DRN-5102227

## The complaint

Mr L complained about the transfer of a defined-benefit (DB) pension scheme to a type of personal pension. Mr L said True Potential Wealth Management LLP was responsible for giving him *"negligent advice"* which was provided in 2020. He said this was unsuitable for him and believes the transfer has caused him a financial loss.

To keep things simple, I'll refer mainly to "TPWM" when mentioning the business. Mr L himself is represented and assisted by a claims management firm in bringing his complaint.

## What happened

Although the original points of Mr L's complaint imply that he was given regulated pension advice which then caused him to unsuitably transfer away from his DB scheme, these facts are disputed.

As I'll explain, TPWM says no advice was given and that Mr L used an on-line portal to transfer his pension – a pension TPWM says was under the financial threshold of £30,000 where obtaining regulated advice to transfer was a legal requirement. Other facts, such as Mr L's personal circumstances at the time are also disputed.

The information we can confirm as being accurate as of 2020 is as follows:

- At the point of transferring his pension, Mr L was 56 years old.
- The cash equivalent transfer value (CETV) of the DB pension was around £29,044. This related to Mr L having been previously employed in an industry which he'd left some time before. The pension he had was therefore in deferral.
- Mr L lived with a partner. He was an IT consultant although had evidently given up work on a temporary basis to look after an elderly neighbour.

It seems Mr L used TPWM's *Client Site Transfer* process, an electronic method of setting up a new account and then transferring his DB scheme into a personal pension plan operated on a TPWM platform. The transfer process seems to have commenced in February 2020 and finally completed in the summer of 2020. Mr L operated his new personal pension through an on-line portal.

In November 2023 and by then aged 59, Mr L complained to TPWM, saying he should never have transferred away from the DB scheme and was likely worse off. However, TPWM said it hadn't provided any advice and that Mr L had independently transacted the transfer, as he was entitled to do, because the CETV was less than the £30,000 mandated by law as requiring regulated financial advice. TPWM therefore didn't uphold Mr L's complaint.

Mr L then raised his complaint with the Financial Ombudsman Service. One of our investigators looked into it and issued a 'view' saying he thought that Mr L's complaint shouldn't be upheld. The investigator concluded that the transfer had been processed wholly by Mr L himself, on a non-advised basis, and therefore that TPWM couldn't be held responsible.

The company representing Mr L says he still doesn't agree with this as he thinks TPWM bears a wider responsibility, even if it didn't provide regulated advice. It says that Mr L had certain personal problems with addiction(s) at the time, and he was prone to making very impulsive decisions. It also says that TPWM ought to have realised these issues and taken steps to ensure it treated Mr L as a vulnerable client. It adds that TPWM should have actively encouraged Mr L to actually seek financial advice, even though the transfer value was below £30,000. It says this would have protected Mr L's interests and would have ensured that he understood the potential risks and benefits of the transfer. Overall, it says TPWM failed in its duty of care to Mr L.

**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've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I've used all the information and responses from the parties involved to consider whether I think TPWM did anything wrong and whether it needs to compensate Mr L in any way.

I'm sorry to disappoint Mr L, but I am not upholding this complaint.

*Introductory issues*

It seems that a friend and ex-work colleague of Mr L was an existing client of TPWM. At around the time in question they asked a member of TPWM staff they personally knew through their clientship, to contact Mr L who had expressed an interest in accessing his pension savings early. A meeting subsequently took place at Mr L's home with a TPWM representative I will refer to as "Mr B".

Mr L now describes himself as someone who at the time had many problems. I've been presented with references to him being an alcoholic and having a gambling addiction and wanting access to some cash to pay down debts. He says he was prone to making unwise decisions and that he was so *"out of it"* that he wasn't thinking straight at that time. This apparently resulted in Mr L not being able to recall conversations and events, nor was he able to hold coherent conversations given that he was regularly under the influence of alcohol. Mr L says that TPWM ought to have realised this and taken steps to ensure it treated Mr L as a vulnerable client.

It's certainly not my role to question Mr L's medical history. However, I've noted what Mr L himself says now (in his complaint) about being unable to recall certain events and I note too, that the events he complains of are now over 4 years distant. I'm also afraid I've been presented with no corroborating evidence of the illnesses / conditions Mr L describes, so it's not fair for me to place any significant weight on what he says with regard to these particular recollections.

On the other hand, “Mr B” who visited Mr L at his home describes the visit as somewhat uneventful. Mr L introduced himself as an IT consultant who was taking some time off work to care for an elderly friend, and he described how he needed some cash to live on in the interim period. Mr L’s house appeared to “Mr B” as ‘orderly, tidy and there was nothing unusual’. Mr L mentioned that his partner, who was at home with Mr L at the time, was employed in financial services. As such, “Mr B” invited her to remain throughout their meeting, which she declined. “Mr B” says that at no point was vulnerability evident and Mr L appeared in good health. Mr L mentioned he wanted to get his pension affairs in order and wanted some information about doing this.

DB pension schemes provide members with a guaranteed income in retirement which is widely considered an important and valuable benefit for members of these types of schemes. Advice on whether to transfer a DB pension can be complex and requires specialist resources. Since the 2015 pension freedom changes, regulated advice in the area of DB pension transfers has been mandatory for any transfer with a value over £30,000. However, as Mr L’s pension was below this threshold, he was likely told he wouldn’t need to pay for advice and instead could use TPWM’s *Client Site Transfer* portal on the web.

Features of the *Client Site Transfer* facility were that it allowed customers like Mr L to transact their own pension transfer to a defined contribution (DC)[1] scheme operated on an on-line platform. The process was broken down into various stages and carried out on-line and which mainly enabled non-advised clients to:

- Set up their own web-based account with a view to transferring a pension into this.
- List their financial details, circumstances, assets and liabilities.
- Set certain financial and pension goals and target a specific pension income in retirement.
- Answer questions about their financial experience and attitude to risk.
- Set out their reasons for transferring from one scheme to another.

In my view, there is reliable evidence that Mr L followed this process and that nothing suggested he was unable to understand either the on-line processes or what he was doing by transferring his pension.

*The role played by “Mr B” / and was Mr L ‘advised’*

Given that “Mr B” visited Mr L at his home, I’ve considered the possibility that his role strayed from giving him information, to advising him to transfer his pension.

However, I consider this unlikely. I begin from the premise that if providing advice, “Mr B” would be entitled to charge for that advice. Fees for the provision of regulated advice can be high, and indeed, are periodically the subject of complaints because many consumers later don’t think the charges by some companies are proportionate or fair. In this case, my experience is that any adviser would probably have been able to charge well over £1,000 if providing regulated financial advice about transferring the pension. However, there’s no evidence that “Mr B” asked for any fees or charges to be paid in this respect – and no evidence that Mr L ever parted with any such money for advice specifically relating to a transfer.

[1] A DC pension (sometimes called money purchase) builds up a pot of money that you can use to provide an income in retirement. Unlike defined benefit schemes, the income you might get from a DC scheme depends on factors including the amount you pay in, the fund’s investment performance and the choices you make at retirement.

There's no further evidence that regulated advice was given. For example, an almost universal feature of advised DB pension transfer cases is the presence of a suitability report which ultimately will recommend whether or not a transfer-away is merited. It's also highly likely that several pages of analysis and financial comparisons would have been presented to the client or discussed in some detail. This would include growth projections showing how much a transferred pension fund might be expected to grow in future years in a personal pension plan. Other common features include a list of client objectives and an analysis of how much they expect to need in their eventual retirement years.

In Mr L's case, none of these discussions with an adviser were present. There is also no evidence that TPWM was directly sent the CETV by Mr L's DB scheme, or indeed any other documents one might expect if acting as an adviser.

I've also seen evidence of his on-line activity where Mr L completed various forms confirming he hadn't been given any regulated financial advice. I've seen too that Mr L confirmed the presence of "Mr B" came about as a recommendation from a friend, and on his DB pension transfer questionnaire Mr L ticked a box which said, *"I confirm that I am not currently taking independent financial advice*". I further note that Mr L was presented on-line with a form entitled, *Personal Pension Key Features and Terms & Conditions* which said in several areas, *"True Potential Investments LLP does not offer or provide financial advice*" and, "*if you are unsure about any of these points you should seek help from your Financial Adviser"*.

<u>*Summary*</u>

I've considered this case with care.

The initial themes of this complaint were that Mr L received negligent advice from TPWM to transfer his pension. However, I'm satisfied that this was a non-advised sale. I've seen several reliable features which show it's far more likely that no advice was given. Although there was a presence from TPWM in the form of "Mr B", I'm satisfied that this occurred because Mr L asked for this through a friend who was also a TPWM client. I think it's likely that the presence of "Mr B" related to explaining the on-line process, answering questions, and probably describing fund management support after the transfer had occurred.

There's simply no persuasive evidence that regulated pension advice was given when facilitating this DB transfer. No fees were asked for or paid, and I consider it highly unlikely that advice would have been given for free. Mr L himself confirmed on several occasions that no advice was being either sought or given. But the most obvious sign of no advice being provided here, was that this transfer fell below the £30,000 threshold deemed as being when advice was required.

I've considered Mr L's point on vulnerability and I'm sorry to hear of the difficult times he says he endured. But I've found no supporting evidence of vulnerability. And "Mr B's" description of an apparently orderly home occupied by Mr L with another person present, tends to be supported by Mr L's own description of being an IT professional and a homeowner.

I have considered Mr L's point that he *should* have received financial advice. In my view, this conflicts with his original complaint point that he actually *had* received advice, when we now know that to be incorrect. The position of the regulator was also specifically to set the mandatory advice requirement at £30,000. Mr L fell below that threshold.

I have also carefully considered Mr L's assertion that regardless of the statutory minimum, it is widely recognised best practice for advisers, trustees and scheme administrators to ensure that members are making informed decisions, particularly with something as significant as a pension transfer. However, I’ve explained that TPWM wasn’t acting as his adviser, nor was it a trustee or administrator of the DB scheme.

So, for the reasons given, I am not upholding this complaint.

## My final decision

I do not uphold this complaint.

I do not require True Potential Wealth Management LLP to do anything else.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 16 March 2025.

Michael Campbell
**Ombudsman**