

The complaint

Mrs C and Mr C ('the complainants') have complained about True Potential Investments LLP ('TPI') and True Potential Wealth Management LLP ('TPWM'). TPWM provided an advisory service to the complainants (including an ongoing service since January 2019). TPI administered their portfolio of assets, held the assets on its investment platform and managed them through that platform.

This decision is only about TPWM and the complaint about its advisory service. In the main, the complainants say they were unsuitably advised to move their cash holdings out of Cash Individual Savings Accounts ('ISAs') into investments, the Ongoing Advice Charge ('OAC') they paid TPWM for its Ongoing Advice Service ('OAS') was of poor value given the underperformance of their portfolio, and their adviser wrongly attempted to apply a charge to a withdrawal they sought to make.

There is an additional issue concerning the complainants' allegation about a Data Subject Access Request ('DSAR') failure committed by True Potential LLP ('TP'), which represents the True Potential Group of companies (including TPWM).

What happened

TPWM explained the OAC as follows –

"The ongoing advice charges ... are 0.5% per annum of the total investment held. This charge is split over 12 months and deducted on a monthly basis. The monetary charge will vary based upon the value of your investment, which may fluctuate."

It has also referred to the agreed terms, in which the contents of the OAS were stated as follows –

"As a client, if you decide you wish to receive ongoing service then the following will form part of our ongoing service proposition to you

- As a client, you are supported and empowered 24 hours a day, 7 days a week through your personalised client website.*
- We will also store a copy of our recommendations, supporting information and any other important documents you provide on this site.*
- Our advisers will ensure that they review your financial affairs when required, by offering review meetings. These can be arranged at a time that best suits your needs.*
- If you have any questions, want to make any adjustments or if your personal situation changes, you can use the secure messaging system on your site to contact your adviser. Alternatively, you can reach a member of our True Potential team by phone or in writing."*

TPWM says – the 0.5% OAC represented good value for money given the above OAS components; it included an entitlement to annual reviews (first conducted electronically through the client portal, then progressed to contact with an adviser if there are changes in circumstances); annual reviews took place in March 2020, February 2021, March 2022 and

February 2023, and no significant changes in circumstances were highlighted in any of them; the OAC could have been cancelled by the complainants at any time; and information on the charges applied were available to them through the client portal (in annually uploaded costs and charges statements).

It also says the complainants had access to record/documentation for all the annual reviews through the client portal; the records also show their adviser's additional endeavours to comprehensively review their estate annually; those endeavours extended to a number of home visits and Zoom meetings, and, notably, to meetings arranged by him between the complainants and TPI in 2023, in response to their concerns about the performance of their portfolio at the time.

TPWM believes that these examples of the service delivered in practice illustrate how the OAS/OAC was of good value, and it says the OAS cannot fairly be judged in the context of performance because the complainants' portfolio's performance was beyond the service's remit, instead performance related to TPI's management service.

In response to the allegation that the complainants' adviser sought to charge them for a withdrawal, TPWM says the following clarification should be noted – the adviser explained that withdrawals could be made on an advised or non-advised basis; the latter was free but the former carried a charge distinct from the OAC, because separate and additional work had to be done in terms of fact-finding, assessing suitability of the proposed withdrawal and presenting a recommendation on the proposed withdrawal; the choice was left with the complainants and it appears no withdrawal was made in the end; furthermore, their adviser explained that he was prepared to guide them on the execution of a non-advised withdrawal.

TPWM's position on the allegation about the transfer of their cash holdings is that the transfers, in 2021, were not advised.

With regards to the DSAR matter, the complainants were unhappy with the responses they received on their complaints, and they considered some of those responses to be misinformed. On 25 April 2024, and to determine any factual inaccuracies in the records held for their account(s), they made the following request to TP –

“Please provide full subject access data, to include, not exclusively, copies of

All data held by TP, associated companies (TPWM etc) and agents ... relative to [the complainants].

This should include emails (to/from TP and its associated companies and its agents including emails relative to us sent by and to your agents) in which we are referred to or discussed.

A copy or transcription of all call recordings (we understand all are recorded) including the call with ... when a complaint relative to investments was discussed on the day prior to the formulation of your final response.

For your ease, they can be provided, indexed, on a disk or memory stick if that helps.”

On 23 May 2024 they were sent information, some of which was unrelated to them. They say they agreed to delete the information unrelated to them, in the context of the redacted substitutes they had been promised, but they did not consider it necessary to delete all that they had received, until the substitute was delivered.

TP instructed them to return the full delivered data in a secure manner, so it could dispose of it, to permanently delete any copies they had made, to confirm the deletion, and to also confirm that they will not continue to access, copy or process the data in any manner. For the trouble and inconvenience caused by carrying out these instructions, and caused by the initial error, the complainants were offered £1,000 compensation on 3 June 2024. However, TP subsequently withdrew this offer, on the grounds that the complainants had repeatedly refused to carry out the instructions. TP also mentioned referral of the matter to the Information Commissioner's Office ('ICO').

One of our investigators looked into the issues and concluded that parts of the complaint should be upheld.

He acknowledged the absence of formal advice in the cash transfers, but noted evidence going back to 2018 that the complainants' adviser appeared to have previously encouraged them to review/reconsider their cash holdings. He said the same evidence showed discussion between the parties about improving upon the interest earned on the cash, through investment. The transfers eventually happened in August/September 2021, the Cash ISAs were moved into TPI Stocks and Shares ISAs.

The investigator considered a 1% initial charge that had been applied to the transfer, which, he said, carried the implication that initial advice had been given. However, he looked into the matter further, and concluded that –

- There is evidence in the February 2023 review of Mr C's agreement with the invested TPI ISA being suitable for him, so this conflicts with his claim that he was led to believe it was a Cash ISA.
- There is evidence in TPWM's terms of business showing that the 1% initial charge was applicable to a non-advised transfer, so it does not denote the provision of advice. There is also evidence in the online client journey for the transfer, showing warnings about the transfer process being non-advised.
- In addition to the above points, the absence of formal advice and of advice related fees, supports the conclusion that whilst Mr C probably took guidance from the adviser in 2021 to execute the transfer process, the transfer was probably not advised by TPWM.

On the complainants' allegation that the OAC was not of good value, the investigator noted their confirmation that it concerns dissatisfaction with their portfolio's performance. He explained that the OAC is unrelated to performance, instead it relates to delivery of the service components within it, so those components and their delivery define its value.

For Mr C, the investigator concluded – on similar grounds to those set out by TPWM – that the OAC was delivered to him and was of fair value. For Mrs C, he concluded differently, because other than in 2023 she did not engage in annual reviews. He accepted that, in the other years, the reviews were offered by TPWM but they were not undertaken by Mrs C. However, he referred to the regulator's Conduct of Business Sourcebook ('COBS') rules, at COBS 6.1A.22 R, and the regulator's guidance factsheet on OACs which, he said, combined to expect a firm not to merely offer suitability reviews but to ensure they were delivered. For these reasons, he concluded that the complaint about the OACs should be upheld, but only for Mrs C.

The investigator did not uphold the complaint about the advice charge that was mentioned for the pension withdrawal Mr C considered making. He reached this conclusion for broadly the same reasons TPWM expressed on the matter, and he highlighted the different

considerations, planning and advice (including cash flow modelling and implications on bringing pension money into an estate) that the adviser would have had to cover in an advised withdrawal – all of which justified the separate advice charge. He also noted that the True Potential Personal Pension's terms and conditions also confirmed that a charge applied to advised withdrawals.

On the DSAR matter the investigator concluded that TPWM, in association with TP, had done something wrong. First, he satisfied himself that our service has scope to address it, by citing the regulator's Dispute Resolution ('DISP') rules on the activities that fall into our jurisdiction (at DISP 2.3.1 R) and by saying the following –

"In many cases, we do have jurisdiction to consider complaints about DSARs as long as the consumer is receiving a financial service from the business. The right to make a DSAR is sufficiently bound up with the financial service itself and is a vital part of the way a business is required to interact with its customers."

The investigator highlighted that the complainants' position on TP's instructions and the £1,000 compensation offer was confirmed in communication Mr C sent to TP that included the following –

"... confirm that following receipt of £1,000 (one thousand pounds) compensation payment from True Potential LLP ... I will:

- 1. Securely dispose of and permanently delete the email related data received 28th May 2024 on a memory stick, which was replaced with certain revised email data on 11th June 2024. This will particularly include the email dated 5th February 2024 that includes complaints data in a paper intended for the TP LLP Board that referenced my complaint.*
- 2. Retain the data received 28th May 2024, included in files labelled ...*
- 3. Not continue to access (other than my own data for my own use, as provided in the DSAR), copy or process the data in any manner.*

I hereby accept True Potential LLPS offer of £1,000.00 (one thousand pounds) for the mis-management of my Data Subject Access Request, and inconvenience caused to me, in full and final settlement of any and all claims I may make in connection with or arising out of the mis- management of my Data Subject Access request sent by True Potential LLP, its associates, agents and representatives."

He concluded that TP/TPWM clearly admitted its mistake in the matter, and recognised the need to compensate the complainants for the trouble the mistake caused them; they were asked to delete all the information initially sent to them, but some of that information was about them and they had yet to receive all the information they asked for; they were not strictly obliged to return data about them that belonged to them; the data breach happened through no fault of theirs; overall and in the circumstances, it was unreasonable to withdraw the £1,000 offer (which was substituted by a £150 offer), TP/TPWM should honour that [original] offer. The investigator also set out a proposal for both parties to address the data breach and achieve the compensation settlement.

The complainants disagreed with the investigator's findings on the cash transfer and DSAR issues. In the main, they insist that the transfer and investment of their cash holdings was unsuitably advised by TPWM, they consider there should be additional compensation (to them) beyond what the investigator proposed (including a form of penalty for TPWM's failings in the complaint matters), and, in their view, the investigator's proposals in the DSAR

matter are unlikely to resolve the disclosures they want and do not properly compensate them.

The complaint was referred to an Ombudsman.

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 have reached the same conclusions expressed by the investigator.

Scope

The complainants have a separate complaint about TPI, concerning their allegation about mismanagement of their portfolio. This decision makes no findings on that subject matter.

My remit is primarily limited to the three main issues the complainants have raised against TPWM – allegedly unsuitable advice to transfer and invest their cash holdings, the OAC/OAS being of poor value, and the matter concerning advisory charges for withdrawals from the portfolio.

I understand that the complainants' case about the OAC/OAS was presented in the context of their unhappiness with their portfolio's performance, but that underlying matter falls into the complaint about TPI. I will not be addressing the underperformance that they have alleged. Instead, and like the investigator, I will be treating the matter only in terms of delivery of the OAS to the complainants, and whether (or not) the service and its delivery amounted to fair value.

The DSAR appears to be somewhat of a secondary matter. I do not say this to diminish the fact that it is a complaint issue for the complainants. I acknowledge that. However, it is a matter that relates to TPWM, but also goes beyond TPWM. It features TP, who is not the respondent to the present complaint. It is also a matter that has wider data protection elements, including the ICO referral that TP/TPWM appear to have made. Nevertheless, I have taken the same pragmatic approach used by the investigator and I am satisfied that our jurisdiction and the facts allow me to do that.

I consider that the issue is sufficiently associated with TPWM, in its position as respondent to the present complaint, and that I have jurisdiction to determine it.

The complainants' DSAR expressly mentioned TPWM, their TPWM adviser and the TPWM complaint handler involved in their complaint.

It was mainly prompted within their reactions to the final complaint response they received from TPWM in March 2024 – before that, an interim response appears to have been issued in December 2023. TPI's separate complaint response was sent to them in December 2023. However, the April 2024 DSAR followed directly after the March 2024 TPWM final response.

All three firms are in the same group of companies, and it appears that the complainants considered it efficient to submit the DSAR to TP in order to capture all the disclosures they sought across TPWM and TPI. It also appears that TP used a similar approach. Its complaint response (of 5 July 2024) on the DSAR matter included –

“As your complaint relates to activities carried out by both True Potential Wealth Management and True Potential Investments, your complaint has been forwarded to our Group Complaints team to considered.”

“... in the interest of resolving your complaint as soon as possible, the Group Complaints team for True Potential LLP have investigated your complaint, as we have the required access to respond from the overall Group as a whole.”

The response gave notice of referral rights – that is, the right to refer the complaint to our service, which is what the complainants subsequently did – and TP has continued to represent its group companies in the matter.

Overall, and based on the above, I am satisfied that the matter can be dealt with in a complaint to which TPWM is the respondent. Correspondence on it has clearly been handled by TP, but it has done so as a representative of both group companies, including TPWM. Importantly, the specific error in the DSAR documentation also related to TPWM, and as I said above the DSAR itself cited TPWM, the TPWM adviser and the TPWM complaint handler.

I now move to our jurisdiction to address the activity involved in the DSAR matter. I have not done the same for the other complaint issues because our jurisdiction over them does not need to be clarified.

As TP/TPWM have rightfully noted, there is no claim or suggestion that the complainants’ data was breached, instead other people’s data appear to have been breached in the information erroneously sent to them. That is a matter firmly within the ICO’s remit, and I have no power to consider or determine it. As far as the complainants are concerned, the DSAR failure they allege is about the information they sought not being fully and properly provided to them, partly because of the dispute between the parties that resulted from the aforementioned error. In other words, as the investigator said, the issue is about the interaction between the parties with regards to addressing the DSAR – and this is also the activity within the complaint matter.

I refer to DISP 2.3.1 R. It says as follows –

“The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:

(1) regulated activities ...

or any ancillary activities, including advice, carried on by the firm in connection with them”

The regulator’s *Handbook*’s glossary defines an ‘ancillary activity’ as one “... *which is not a regulated activity but which is ... carried on in connection with a regulated activity; or ... held out as being for the purposes of a regulated activity*”.

TPWM’s OAS was a regulated activity, under the category of ‘advising on investments’ (as defined in the 2001 Regulated Activities Order). The complainants’ DSAR was directly connected to the service they had been receiving, and paying for, under the OAS and directly connected to their complaint about the OAS/OAC. TP/TPWM’s handling of the DSAR was essentially about providing information to the complainants concerning the OAS that had been delivered to them. In other words, it was about discharging a legal obligation to disclose information on the regulated activity conducted by TPWM and TPI (represented by TP) in the service provided to the complainants. That sat alongside the regulated activity that was being conducted, so it was *connected* with it.

For the above reasons and in the context of the present complaint, I am satisfied that TP's handling of the DSAR amounted to an ancillary activity carried on by TP representing TPWM, in connection with a regulated activity (the OAS).

Transfers of the cash holdings

In the absence of evidence that TPWM advised the transfers, the allegation about their unsuitability falls away. I cannot reasonably determine their suitability in a complaint about TPWM if it did not recommend them.

The balance of available evidence is broadly as the investigator described. The complainants' adviser clearly had a background role in their considerations about investing the Cash ISAs. There is email evidence showing that those considerations were shared with him, and I consider it more likely (than not) that Mr C's accounts of his discussions with the adviser about improving on the performance of the cash holdings are true.

However, there is a primary need to establish that regulated advice was given to the complainants to conduct the transfers. Under the Regulated Activities Order, regulated investment advice is defined as follows –

“Advising a person is a specified kind of activity if the advice is—

(a) given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and

(b) advice on the merits of his doing any of the following (whether as principal or agent)—

(i) buying, selling, subscribing for or underwriting a particular investment which is a security or a contractually based investment, or

(ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.” [my emphasis]

As emphasised in the quote above, regulated investment advice involves a firm advising on the merits of any of the listed actions. Such advice will usually be documented. There is no documentation showing advice from TPWM on the merits of the cash holdings transfers that the complainants conducted.

Sometimes, and depending on the circumstances in a case, identifying the provision of advice might not be straightforward. The regulator provides guidance for this in its Handbook's Perimeter Guidance Manual ('PERG'), at PERG 8.28. The guidance helps in distinguishing advice from the [non-advisory] provision of information, but it also recognises that the latter “... *may take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation*”. The guidance concludes with the following –

“One factor in deciding whether what was said by an adviser in a particular situation did or did not amount to advice is to look at the inquiry to which the adviser was responding. If an investor asks for a recommendation, any response is likely to be regarded as advice.”

“On the other hand, if a customer makes a purely factual inquiry it may be the case that a reply which simply provides the relevant factual information is no more than that.”

Evidence before 2021 could be viewed as mixed, in terms of whether the complainants asked for, and received, advice on their cash holdings or whether they asked for, and received, information. There were on and off discussions between Mr C and the adviser, going back to 2018, about the holdings. However, I consider that the gap between 2018 and 2021 would probably stand to defeat, or at least cast into doubt, any idea that advice was previously (before 2021) given in the matter. Any earlier advice that was agreed would

probably have been implemented around the same the time, and there is no evidence of that.

The events in 2021 are what I consider to be relevant, because this is the year the transfers happened and the events in this year show what prompted, and led to, the transfers. Any request for and/or provision of advice, or any evidence of an advised transfer(s), ought reasonably to be captured within these events. On balance, I consider that the opposite – evidence of Mr C pursuing the transfers on an execution only basis – is prominent.

The transfers, in 2021, appear to have been initiated by the complainants. In his email to the adviser of 26 February 2021 Mr C said he and his wife "... had a discussion and are considering transferring the Skipton and NS&I ISAs ..." alongside a separate set of cash balances, and he asked – "Is this something I can do by logging on and what would the costs to me be for doing so?". I acknowledge that the complainants' discussion with each other was probably partly informed by the on and off discussions about the ISAs they had been having with the adviser since 2018. However, as I said above the discussions before 2021 never led to transfers before 2021, so it is what happened in 2021 that mainly matters.

The adviser's response included –

"... you can instruct the transfers via your client site."

"I can give you guidance on this process if you require me to."

"The initial cost applicable to transfer by this method is 1%. On a total value of c. £97,300.00 valuation the cost will be £973.00."

"The costs thereafter, will be the same as those which are applied to your existing pension funds with True Potential."

The adviser also said "Markets are currently taking a southwards journey. Which means it could be a good time to transfer from cash." This was noted by Mr C, because his reply said he would watch the market and wait for signs of a rebound before conducting the transfers. This also shows that his intention for the transfers was to invest the cash, so he was aware that he and his wife were moving from cash holdings to investments exposed to the markets.

The adviser followed up on 17 March and Mr C explained that, for personal reasons, he was not yet ready to embark on the transfers.

There is a 17 June 2021 email from Mr C to the adviser, in which he lists all his and his wife's ISAs and says "We would like to be able to deposit these and would appreciate your assistance in doing so through the platform. Perhaps we could have a call early next week?". The adviser responded on the same date, sharing his availability in the following week and asking for Mr C's.

Mr C replied on 18 June to suggest a time for the call he had asked for, but he also confirmed that he had already withdrawn his ISAs, that the withdrawal should shortly be settled, and that he was in the process of dealing with his wife's ISAs. The adviser replied on 21 June, agreed the time proposed for the call and cautioned Mr C against the withdrawal he had made (and against doing the same with his wife's ISAs), saying that the idea was to transfer the ISAs not to cash them in, as the latter risked losing their tax efficient status.

Mr C thereafter used the TP/TPWM/TPI client portal to conduct the transfers. We have been provided with evidence of the online client journey he would have taken for this purpose. That journey included investment and portfolio related selections, as well as enquiries about objectives, risk profile and financial circumstances, all of which he would have addressed directly. As the investigator also noted, there was displayed notice confirming that the process was non-advised.

These enquiries and selections are things that would usually be treated by an adviser as part of an assessment of suitability for the transfers. In the complainants' case, Mr C used the online client portal and dealt with the enquiries and selections himself. Evidence of the process supports the conclusion that it was designed to enable the user to determine suitability her/himself. Hence the types of enquiries that had to be addressed, some of which facilitated the user's determination of suitability by requiring answers to meet a particular threshold before the journey was allowed to continue.

I echo and endorse the investigator's findings on the 1% initial adviser fee. Indeed, at first sight it seems to suggest the provision of 'initial' advice on the transfers, but the terms confirm that it was no more than an initial service fee for the transfers and that it was applicable to non-advised transfers. The adviser's response to Mr C (as quoted above) gave him prior notice of this.

Overall, on balance and for the reasons given above, I do not uphold the allegation about the transfers of the Cash ISAs being unsuitable; TPWM did not advise them so it has no responsibility for their suitability; furthermore, if the complainants say they were unaware the transferred ISAs were to be invested, there is evidence in correspondence showing they were aware of (and intended) such investment before and after the transfers.

The OAS/OAC

TPWM's annual suitability reviews were primarily based on the online client portal. Its OAS clients were sent prompts and reminders about their upcoming annual suitability reviews and requests to complete them. We have been sent evidence of this.

The process progressed to a face-to-face review meeting with an adviser where there were changes in circumstances that prompted that meeting, otherwise the process could be concluded at the online stage. I can see the reasoning behind this, given that if the relevant circumstances remained unchanged from one year to another, there would arguably be nothing to suggest a previously suitable solution had potentially become unsuitable.

It should be noted that the service was about reviewing suitability of initial investment advice, not about the management of ongoing investments (which was outside TPWM's OAS and was within TPI's management service). If there was no need for a face-to-face meeting, that did not mean the complainants' portfolio was left unattended to (especially if there were changes in the markets or in any other factors that potentially affected the portfolio). As is clear in their complaint about TPI, they were invested in a discretionary managed portfolio, so that gave their assets a distinct ongoing management service from TPI that was separate from TPWM's OAS, and that existed to cover portfolio adjustments to changes in the types of factors I mentioned above.

The OAS was put in place in 2019. The client portal reviews were conducted with Mr C in March 2020, February 2021, March 2022 and February 2023. My understanding is that face-to-face meetings were not prompted by changes in circumstances (that is, changes after the initial advice event(s)) during these reviews.

Correspondence from February 2024 onwards reflects considerations between both parties about proceeding with that year's annual review despite Mr C's complaint having been submitted and despite his decision not to invest further through the TP group of companies. He questioned whether (or not) it was worth doing so and said "*I did ask how this should be dealt with, bearing in mind my complaint and the fact I will not invest further funds with TP*".

TPWM encouraged him to proceed with the online review, but it also reminded him that he could cancel the OAS/OAC if he wished to. He was not persuaded there was a point in continuing with the review and he objected to doing it over the online portal, citing review related meetings he had held with the adviser in the past. The discussion then appears to have abandoned the annual review matter. Instead, both parties mainly explored, without success, a possible financial settlement for the complaint.

With regards to Mrs C, there is evidence of the notice/reminders sent to her (to conduct the online reviews) in September 2022, October 2022, January 2023, January 2024 and February 2024. TPWM accepts that she completed the online review only once, in February 2023, but it has stressed to us evidence that she logged into the client portal 108 times over the relevant periods and that she would have seen the reminders and required action notices about completing the online reviews. Its position is essentially that it did all it reasonably could in the matter, but she chose not to engage (other than in February 2023).

As I stated in the background section above, the contents of the OAS were defined as follows –

“As a client, if you decide you wish to receive ongoing service then the following will form part of our ongoing service proposition to you

- As a client, you are supported and empowered 24 hours a day, 7 days a week through your personalised client website.*
- We will also store a copy of our recommendations, supporting information and any other important documents you provide on this site.*
- Our advisers will ensure that they review your financial affairs when required, by offering review meetings. These can be arranged at a time that best suits your needs.*
- If you have any questions, want to make any adjustments or if your personal situation changes, you can use the secure messaging system on your site to contact your adviser. Alternatively, you can reach a member of our True Potential team by phone or in writing.”*

The reviews mentioned in this quote included the annual suitability reviews. In considering the service as a whole, and on balance, I am persuaded by TPWM's argument about the notable value the complainants would have enjoyed in the online annual suitability reviews that took place (though, I address the shortfall in Mrs C's case separately below), in the additional review related face-to-face meetings that Mr C mentioned in his 2024 correspondence (seemingly consistent with TPWM's reference to the adviser comprehensively reviewing their estate annually), in the home visits and Zoom meetings that both parties have referred to, and in the meeting(s) the adviser seems to have helped to arranged in relation to TPI.

Overall, they appear to have received a significant part of the ongoing comprehensive service described in the quote above. They had relatively good access to their adviser and Mr C, in the main, used that access consistently throughout the relevant period. I do not consider that the issues in early 2024 around the online review alters this finding. Overall, on balance, for the above reasons and based on evidence of contacts between both sides, I am satisfied that he received the value he paid for in the OAS up to 2024.

However, as the investigator explained, there was a shortcoming in the value received by Mrs C in the OAS, given that her use of the annual reviews was notably minimal (a single annual review during the relevant period).

I understand TPWM's point about the invitations and reminders that she would have seen during her portal visits, and about the implication being that it was her choice not to engage with the reviews as she was asked (or required) to. However, another point that matches

and, in my view, defeats TPWM's is that regardless of whether (or not) Mrs C chose not to engage in the process, it was charging an ongoing fee for a service that she was not receiving (for the years in which no reviews were conducted for her).

I appreciate that the complainants could have considered adjusting or terminating the service (and/or its costs) at their end, but the fact remains that TPWM continued to be paid for an ongoing service she did not receive (other than in February 2023). As far as Mrs C is concerned, therein lays the basis for concluding that the OAS/OAC did not provide fair value for her. In this regard, I echo and endorse the investigator's reference to the regulatory expectation that a service like the OAS should be delivered, not merely offered, where it is being paid for. I also highlight that the annual suitability reviews were a major component of the OAS, so by missing them in Mrs C's case (other than in February 2023) she did not receive the main feature of the service (other than in February 2023).

For the above reasons, I conclude that the part(s) of the OAC paid to and received by TPWM for the OAS concerning Mrs C, and for all the years in which she did not receive the annual suitability reviews, should be refunded to her/the complainants (with interest from when the OAC payments were deducted to the date of settlement). As I said above, the missing reviews essentially meant she did not receive the OAS she was paying for.

Before leaving this issue, the parties should note that I have also given due consideration to the 0.5% OAC rate, as part of the overall circumstances I have looked into to determine whether (or not) the OAS/OAC was of fair value. I am satisfied that the rate was comparatively fair and, based on the OAS' contents (as addressed above), that it was also a fair rate in return for the service delivered (with the exception of the shortcomings I identified in Mrs C's case).

As TPWM, and perhaps the complainants, will know, transparent and dedicated charges for an OAS was/is one of the effects of the regulator's 2012 Retail Distribution Review ('RDR'). The regulator's July 2013 Thematic Review of the RDR, six months into its implementation, referred to 0.5% per year "*of the amount invested*" as an example of a typical ongoing charge applied by firms at the time. Thereafter, and in its 2020 evaluation of the RDR it said – "*Our research shows the average charges are 2.4% of the amount invested for the initial advice and 0.8% per annum for ongoing advice*". This was around the same time that the OAS/OAC in the complainants' case was set up and was in operation. Therefore, it appears that the 0.5% rate applied by TPWM was lower than the average OAC at the time.

I do not find any problems in the specific OAC rate applied to the complainants' account(s).

Advisory charges for withdrawals

In straightforward terms, I consider that the facts of this issue essentially determine it. They also show that, on balance, it cannot reasonably be upheld.

Mr C's dissatisfaction appears to be, in the main, the notion that the adviser attempted to charge him separately for an advised withdrawal from his portfolio. It does not appear that a charge was actually applied to an advised withdrawal, so the matter seems to be a complaint *on principle*, as opposed to one concerning an alleged harm having been committed.

I refer to the regulatory definition of advising on investments that I quoted above. If Mr C considers that an investment *withdrawal* is different from an investment, I disagree. Such a withdrawal requires liquidation of part of an existing investment or, in some cases, part of cash allocated to support the investment (for example, cash held in a product to pay ongoing fees in the product). Thereafter, the investment's potential for performance is reduced,

because of the liquidation and withdrawal. For these reasons, considerations can arise about whether (or not) such a step is advisable, or suitable, in the circumstances.

Advising on investments covers such considerations, and this relates to advising on the *merits* of the investment related step that is contemplated.

If Mr C needed to make a withdrawal, if he determined that it was to be made and that there was no room for anyone else's input on the matter, he would not have needed or wanted any advice. The transaction would be, by default, an execution only transaction. However, if despite needing the withdrawal, he wanted advice on whether (or not) it was in his best interest and/or on how to address the need (be that through a withdrawal or through an alternative), then he would have either wanted or needed advice.

In the second scenario, the task would be separate from an OAS in which ongoing suitability reviews of a previous initial advice were being conducted. Instead, the task will be created by Mr C asking for 'new' advice on a new matter (the withdrawal).

That would have involved the full advisory process that TPWM would have been expected to apply as a regulated firm, inclusive of fact-finding on the circumstances related to the subject matter, a suitability analysis covering current and future implications of the contemplated withdrawal and a suitability analysis of any alternative solution(s) that the adviser proposed. A separate advisory service on a new matter like this could not have been reasonably expected free of charge. If the proposed withdrawal potentially applied to Mr C's pension arrangement, the adviser would have needed to consider and advise on even more factors, given the important retirement planning characteristics of a pension and the equally important implications of a withdrawal in that context.

Overall, on balance and for the reasons given above, I do not find it unreasonable that the adviser referred to a separate charge for advising on a portfolio withdrawal.

The DSAR matter

I agree with the investigator's conclusion on compensation in this matter.

I have also noted his findings on the steps both parties should take to resolve the underlying DSAR pursuit. As I explained earlier, I am not dealing with a data breach issue or any matter that falls into the ICO's remit. This includes the matter that TP/TPWM appear to have referred to the ICO. Incidentally, if the complainants consider that TP/TPWM has failed to provide the information disclosure it is obliged to provide in response to their DSAR, they too have discretion to consider a referral to the ICO in that respect if they wish, and I make no findings on the issues that would feature in such a referral.

However, in terms of a pragmatic proposal to aid both parties in amicably resolving the matter between themselves, I do not consider there was anything wrong in what the investigator proposed. He said TP/TPWM should properly discharge its obligation in responding to the DSAR, then the complainants should return and delete all the data that was mistakenly sent to them. This seems to be a proposal based on common sense, as it upholds the complainants' entitlement under the DSAR whilst also reasonably engaging their cooperation in ensuring that the initial disclosure error is resolved and not compounded.

In the circumstances of the case, I am not satisfied that I have the scope to make any explicit *orders* in this respect, as I remain mindful of the ICO's natural and primary remit in the matter, but I am prepared to confirm that I agree with and endorse the steps *proposed* by the investigator.

I am however satisfied that I have the scope to deal with the impact of the problems the complainants have faced in trying to have their DSAR properly answered. The matter was ongoing for around half a year by the time of the investigator's December 2024 view and it is still, to date, without a complete resolution.

TP/TPWM clearly recognises the seriousness of the matter and, to its credit, it reflected that recognition quite promptly in the £1,000 offer it initially made to the complainants. I acknowledge that part of the offer related to the trouble caused to them in having to help TP/TPWM resolve the data that was mistakenly sent to them. However, that was just as much a part of their overall DSAR experience as was/is the problems directly related to them receiving all the information they asked for and are reasonably entitled to receive. My view on the offer sits in this overall context.

It also sits in the context of TP/TPWM unreasonably, in my view, withdrawing the offer despite the position Mr C confirmed (as quoted above). I do not find that there was anything particularly controversial in what he set out. He essentially agreed to *securely dispose of and permanently delete* the information unrelated to him and his wife, not to retain or continue to access any of that information, but to retain the information that belonged to them.

Quite reasonably, he sought to address the two objectives held between the parties – helping TP/TPWM to resolve its error but also ensuring that he secured the information he and his wife had asked for. The latter was his only pursuit, before TP/TPWM committed the mistake, and that mistake had nothing to do with him, so it was not unreasonable for him maintain a part of his focus on obtaining (and keeping) the information that belonged to him (and his wife).

In the circumstances, I do not find that the complainants deserved to have their already poor DSAR experience compounded by what appears to have been akin to an abuse of the £1,000 compensation offer. First it was offered to them, then withdrawn (and then substituted by a significantly lower amount) because they did not comply with TP's instructions, but as I said above their response was not unreasonable. This creates the perception that they were unfairly subjected to a form of punishment in the matter, because they did not do exactly as TP had prescribed.

For the sake of clarity, nothing above is intended to say or suggest that TP's initial instructions were inherently unreasonable. The point is that Mr C's counter proposal achieved the same result through slightly different means, slightly different means that he was entitled to use because he was entitled to retain information that belonged to him (and his wife). There should have been no good reason why the counter proposal was not used to settle the matter, and there was no good reason for TP to react negatively to it (or no good reason why it did not reinstate its original offer in response to it, especially as Mr C had accepted that offer).

In terms of the value of the offer itself, our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience>. Under this guidance, awards between £750 and £1,500 are explained as follows –

“An award of over £750 and up to around £1,500 could be fair where the impact of a business's mistake has caused substantial distress, upset and worry – even potentially a serious offence or humiliation. There may have been serious disruption to daily life over a sustained period, with the impact felt over many months, sometimes over a year. It could also be fair to award in this range if the business's actions resulted in a substantial short-term impact.”

The complainants have waited, to date, for compensation in this matter mainly because TP withdrew its initial offer, and I have addressed my findings on that above. It has been over a year since their DSAR and resolution of that also appears to be, at least partly, an outstanding matter. They have had the distress of being involved in a potential data breach (unrelated to them), which they hold and/or share no responsibility for and which, to an extent, unfairly took some attention away from their DSAR. Their already negative experience was compounded by the events associated with TP's offer and offer withdrawal. Overall, I am satisfied that a £1,000 award is fair and reasonable compensation for them, in the circumstances, to address the trouble and distress they have been caused in the DSAR matter.

Putting things right

To compensate the complainants fairly, I order TPWM to do as follows –

- Pay them £1,000 compensation for the trouble and distress caused to them in the DSAR matter.
- Calculate the total of all OACs applied to their account(s) since the OAS/OAC began in 2019 and up to the conclusion of the service. The result is 'A'.
- Calculate how much of A was paid for the service to Mrs C (based on the service to her assets/accounts and application of the 0.5% per year charge to the values of her assets/accounts) during this period. The result is 'B'.
- Calculate the total OAC charge that paid for the February 2023 annual suitability review conducted for Mrs C, then deduct it from B. The result in 'C'.
- Pay C to Mrs C as redress for the missing OAS/annual reviews in her case.
- Calculate interest at the rate of 8% simple per year on each OAC payment for the missing OAS/annual reviews in Mrs C's case, from the date of each payment up to the date of settlement. The result is 'D'. Pay D to Mrs C as compensation for being deprived the OAC payments from when they were made to the date of settlement.
- Provide the complainants with a calculation of all compensation payments in a clear and simple format.

My final decision

I partly uphold Mrs C and Mr C's complaint as set out in my findings above. I order True Potential Wealth Management LLP to calculate and pay compensation to them as I have also set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 2 September 2025.

Roy Kuku
Ombudsman