

The complaint

Mr H complains about the financial advice he says he received from True Potential Wealth Management LLP ("TPWM"). He says he received unsuitable advice to switch his pension and has suffered a loss as a result for which he'd now like to be recompensed.

What happened

Mr H had a relationship with his adviser (who I will refer to as Adviser M) when Adviser M worked for a different advisory firm, having received advice from him in late 2015 to transfer his defined benefit pension to a personal arrangement with Royal London. At that time he accessed the maximum available tax free lump sum from his pension (which he invested with advice from Adviser M), and the remainder of the pension was invested. Mr H states that he was happy with the performance of this investment.

In April 2021, Adviser M moved from the advisory firm he was working with to become an adviser at TPWM. Mr H received a letter advising him of this, which confirmed that TPWM would take over the servicing of his investments.

At around the same time as this, Mr H's pension was transferred from the existing investment with Royal London to a new pension with True Potential Investments ("TPI") under the management of TPWM. At the time of the transfer, the value of Mr H's pension was approximately £670,000. Following this transfer, Mr H states that he became concerned that the performance of the investment was not performing as well as expected.

Mr H states that he complained to Adviser M on "a couple of occasions" on the phone and was told "it would recover and wait it out". He also states that he received a call from a senior partner or director at TPWM who also reassured him that the investment would recover.

Mr H remained concerned about the performance of his pension, and in November 2022 sought advice with a different financial adviser and arranged for his pension to be returned to the previous investment with Royal London. At this time his pension value was approximately £589,000.

On 15 February 2024, Mr H complained to TPWM. In this complaint Mr H stated that he was unhappy with the advice received, which had resulted in him incurring a financial loss. Within this complaint, Mr H stated that he believed that the advice he received from Adviser M to transfer his pension to TPI was motivated by Adviser M receiving a financial incentive to do so, and that there was no other reason for him to have transferred. TPWM did not uphold the complaint. They stated that Mr H had not received any advice to switch his pension from the existing provider to TPI, and he had done so on a non-advised basis following receipt of their Direct Marketing Offer (DMO). They stated that such offers are only made to clients who hold comparatively similar policies to TPI, and that when proceeding with the transfer he had ticked a box to agree to a disclaimer that he was aware that his adviser had not assessed his individual circumstances to enable individual financial advice to be provided.

They further stated that they believed that Mr H should have been aware that he had not received advice, and they had no record of him requesting a personal recommendation. They stated that as the required steps to provide advice had not been followed, and the fact that no initial fee was charged they were satisfied that they did not believe that Adviser M provided any advice.

Mr H was unsatisfied with this response and referred his complaint to this service. Our investigator reviewed the complaint along with submissions from both TPWM and Mr H, and concluded that there was no evidence to support Mr H's assertion that he had received advice, and did not uphold the complaint. She concluded that although there was evidence to suggest that Mr H had transferred his pension after talks with Adviser M, this was in a capacity as a friend and there was no evidence that TPWM provided anything other than information to allow Mr H to make an informed decision whether to transfer.

Mr H did not accept the investigator's view and submitted further information to support his assertions. The investigator considered the information and amended her view. She concluded that although she was satisfied that Mr H had forwarded the DMO to Adviser M and it was more likely than not that he had used the details contained within it to complete the form and arrange the transfer of the pension, she did not agree that advice had taken place, meaning that she didn't think she could hold TPWM responsible.

Mr H remained dissatisfied and the complaint has therefore been passed to me for a decision.

Provisional Findings

I issued my provisional decision on 15 May 2025. It said:

"I have considered all of the evidence and arguments provided to decide what's fair and reasonable in the circumstances of this complaint.

Subject to any further information I receive, I intend to disagree with the view of the investigator in relation to the decision not to uphold Mr H's complaint. I will explain why below.

Mr H is unhappy with the switch of his pension and the resulting performance during the time it was invested with TPI, which he states was as a result of advice given by Adviser M, in his capacity as an adviser of TPWM.

TPWM have stated in their final response to Mr H, and in their subsequent correspondence, that Mr H did not receive advice in relation to switching his pension invested with Royal London to TPI and instead proceeded with a Direct Marketing Offer that was sent to his personal email address.

They state that this was a mailing that was sent to clients who had newly joined the firm, to let them know that they could transfer investments held elsewhere to TPI. This was done as part of an automated process therefore the specific email sent to Mr H is not available. However, TPWM have provided a generic example of the email Mr H would have received. This included an activation key that would need to be used in order to proceed with the Direct Marketing Offer. Having proceeded with this, TPWM state that Mr H would have been able to view the necessary information about the available products and portfolios offered to allow him to make an informed decision on whether to transfer his pension to TPI. TPWM have provided a screenshot of the screen that would have been presented to Mr H when proceeding with the DMO, allowing him to make his own selection of the portfolio he wished

to invest in. TPWM state that having logged in and reviewed the direct offer, the first page that Mr H would have been presented with was a disclaimer which clearly states that a financial adviser had not assessed his circumstances. This disclaimer requires a box to be checked to demonstrate agreement that financial advice had not been received. TPWM state that Mr H agreed to this disclaimer.

Mr H has consistently stated that he did not decide to transfer of his own accord, nor did he select his own investments. He confirms that the funds were selected by the adviser, and he would not have been in a position to do this without that advice. He states that he did not proceed with the DMO himself, but that this was done by Adviser M.

In his response to the investigator's first view, Mr H provided an email showing that he had sent the email containing the direct offer to Adviser M on 3 April 2021. Mr H confirmed that he did not act on the offer, but it was Adviser M who opened the email, selected the funds and ticked the box agreeing to the unadvised offer. Mr H states that he did not digitally sign the application, and this was done by Adviser M – he has provided documents obtained via a subject access request to TPWM which show his full name was used to sign those documents. Mr H states that he would never sign in this way, he would only sign with his initial and surname as he has done for his entire life unless it was in an email, when he would use his first name and surname. It is noted that the date on the application form is 3 April 2021, the same day as the email was forwarded. I am satisfied with Mr H's account that he forwarded Adviser M the email who completed the steps on his behalf – including choosing Mr H's investments. I can think of no other plausible explanation as to why Mr H would forward that email to Adviser M.

In completing Mr H's application on his behalf, and choosing Mr H's investments, it's evident Adviser M's actions meant Mr H wasn't acting on an execution-only basis. Adviser M, and therefore TPWM, were advising Mr H. The long-standing relationship between Mr H and Adviser M only strengthens this view. Mr H would, reasonably, have considered his new arrangement as being the result of Adviser M's advice. At the very least, he would have thought Adviser M had endorsed the switch – which would be tantamount to advice. And it's difficult to conclude the selection of investments by Adviser M was anything other than advice. Adviser M ought reasonably to have thought the same and been aware of how his actions would have been interpreted by Mr H. It also means Mr H would not have had the opportunity to review the disclaimer confirming that he had not received advice.

In acting in this way, TPWM therefore had to ensure the suitability of Mr H's new arrangement (COBS 9.2). It also had to be mindful of the Regulator's Principles, and COBS 2.1.1R:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

I will return to the suitability of the switch shortly. But in blurring the boundary between execution-only and advice, not communicating clearly the basis on which it was acting, and in proceeding to switch Mr H's pension and choose investments on his behalf without

considering his needs and circumstances, it strikes me that TPWM hasn't adhered to the Regulator's Principles outlined above, nor COBS 2.1.1R.

As part of the proposition with TPWM, Mr H was paying a fee of 0.5% for ongoing advice. It is noted that he had been paying this fee previously through the duration of his relationship with Adviser M.

In return for the ongoing advice fee, Mr H was entitled to an annual review as part of the service he was signed up to. The information provided by TPWM shows that a review was carried out for Mr H on 7 June 2022, approximately one year after his pension fund would have been received by TPI. This was followed by a review report on 8 June 2022. This review and report covered a number of areas including Mr H's circumstances and objectives, his attitude to risk alongside his capacity for loss, and any possible changes to his circumstances, including assets and liabilities. The report covers both Mr H's ISA and his pension and includes an introduction which includes the following statement;

"True Potential Wealth Management have an obligation and an ongoing commitment to review your goals, objectives and personal circumstances to ensure that the product we initially recommended to you is still in line with what you want to achieve and, more importantly, is still suitable based on your current circumstances."

Specifically referencing Mr H's pension, the report states "when we first set up your investments we agreed a retirement date for you based on your goals and objectives. You have confirmed that your retirement date has not changed and your investment goals and objectives remain suitable in line with the investments we recommended."

This further supports the ongoing relationship between Mr H and Adviser M, and provides irrefutable evidence that TPWM endorsed the suitability of the pension for Mr H in June 2022 and constitutes advice at that time.

As stated above, Adviser M had been Mr H's adviser for a number of years prior to April 2021. I note that Mr H had been paying for an ongoing advice service. I have been provided with a review letter dated 10 March 2021 created by Adviser M (while he was with his previous firm) which outlines Mr H's investments, and states "I am pleased to provide you with a positive update". It states that he was pleased with the performance and was not recommending any fund change. The review letter stated that the fund charge was 0.35% but noted that if the value fell below £607, 000, then the fund charge would increase slightly to 0.4%. In addition to this, Mr H was paying 0.5% ongoing advice charge, he was therefore paying a total of 0.85%pa for his investment.

Shortly after this review, Mr H's pension was transferred to TPI.

I have been provided with the charges summary of the recommended investment. This shows that the charging structure comprised a platform fee of 0.4%, and fund management charges of 0.72%, totalling 1.16%, plus ongoing advice charge of 0.5% (total 1.66%). There is slight inconsistency of the charges, which elsewhere states that the total fund charge was 1.56% (comprised of 0.84% service costs and 0.72% product costs). It is likely that this is due to the statements of charges being based on projected and actual charges, which may vary within a portfolio. Nonetheless, it is clear that the charges of the new investment to which Mr H's pension was switched were significantly higher than those incurred by his existing investment. There is nothing to indicate that it was in Mr H's best interests to transfer and incur those additional charges. Indeed, the fact that his previous arrangement

had been assessed as suitable shortly beforehand – in March 2021 – suggests that Mr H did not need the additional features, or funds, offered by TPWM/TPI Therefore I cannot conclude that the recommendation to transfer Mr H's pension was suitable.

In their submissions to this service, TPWM state that Mr H has accessed the Client Site on over 1000 occasions which they believe evidences that he is comfortable in using the site and familiar with the status of his investments. I agree that the number of occasions that Mr H's account within the Client Site has been accessed indicates a high level of interaction and interest in his investment – that's why he ended up switching his pension back to his previous provider. However, that doesn't mean TPWM isn't at fault for the position Mr H ended up in.

Having considered the above, I intend to uphold this element of Mr H's complaint and direct Mr H be put into the position he would have been in had the transfer to TPI not taken place."

Responses to my provisional decision

I have received responses from both Mr H and TPWM confirming that they accept my provisional decision. Neither party have provided any additional information or evidence for consideration. Mr H has asked questions relating to the practicalities of the payment of the redress, which have since been discussed with the investigator. I would like to comment here that it is not the role of the Financial Ombudsman Service to punish businesses or tell them how to operate, our role is to put consumers back in the position that they would have been in had it not been for the business's errors. I am satisfied that this final decision puts Mr H as closely as possible into the position he would have been in had he been given suitable advice.

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.

As no new information or evidence has been received from either party, I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision. It follows that I uphold this complaint.

Putting things right

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr H would have remained with his previous provider. I am satisfied that what I have set out below is fair and reasonable in this situation.

What must TPWM do?

To compensate Mr H fairly, TPWM must:

- Compare the performance of Mr H's investment with TPI with the notional value if it had remained with Royal London. If the actual value is greater than the notional

value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- TPWM should also add any interest set out below to the compensation payable.
- If there is a loss, TPWM should pay into Mr H's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If TPWM is unable to pay the compensation into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount - it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. Mr H has already confirmed that he has already taken the maximum tax free lump sum available to him from his pension, therefore any income he could receive from his pension will now be taxable with no further adjustment for tax free lump sums.
- Mr H has confirmed he had to find another adviser in order to return his investment to the provider it had been with prior to the advice to transfer to TPWM. It is my view that the calculation undertaken above will not already have taken these fees into account. Therefore TPWM should repay that adviser's fees together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the actual value and the notional value can be offset against the fees with interest. However, if the calculation of the notional value carried out at the first step above does make an allowance for his new adviser's fees, this should not be paid to Mr H separately.
- Income tax may be payable on any interest paid. If TPWM deducts income tax from the interest, it should tell Mr H how much has been taken off. TPWM should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
TPWM Pension	No longer in force	Notional value from Royal London	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Notional Value

This is the value of Mr H's investment had it remained with the previous provider until the end date. TPWM should request that the previous provider calculate this value.

My final decision

For the reasons stated above, I uphold the complaint. My decision is that True Potential Wealth Management LLP should pay the amount calculated as set out above.

True Potential Wealth Management LLP should provide details of its calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 August 2025.

Joanne Molloy
Ombudsman