

The complaint

Mr and Mrs H have complained to True Bearing Ltd, trading as Amber River True Bearing (True Bearing), in the following terms:

- Poor investment performance in Mr H's Morningstar ISA, compounded by high fees.
- Advice provided by True Bearing not to encash the ISA to fund a buy-to-let property purchase in 2020.
- Advice provided by True Bearing in relation to Mrs H's defined benefit pension scheme transfer, causing her to defer the transfer, resulting in a significant loss when the transfer value dropped.

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr and Mrs H had been clients of True Bearing since 2014. Mr H's original adviser retired in March 2023. After this, Mr H was allocated a new advisor in December 2023.

The complaint focuses on events between 2017 and 2023, including investment performance, advice on property investment and the deferral of Mrs H's final salary pension transfer.

In December 2023, Mr H complained, which was followed by a final response letter issued on 21 January 2024. True Bearing declined to uphold Mr and Mrs H's complaints, saying the following in summary with regard to the three complaints:

- The financial planning report of December 2017 set out the rationale for switching the ISA which, whilst incurring a slight increase in costs, established an investment strategy which was consistent with their risk rating.
- A switch of a further ISA was recommended, but Mr and Mrs H said that they didn't wish to do so as they were considering using the ISA proceeds to invest in a buy to let property. But there was no evidence that the adviser provided any advice regarding the retention of the original ISA.
- It was noted that Mr and Mrs H wished to discuss defined benefits pensions (although it wasn't specifically recorded as to whether this was Mr or Mrs H's defined benefit entitlement). But at the time, True Bearing has a strict policy on not advising on defined benefits unless the client(s) had been with them for more than three years, they were over 50, the value of the pension didn't exceed £750,000, and they had other pension assets. As Mr H was 48 at the time, the criteria couldn't be met.

- In September 2022, it was noted that Mr H “*may look for advice on an Occupational Transfer*”, but failed to meet True Bearing’s updated criteria of the client being over 55 and having a risk rating of at least “6 out of 10” (where “1” would be the lowest and “10” would be the highest).

Dissatisfied with the response, Mr and Mrs H referred their complaint to this service.

Having considered the matter, our investigator didn’t think that the complaint should be upheld, saying the following in summary:

- With regard to the ISA performance complaint, having reviewed the Client Discussion Diary Notes from 2017 to 2022, it was clear that Mr H was made fully aware of the ongoing investment fees and charges, which were reviewed during each Annual Meeting. The annual valuations also summarised ongoing charges.
- Additionally, the Client Agreements signed in 2017, 2020, and 2022 confirmed that Mr H agreed to a “Compass 12 Annual Service Proposition”, which included investment reviews, performance assessments and detailed discussions of fees. Mr H's risk rating was set at “3 out of 10” in both the 2017 and 2020 Attitude to Risk Questionnaires.
- These documents confirmed that Mr H was fully aware of the charges and agreed to remain invested, despite fluctuating market conditions.
- The FCA’s Conduct of Business (COBS 6.1A.8R - as set out in its handbook) requires firms to disclose fees in a clear and transparent manner. The evidence demonstrated that True Bearing met this obligation, with Mr H being informed of the fees at each review and agreeing to them.
- Additionally, COBS 9.2.1R required that firms ensure investment advice was suitable. The risk profile and objectives confirmed that the advice was consistent with Mr H’s stated preferences.
- And so, as the investigator hadn’t identified a breach of regulatory obligations or failure in communication regarding the fees, he didn’t think that that aspect of the complaint should be upheld.
- With regard to the complaint about advice on the ISA and property investment, the Client Discussion Diary Notes and Suitability Report from 8 December 2017 provided clear evidence of the advice Mr H received. The meeting on 29 December 2017 recorded that Mr H had considered encashing his ISA and withdrawing £50,000 to buy another buy-to-let property. However, he ultimately decided not to proceed with this option.
- The file also noted that Mr H had £20,000 in cash and was considering borrowing an additional £100,000 to buy the property for £170,000. However, the records from the December 2017 meeting didn’t confirm that this option was seriously pursued or that any formal recommendation was made against it. Instead, the advisor noted that Mr H was happy to remain invested in the ISA and opted to retain his existing investments.
- The Attitude to Risk Questionnaire from 2017 showed that Mr H's risk rating was “3 out of 10”, indicating a cautious approach to investments. The advice given was in

line with Mr H's risk tolerance, and it was clear that no undue pressure was placed on him to make his decision. COBS 9.2.2R required that advice be based on the client's risk tolerance and objectives, which the adviser adhered to by recommending that Mr H remain invested.

- As there had been no regulatory breach here, the investigator didn't think that this aspect of the complaint should be upheld.
- With regard to the defined benefits pension transfer advice, in June 2020 Mrs H was considering transferring out of her pension scheme when the cash equivalent transfer value (CETV) was £160,000. True Bearing advised her to defer the transfer until she met its criteria in September 2023, when she would be closer to the age of 55, as per COBS 19.1.6G. This rule specifies that a firm should only recommend transferring a defined benefit pension if it can be clearly demonstrated that it's in the client's best interest to do so.
- By September 2022, the CETV had dropped to £108,000. The final response letter dated 21 January 2024, and the Client Discussion Diary Notes confirmed that Mrs H was advised to wait for a more favourable transfer window. However, True Bearing's "Defined Benefit Advice Process (July 2020)" required clients to be at least 55 years old and have a minimum attitude to risk of "6 out of 10". Mrs H's profile did not meet this requirement, and the adviser followed the regulatory framework by advising her not to transfer until she was closer to 55.
- The drop in CETV was unfortunate, but COBS 19 was clear that the advice to wait was appropriate, given Mrs H's circumstances. No recommendation to transfer was made at the time due to these regulatory requirements, and the decision not to proceed with the transfer couldn't be considered a failure in the advice process.
- And so the investigator also wasn't persuaded that this aspect of the complaint should be upheld.

Mr and Mrs H disagreed, however requesting that the matter be referred to an ombudsman for review, and submitting the following further comments in summary:

- They had never submitted a full written complaint to True Bearing, to which it could then provide a comprehensive response. Mr and Mrs H requested that, if the investigator had a copy of the full written complaint, this be forwarded to them.
- Not everything which was discussed at meetings was recorded in the meeting notes.
- True Bearing actively discouraged the encashment of the ISA for the property purchase, even though it had been underperforming.
- The complaint about being advised to not encash the ISA for the property purchase related to 2020, and they had no complaint about the earlier advice in this regard. It was in 2020 that they were actively discouraged from doing so, and had missed out on property value increases whilst the ISA underperformed. This specific point therefore hadn't been properly assessed by either True Bearing or the investigator.

- They made no secret of their desire to transfer defined benefits as soon as possible to protect the transfer value and provide tax efficient drawdown of the fund. No regulatory requirements were ever discussed.
- The advice with regard to the ISAs and the defined benefits was contrary to their wishes and had been proven to be wrong for them. And issues of risk tolerance were irrelevant here.

The investigator considered Mr and Mrs H's comments and responded as follows:

- With regard to the nature of the complaint, although he was unable to confirm the existence of a full written complaint, True Bearing had responded on the basis of its understanding of Mr and Mrs H's concerns, and he was satisfied that it had done so in line with the required complaint handling processes. And in investigating the complaint, he had relied on the available records.
- The advice given in 2020 to maintain the ISA was consistent with Mr H's risk tolerance and financial objectives as understood at the time. Hindsight may have demonstrated that a different approach would have yielded a better financial outcome, but based on the available information, the recommendation wasn't unsuitable at the time.
- The advice with regard to the defined benefits transfer was to wait until Mr H met the necessary age and risk tolerance criteria. This was aligned to the requirements in COBS 19.1.6G, which set out that pension transfers should only be recommended if it could clearly be demonstrated to be in a client's best interests. And it was reasonable for the adviser to encourage waiting rather than proceeding immediately.
- Mr and Mrs H may not have been specifically informed of the internal requirements relating to age and risk tolerance, but they formed part of True Bearing's compliance process. As the suitability assessments were applied consistently, this wouldn't constitute a regulatory failure.
- Although Mr and Mrs H may feel that the advice didn't align with their personal preferences or goals, it was given in line with regulatory standards. Suitability assessments are based on a holistic view of clients' financial positions, objectives and risk tolerance, which were considered during the reviews undertaken.
- There may have been additional discussion points which weren't captured in the notes, but the findings were based upon the available documentation and the absence of additional notes didn't invalidate the conclusions drawn from the documented evidence.

Mr and Mrs H maintained their disagreement with the outcome, however, saying the following in summary:

- They still hadn't received the evidence of their written complaint.
- Their view relating to the lack of impartiality of the compliance director in undertaking the investigation into their concerns remained unchanged.

- The sole focus of the complaint relating to the encashment of the ISA for property purchase was from 2020. They requested the documentation referred to by the investigator relating to the investment property identified in 2020.
- Their communications regarding the defined benefit transfer were clear. They also set out the financial benefit of the transfer and drawdown – which was aligned with the “no brainer” comment from the adviser at the time and which confirmed that the adviser agreed that this would have been in their best interests. However, if the investigator remained of the view that it was suitable to wait under the requirements of COBS 19.1.6G, he was invited to explain why.
- Although the investigator had said that True Bearing’s failure to share its internal compliance requirements for transfer advice with them wasn’t a regulatory failure, their repeated desire to transfer in 2020, along with the adviser’s confirmation that this was in their best interests, meant that the advice wasn’t in their best interests.
- Whilst they had tried to help fill the gaps in the documented evidence, it was disappointing that the investigator hadn’t taken into account these further representations, instead relying on the biased information provided by True Bearing.
- The information they’d previously provided to the investigator should have been referred to True Bearing for its comments, but they doubted that it had.

A different investigator then sent Mr and Mrs H the complaint acknowledgement from True Bearing, along with risk profiling documents.

In response, Mr and Mrs H said the following:

- True Bearing hadn’t provided them with the reports, and they were unaware as to what information had been used to compile these reports as their attitude to risk had only been discussed in 2023.
- The evidence suggested that the reports were compiled independently of them and only after the three complaints had been submitted.
- The last risk questionnaire that they’d completed was in June 2023, and so over three and a half years before the reports had been produced.
- Notes from June 2020 contained inaccuracies such as reference to a retention bonus which would be used to repay a residential mortgage – but this had already been repaid in 2019.
- There were also other inconsistencies with regard to the notes about the defined benefit pension schemes. The ones submitted to this service suggested that advice/information had been given in respect of this, but this wasn’t the case. However, the adviser had clearly thought that a transfer of the defined benefits was the right choice.
- An email from 9 June 2020 requested that they complete an attitude to risk questionnaire and asked for further details on the defined benefit scheme, but the

notes provided to this service indicated that, on the same day, it was recorded that due to their ages and risk profiles a defined benefit transfer couldn't be discussed.

- Having received a response from True Bearing to further queries on this, it had acknowledged that the risk reports from 2023 were based on information from 2020.
- And it had confirmed that the risk reports in June 2020 were complete three days after the meeting in question.
- They wished to reiterate that advice given to them contradicted True Bearing's requirements on age and risk rating, and that they were advised it was a "no brainer", but without being given the true reason as to why.
- Had True Bearing been open about the age and risk rating requirements, they would have approached alternative advisers to facilitate the transfer in 2020.
- With regard to the investment opportunity, it was clear that True Bearing hadn't addressed this with them or this service, instead referring to an investment opportunity from a few years earlier. True Bearing had therefore offered no response to that part of the complaint.

As agreement couldn't be reached on the matter, it was referred to me for review.

At my request, the investigator asked True Bearing to provide all suitability reports and fact finds for the relevant period, and also asked it for its comments relating specifically to what Mr and Mrs H had said about advice they were given in 2020 to not invest in a buy to let property.

In response, True Bearing provided the documents and also said that there was no record of a discussion about Mr and Mrs H investing into a new buy to let property in 2020.

Specifically, it said that its adviser updated the fact find on 9 June 2020 and recorded the value of the main property and the existing investment property, and also noted that they would downsize from the former to release equity, and eventually sell the latter.

Additional client discussion diary notes for 9 June 2020 recorded that the annual review meeting had been brought forward due to Mr H's impending retirement at age 48.

At a subsequent meeting on 19 June 2020, the adviser reverted to Mr and Mrs H to present them with cashflow findings and comments.

But, it said, there was no mention of an additional buy to let property at either meeting.

The investigator put these further comments to Mr and Mrs H, who responded as follows:

- They weren't surprised that there was no reference to the buy to let opportunity in 2020, but they were actively discouraged from encashing the True Bearing portfolio and advised against the investment property, even though the investment portfolio continued to underperform and was only generating small returns which were only covering the management fees - leaving little to no net returns for them.
- Their recollection was that the investment property had been identified and they expressed their wish to encash the True Bearing portfolio as this was continuing to

show no returns and use the funds for a deposit, legal fees and stamp duty, bridging the balance to the purchase price with a buy to let mortgage.

- True Bearing encouraged them to retain the portfolio, with the adviser emphasising that it made sense to spread any monies across a range of investment types and not focus solely on property.
- They continued to express disappointment in the performance of the investment portfolio, but were assured that things would bounce back. And so reluctantly the decision was made to follow True Bearing's advice in the short term even though they were uncomfortable with this.
- However, it was stressed to True Bearing that any further investment into their portfolio(s) would only be made once the portfolio started to perform and provide the minimum returns expected.
- True Bearing had acknowledged this position, although they noted that this wasn't referenced in the notes provided either.

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.

To firstly address the complaint point relating to the transfer of Mr H's ISAs into the recommended replacement product in 2017, I note that Mr and Mrs H haven't specifically addressed this in their response to the investigator's findings on the overall complaint, instead focusing on the other two parts of the complaint.

But for the avoidance of doubt, I've reached similar conclusions to the investigator on that particular matter, and for broadly the same reasons. I don't think the advice was unsuitable, given the recommended portfolios into which the transfer was made, and which were aligned to the stated attitude to risk. There was a small increase in charges, of which Mr H was made aware, but he was recorded as being comfortable with this for the prospect of enhanced growth.

Turning then to the two other complaint points, Mr and Mrs H's position is that they were advised to maintain the ISA in 2020 and to retain the defined benefits, although the actual nature of this "advice" is unclear. Certainly, the available evidence doesn't support the position that a personal written recommendation was provided to Mr and Mrs H on anything other than the ISA transfer in 2017. And so, insofar as any "advice" was given, in Mr and Mrs H's view this seems to have taken the form of them being dissuaded from encashing the ISA in 2020 for a buy to let purchase, and then an acknowledgement by the adviser of the benefits of the defined benefits transfer – a "no brainer", but with no follow up process to do so.

I think it would be difficult therefore to reasonably conclude that any regulated advice, in the form of a personal recommendation, had been given to Mr and Mrs H to either retain their ISA or to not transfer the defined benefits. I can't of course rule out the possibility that verbal dissuasion was provided in both instances, and simply wasn't recorded in the file notes. And I've noted Mr and Mrs H's strength of feeling on the conversations which they say were held, along with the content of those conversations - although I think it's worth noting that other records were made regarding discussions held at client meetings, including plans around existing buy to lets.

However, even if a different interpretation of the above were possible, and it could reasonably be concluded that Mr and Mrs H *were* dissuaded from both encashing the ISA in 2020 and transferring defined benefits, I don't in any case think that such "advice" would necessarily have been unsuitable.

To firstly address the matter of the defined benefits, I've considered Mr and Mrs H's known circumstances at the time.

In terms of the assessment of their attitude to risk, Mr and Mrs H have said that they didn't receive the risk profiling reports, and that this hadn't been discussed with them until December 2023. But whilst they may not have seen those reports, I think it's unlikely that True Bearing would simply have guessed at their attitude to risk when considering options prior to that.

I acknowledge what Mr and Mrs H have said about the timing of the completion of the risk profilers and the meetings notes which said that they'd been advised that they didn't satisfy the criteria for receiving transfer advice, but I note that they haven't questioned the responses they gave in the risk profilers, or said that their attitude to risk was in some way incorrectly recorded. And if the attitude to risk as set out in 2020 hadn't been consistent with their own understanding of this, then it might reasonably be expected that they would have challenged this.

But even if there was doubt around their attitude to risk, and Mr and Mrs H were now asserting that they did satisfy True Bearing's requirement in that regard, they nevertheless still failed the age requirement in 2020.

Further, Mr and Mrs H have said that, although they were told that the transfer was a "no brainer", they were nevertheless dissuaded from transferring at that time. But in the absence of the information relating to them not meeting the internal requirements, and given their own belief that a transfer was the right thing to do - and, according to Mr and Mrs H, endorsed by True Bearing - there must have been a specific justification for doing so which persuaded them that waiting was the right course of action.

And such justifications do exist. There are often quite compelling reasons for deferring a decision on whether to transfer defined benefits until closer to the time of the planned withdrawal of those benefits.

For example, individuals' circumstances may change in the period up to the beginning of benefit withdrawal. Income drawdown from a transferred pot of money may seem like the best prospect at a given point in time, but later on so may be the fixed income from the scheme. And I think it's worth noting that there's a significant body of decisions on this service's database within which financial firms have been criticised for providing advice to transfer defined benefits too far from retirement, not least due to the prospect or at real least possibility of an individual's situation changing over time.

And commentary around a transfer seeming like a prudent financial decision at the time and advice to nevertheless wait until closer to retirement to make a decision on this wouldn't be mutually exclusive.

It's entirely possible that a transfer may, from a financial perspective, seem the best thing to do at that moment in time, but the future couldn't be known. And so advice to wait, at least until clients satisfy the internal requirements for the provision of formal advice on the transfer, wouldn't in my view be inappropriate.

Mr and Mrs H have said that, had True Bearing explicitly informed them of its internal

requirements to assess the suitability of a transfer, they would have looked elsewhere to implement the transfer. But on balance, I don't think this is more likely than not to have been the case. One of the key criteria for providing transfer advice was that the age requirement hadn't been met, and so in essence that it would be prudent to wait until closer to the age at which the benefits could be accessed - which as I've set out above is in itself a justification for not transferring.

Had True Bearing informed Mr and Mrs H of its specific criteria for providing transfer advice, this key requirement would intuitively also have been explained to them, the reasons being that waiting to nearer retirement age to effect a defined benefit transfer is usually a more prudent course of action due to the factors mentioned above, not least of which is the possibility of a change in circumstances.

Further, the rationale for the risk rating requirement would also likely have been explained in terms of the guaranteed income provided by scheme benefits typically being more suited to those with a more conservative attitude to risk, as was the case here.

I don't think this explanation would have left Mr and Mrs H with a materially different point of view to that which must reasonably have been fostered by them to in any case persuade them to wait. It was open to Mr and Mrs H to either heed that advice, either specifically set out in terms of True Bearing's internal requirements, or in more general but nevertheless similar terms, or seek advice from another firm if they were determined to proceed.

And so even if an undocumented discussion occurred around the defined benefit transfer, I think the matter of whether or not they were explicitly told of True Bearing's requirements to give formal advice is of diminished importance here. I don't think it would have made a material difference to the outcome in terms of whether Mr and Mrs H would have sought assistance elsewhere.

I acknowledge that the transfer value fell after this point, but for the reasons given, I don't think it would be fair or reasonable to hold True Bearing responsible for what Mr and Mrs H have since come to consider to be a missed opportunity to capitalise on that higher transfer value. And I think it's also worth noting that, although the transfer value may have reduced, the valuable benefits which would be provided by the scheme remain.

Turning then to the matter of the encashment of the ISA funds in 2020 for the purpose of investing in a buy to let property, and similarly to above, on the (albeit unsubstantiated and undocumented) assumption that advice was given, I don't think that such advice would have been inappropriate. Mr and Mrs H were recorded as having a cautious attitude to risk, and with a significant proportion of their assets already being held in "bricks and mortar" property, retaining diversification in other asset classes (split equally between three appropriately risk rated portfolios) wouldn't in my view have been unsuitable advice.

Moreover, I think it's worth noting that, in the fact find update of June 2020, Mr and Mrs H were recorded as considering the sale of their existing buy to let property, which would appear to be somewhat at odds with the position that they were in fact intending to invest into further buy to let property, but were dissuaded from doing so.

Overall, therefore, whilst I appreciate that Mr and Mrs H will be disappointed with this outcome, for the reasons given, I don't think it would be a fair or reasonable outcome to uphold this complaint.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 15 August 2025.

Philip Miller
Ombudsman