
 - b. The amount of tax he was liable to pay in the 2023/24 tax year on the pension he withdrew. For the avoidance of doubt this is not the actual amount of tax paid if he was paid subject to an emergency tax code and he was entitled to claim a refund of overpaid tax.

TP should deduct the amount in (a) from the amount in (b). If the answer is positive it should pay Mr W that amount together with interest at the rate of 8% per annum simple from the date Mr W received his pension withdrawal to the date of actual payment pursuant to my final decision.

Before I issued my final decision I asked :-

1. TP to comment on what it would need to complete this calculation.
2. TP to provide confirmation that Mr W's pension was invested following its transfer to TP and provide details of a final statement and details of how it was invested.
3. Mr W to provide TP with such reasonable information as it needed to complete this calculation.

I also considered that these events caused Mr W distress and inconvenience. I noted

however that TP had already offered Mr W £500 for distress and inconvenience. I thought this was fair and reasonable in all the circumstances and is at the level I would have awarded had I needed to do so. If TP had not paid this amount then I would direct that it should do so in my final decision.

I proposed to uphold this complaint and direct that TP should pay Mr W an amount in respect of the additional higher rate tax he was liable to pay as set out in my proposed direction above and if not already paid the amount mentioned above in respect of distress and inconvenience.

Mr W said

- He had not received any refund of the fees.
- He had never indicated that he would not be liable for tax on the final 75% he withdrew, but he was not aware that it would be 40% and deducted before he received his pension fund. He also did not recall being advised of the option to transfer.
- Regarding the records and that they show the FA joined TP in mid 2021, this differs somewhat to the email he received in December 2022 when the FA informed him that as a valued client he was informing him that he had joined TP in October 2022.
- Also between April 2022 and October 2022 he had a relapse with his health, his FA was fully aware of this. He had been a client of his for almost 14 years and had, up to then had an open and honest professional/ personal relationship. It seems that since the FA joined TP he became a small insignificant client. If only his FA had simply spoken to him back in November 2023 all this distress and anxiety over the last year could have been avoided.
- Regarding the £500.00 for distress and inconvenience an offer was made but no money had been received. He didn't think this was enough.

In summary TP said the following:-

- A key part of the original complaint response was to offer Mr W redress of £500, in recognition of the difficulties he encountered.
- With reference to the incomplete 'handover' process, it was not the case that its use of technology or online-based services prevented the original onboarding of Mr W.
- TP attempted to begin this onboarding process for Mr W by calling him on Monday 15th May 2023, following the arrival of his pension funds on 6th May 2023. Their records indicated that Mr W was unavailable to complete the welcome/onboarding call at this time, and a call back was scheduled for Thursday 18th May 2023. The same member of TP staff called Mr W on 18th May 2023, but no answer was received and so a voicemail was left.
- TP re-attempted contact with Mr W on 25th May 2023, calling both his mobile number (on which a further voicemail was left) and his landline number in succession, without answer on both occasions. Despite TP's initial efforts to contact Mr W and having followed up on multiple occasions, no answer or call

back was received from Mr W. It did not feel that TP should be held responsible for Mr Ws' unavailability or unwillingness to engage with its welcome calls or onboarding process during May 2023.

- The provisional decision stated that "*Whatever internal requirements were then needed should have been resolved between the FA [sic] and TP*". The requirements that referred to were simply for Mr W to accept a telephone call from TP staff and be taken through a welcome process. It said that it regularly placed phone calls to Mr W and this represented a clear effort on TP's part to follow up, to offer Mr W support.
- When describing the incomplete handover process within my provisional decision, I stated; "*But I don't think the breakdown in the transfer was Mr W's fault*". It contended that this incomplete handover process is no more TP's fault, given these contact attempts were made in good faith by TP.

In the absence of any contact, Mr W's ongoing financial advice relationship remained with his existing adviser, who, was a self-employed financial adviser within TP at the time these events took place.

It noted that the FA was not an IFA at this time; he was a Restricted financial adviser within TP. As part of the FA's ongoing service to Mr W, the FA would have been expected to carry out an annual review of Mr Ws' affairs. Due to the timing of Mr Ws' full encashment, there was ultimately no opportunity for such an annual review to take place.

Mr W was explicitly warned of significant tax consequences and was signposted towards alternative options such as a transfer out, and it was also suggested that he speak with his financial adviser.

It said its office offered Mr W an appointment with one of its internal financial advisers just three working days after his original request to close his account.

As stated, it wholly accepted that the service offered to Mr W during this short window of time fell short of its standard. It believed an offer of £500 redress for a three-working day delay in offering Mr W advice is a generous sum.

It had also previously addressed the FA's wider failure to communicate with Mr W during the prior seven months, by offering to refund all ongoing fees that had been deducted from Mr W's account.

It did not believe that TP should be held responsible for tax charges that Mr W knew he would incur, and that he was already planning to complain about before those tax charges had been incurred.

The provisional decision made reference to what might have happened if Mr W had ultimately received advice from TP. If a pension is to be accessed, TP's pension drawdown advice standards require customers to have an immediate and quantifiable need to access their pension, for example to meet their regular spending or for a specific large item of expenditure. TP advisers may not recommend withdrawals from a pension without an immediate and quantifiable need, as to do so is to unnecessarily remove assets from a tax-efficient environment, with the potential for unnecessary income tax charges to be paid.

It couldn't find that Mr W had an immediate and quantifiable need to withdraw from

his pension, and so it couldn't agree that its advice would have been to stagger withdrawals over two or more tax years. Mr W's only motivations for withdrawing from his pension would appear to be his displeasure at the pension not having increased substantially in value over a period of six months, and the absence of communication around that perceived lack of performance.

In the absence of a quantifiable need, TP would not have recommended any pension withdrawals at all. Further, TP did not accept instructions on an insistent client basis, so even if Mr W had insisted that he wanted TP to provide him with the most tax-efficient means of withdrawing his full pension, to do so would have fallen outside of its advice standards as a firm.

Based on the information it had about Mr W's income it also said it seemed unlikely he would have fallen into the higher rate tax band.

Mr W most likely had a substantial sum of tax deducted because of the way that HMRC insist pension payroll is carried out, i.e. with an emergency tax code upon first withdrawal.

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 have considered the replies from Mr W and TP and would comment as follows:-

- My provisional decision concluded that the offer of £500 was fair and reasonable in the circumstances. I have reconsidered this in the light of the further comments by both parties. Having regard to the impact of the events on Mr W and the time period over which the events took place (a period of months) I remain of the view that it is a fair and reasonable award.
- I noted TP's further comments about the onboarding process but it does not affect my conclusion and my award for distress and inconvenience.
- I note that TP says it does not deal with insistent clients and in any event it thinks it is unlikely Mr W will have paid higher rate tax. Based on the evidence and replies from Mr W it does not seem he had a settled purpose for his pension at the time of withdrawal. On that basis TP would not have advised him or supported his decision to encash and could not, as I had assumed, advise payment over more than one tax year. So on balance I think Mr W would have proceeded as he did at the time, on an execution only basis. I have therefore decided that an award to pay any higher rate tax would not be fair and reasonable (even assuming any would have been payable). I have informed Mr W that I was removing this element of my proposed award and he has made no further comment.
- I also understand that the ongoing fees charged for financial advice are now covered under a separate matter between TP and Mr W so I have not covered them in this proposed award to avoid duplication. Mr W has been notified of this.

Mr W has confirmed that he has received the relevant form to reclaim any overpaid tax but had not attempted to complete it. It is most likely that what is needed is information that he has access to. I have asked TP to assist him with information that only they have (if any). However it is Mr W and not TP who will need to complete and submit the form

for that reason I have not made any further direction on this.

Putting things right

In the light of the replies from the parties I have amended my award to a direction that TP should, to the extent it has not already done so, pay Mr W £500 for distress and inconvenience (to the extent that it has not already done so).

My final decision

I uphold this complaint.

I direct that True Potential Wealth Management LLP must within 30 days of this service notifying it that Mr W has accepted this decision pay Mr W £500 for distress and inconvenience (to the extent that it has not already done so in respect of this complaint).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 December 2024.

Colette Bewley
Ombudsman