DRN-4230665

The complaint

Mr H has complained about the advice he received from True Potential Wealth Management LLP to transfer his existing pension plan into a True Potential Wealth Management LLP personal pension. Mr H has claimed that the pension transfer advice that he received from True Potential Wealth Management LLP wasn't suitable.

What happened

Mr H held an existing stakeholder pension plan. In this decision I will refer to the pension provider that Mr H held his existing pension plan with as Firm A.

Mr H was referred to True Potential for financial advice by a neighbour. Mr H had a meeting with an adviser from True Potential in March 2021.

At that meeting the True Potential adviser gathered information about Mr H's financial position and recorded this information in a fact find. The information gathered by True Potential said that Mr H held a stakeholder pension with Firm A which was valued at £45,558, that Mr H was in his late 40's, married and in good health, he was unemployed, but was seeking new employment, and that his only income was unemployment benefit.

The fact find also recorded that Mr H's only savings, aside from his Firm A pension plan, was £1,500 in a bank account, which was his emergency fund. It also recorded that Mr H lived in rented accommodation, had a balanced attitude to investment risk and had no financial capacity to make any contributions into a pension plan.

In April 2021, following on from the March 2021 meeting, True Potential sent a suitability report to Mr H. In this report True Potential recommended that Mr H transfer his Firm A stakeholder pension to a True Potential personal pension.

In the suitability report True Potential explained their reason for recommending a pension transfer as follows:

"You would like online access to view the performance of your investment, ability to free switch if needed, have 24 hour access and be able to impulse save. You can benefit from a fully diversified, lower cost and lower volatility portfolio which is managed on a discretionary basis by True Potential Investments. The exclusive fund you have selected provides numerous individual funds that are spread worldwide in every asset class to offer a fully diversified approach to your investment strategy."

The suitability report confirmed Mr H would be charged 1% of the fund value for the initial advice (£455.58) as well as 1% of the fund value each year for on-going advice. The suitability report also contained a document headed "*Replacement Analysis Form*". This was attached as an appendix to the report which detailed the difference in charges between Mr H's existing Firm A plan and the proposed True Potential pension plan.

Mr H decided to go ahead with True Potential's recommendation to transfer his Firm A pension to a new True Potential personal pension. The transfer was completed on 12 April 2021.

In December 2022 a litigation firm wrote to True Potential, on behalf of Mr H, to complain about the pension transfer advice given to Mr H by True Potential, claiming that Mr H had received negligent advice from True Potential and had suffered a financial loss as a result.

True Potential responded to the litigation firm's letter in February 2023 saying that the pension transfer advice given to Mr H was suitable and that therefore they didn't uphold Mr H's complaint.

Mr H wasn't happy with True Potential's response, so he referred his complaint to the Financial Ombudsman Service, again through the litigation firm.

One of our Investigator's reviewed Mr H's complaint. Their view was that the pension transfer advice that Mr H received from True Potential wasn't suitable and they therefore upheld Mr H's complaint.

True Potential have responded to say that they don't agree with the Investigator's view. Mr H's complaint has therefore been brought 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.

Mr H's complaint was raised through a litigation firm. The complaint letter prepared by the litigation firm contains errors and incorrect information about Mr H's pension with Firm A. The letter also contains incorrect information about the type of pension plan and investment that Mr H set up with True Potential.

I have therefore focused my decision on the main point of complaint raised by Mr H, which was that the pension transfer advice that he received from True Potential wasn't suitable.

I've seen both the fact find information gathered by the True Potential adviser in March 2021 and the suitability report sent to Mr H by True Potential in April 2021.

In the suitability report sent in April 2021 Mr H's goals are recorded by True Potential as follows:

"*I would like to try to improve the growth on my retirement pot and am not satisfied with my current pension provider. I would like to have more control over the management of my pension funds in line with my retirement goals. I am hoping to retire at state retirement aged 67 and feel that an amount of around 15000 a year would be sufficient to live on in retirement. I am expecting to be eligible for full state pension which will supplement my personal pension planning."*

I have however not seen any detail that was gathered by True Potential to explain why Mr H was not satisfied with Firm A as his pension provider. Mr H has also said above that he wanted to have more control over the management of his pension funds. However, when Mr H completed paperwork to proceed with True Potential's advice he signed an authority which said the following:

"I authorise True Potential Investments LLP

• To undertake the day-to-day discretionary management of the investments held in the Portfolio. You agree that we are authorised to buy, vary and sell the investments held within the Portfolio from time to time, at our absolute discretion, provided that True Potential Investments operate within the objectives of the Portfolio."

I think that by signing this authority and thereby giving absolute discretion to True Potential to make changes to his investments without consulting him, Mr H would not have had more control over the management of his pension funds.

Under the heading *"What We Agreed"* the suitability report went on to say:

"To look at your portfolio and consolidate those assets listed below into True Potential One. True Potential One is our financial planning system that consolidates all of your savings and investments into one convenient location by grouping. By consolidating your investments, you know exactly how much you have and how much you need to reach your goals."

However, according to the fact find information gathered by True Potential, Mr H only had one pension plan, which was his Firm A pension plan which was invested into a single fund, when he met the True Potential adviser. He had no other savings or investments aside from his emergency fund of £1,500 in his bank account. I therefore don't think that the opportunity to consolidate "*all of your savings and investments into one convenient location by grouping"* was applicable to Mr H.

The suitability report stated that in order for Mr H to achieve his retirement goal of "*hoping to retire at state retirement aged 67 and feel that an amount of around 15000 a year would be sufficient to live on in retirement"* he needed to build a pension fund of £173,124 at his age 67. To achieve this pension fund True Potential said that Mr H could either invest £33,220 straight away or contribute £216 each month into his pension.

However, Mr H was unemployed and lived in rented accommodation when he met with the True Potential adviser. He had an emergency fund of £1,500 in his bank account and no other savings, investments or assets. The fact find completed by True Potential also stated that Mr H had no inheritances. The suitability report said that "*your current financial situation and affordability does not allow you to invest any additional funds*".

I therefore think that Mr H was not in a financial position to achieve the goals that True Potential had set out for him when they advised him to transfer his pension.

True Potential have said that Mr H was actively seeking employment when he met with their adviser, and that he intended on working until he was 67. However, at the time that True Potential gave advice to Mr H, he was unemployed and had no capacity to save into a pension. I appreciate that Mr H's circumstances could change after True Potential had advised Mr H, but I think it reasonable for True Potential to have based their advice on Mr H's circumstances at the time that advice was given and not on what his circumstances may or may not be in the future.

The suitability report goes on to state the reasons why True Potential's investment platform, True Potential One, was recommended for Mr H. This says:

"*You would like online access to view the performance of your investment, ability to free switch if needed, have 24 hour access and be able to impulse save. You can benefit from a fully diversified, lower cost and lower volatility portfolio which is managed on a discretionary basis by True Potential Investments. The exclusive fund you have selected provides numerous individual funds that are spread worldwide in every asset class to offer a fully diversified approach to your investment strategy."*

True Potential have said that Mr H would have greater access to information via their client site and that this was something that wasn't available to him through his Firm A pension.

However, Firm A have said that Mr H had already registered for their online service, for which there was no extra fee or charge. Firm A have said that this online service gave Mr H access to the following:

- The current value of Mr H's Firm A pension plan (which included the number of units and unit price, fund name and fund factsheet for the fund/s invested in).
- Information regarding pension contributions.
- Pension projections.
- Details of beneficiaries on the plan.
- There was also an option to make a single pension contribution.
- It also had a link to the membersite, which allowed Mr H to make investment changes to his pension.

I therefore think that Mr H already had online access through his Firm A pension which allowed him to view the value of his pension plan. He therefore didn't need to transfer his pension to gain online access.

Mr H could therefore already make investment changes in his pension and make single pension contributions. He had 24 hour access to the service. This online service was available to him free of charge under Mr H's Firm A plan, but True Potential charged Mr H a fee for their online platform under their personal pension.

In a section of the suitability report headed "*Replacement Analysis"* True Potential said:

"During our discussions we looked at a fund with (Firm A) which matched your profile and attitude to risk more - the (investment manager) Global Equity Fund to make the cost comparison against the True Potential Balanced portfolio. The difference in cost to you is £213.14. A fund switch within the ceding scheme is available to you at no cost but this has been discounted because you would prefer to have your investment within a more diversified spread of risk rather than being mainly invested in Equities. Also you ceding scheme does not offer you the facility of online 24.7 portfolio valuations and messaging about your plan or the ability to make additional online extra payments into your account if you wish to, or the option of monitoring your pension instantly to recognise any potential shortfall in your pension planning."

However, Mr H's Firm A pension wasn't invested in the Global Equity Fund that True Potential refer to above. Mr H's Firm A pension was invested in Firm A's Future Growth Fund.

True Potential have said that the Global Equity Fund matched Mr H's "*profile and attitude to risk more". *True Potential have said that Mr H was a *"Balanced Investor*" which they define as: "*The Balanced Investor may be somewhat concerned with short-term losses and may shift to a more stable option in the event of significant losses. The safeties of investment and return are typically of equal importance to the Balanced Investor".*

I have seen fund fact sheets for both the Global Equity Fund and Future Growth Fund from early 2021. These fact sheets state that the Future Growth fund had approximately 79% of its holdings invested in equities, whilst the Global Equity Fund had approximately 99% of its holdings in equities.

But True Potential state that Mr H wanted a "*spread of risk rather than being mainly invested in Equities".* Also, in their final response letter to Mr H's complaint, True Potential say that the Future Growth Fund didn't meet Mr H's balanced risk profile. They said: "*Our assessment of Mr H's risk profile was that of a Balanced investor, where you would generally expect around 60% exposure to equities. The fund he was in previously was more aligned to a Capital Growth investor, and therefore exceeded his risk tolerance".*

True Potential had therefore said that Mr H's existing investment in the Future Growth fund exceeded his risk profile as it had more than 60% of its holdings in equities. But True Potential then selected an alternative Firm A fund, the Global Equity Fund, that had significantly more invested in equities than Mr H's existing investment, and then discounted a fund switch. I therefore don't think that the Global Equity Fund matched Mr H's "*profile and attitude to risk more"* as True Potential said.

Firm A have said that there were over 90 different investment funds available to Mr H under his Firm A plan and have provided details of all of the funds that were available.

I think it likely that with over 90 funds available to Mr H, some of these funds would reasonably have met the balanced risk definition above and would also have provided a "*spread of risk rather than being mainly invested in Equities"* as True Potential said that Mr H preferred. I think that they would also have allowed Mr H to hold a portfolio invested across different asset classes. Mr H was able to invest in more than one fund under his Firm A pension. Fund switches within Mr H's Firm A pension could've been made free of charge.

I also think that the difference in costs of £213.14 as shown above in the "*Replacement Analysis"* above was not applicable to Mr H. This is because the analysis used a fund (the Global Equity Fund) that Mr H wasn't invested in and, as True Potential said, didn't meet his preference.

Instead, I think that it would have been fair and reasonable for True Potential to calculate the difference in costs shown in this section of the suitability report between their recommendation and the fund that Mr H's Firm A pension was actually invested in when they advised Mr H, which was the Future Growth Fund.

As the charges applying to Firm A's Global Equity Fund were more than those applying to the Future Growth Fund, then the actual difference in costs between Mr H's Firm A plan and True Potential's recommendation was higher than the figure of £213.14 shown in True Potential's "*Replacement Analysis*" above.

I therefore think that by True Potential using a fund that had a higher charge than the one that Mr H's Firm A pension was actually invested in, when calculating the difference in cost shown in their *"Replacement Analysis*", they gave Mr H a false impression of the cost difference.

True Potential also said in their *"Replacement Analysis"* that Mr H would benefit from a "*lower cost*" portfolio. But the costs applied by True Potential were higher than those that Mr H was paying under his Firm A pension. I therefore don't think that Mr H did benefit from a "*lower cost"* portfolio.

The suitability report prepared by True Potential also contained a document headed "*Replacement Analysis Form*". This was attached as an appendix to the suitability report. This detailed the difference in charges between Mr H's existing Firm A plan and the proposed True Potential plan.

True Potential have said that the costs of transferring were clearly disclosed to Mr H in this *"Replacement Analysis Form*", so I have therefore considered the information set out in this document.

There was a single charge applying to Mr H's Firm A plan shown in the "*Replacement Analysis Form"*. This was the investment fund annual management charge applying to Mr H's holding in the Future Growth Fund, which was 0.4% a year. Based on a fund value of £45,558 this equalled £182 a year, as was shown on the "*Replacement Analysis Form"*.

The charges information for the recommended True Potential solution showed a platform fee of 0.4% a year, as well as a fund charge of 0.8% a year. True Potential therefore show total yearly costs of £545.72 applying under their recommended solution based on a fund value of £45,558.

However, the "*Replacement Analysis Form"* didn't include True Potential's ongoing advice fee of 1% a year, which was detailed elsewhere within the suitability report. Based on a fund value of £45,558 this equalled £455.

I think it would have been reasonable for True Potential's "*Replacement Analysis Form"* to have included the ongoing advice fee, so that the analysis could then show all of the yearly costs that Mr H would incur if he followed True Potential's advice.

Including True Potential's ongoing advice fee would bring the total annual costs for their recommended solution to £1,000, instead of the figure of £545 as shown on the "*Replacement Analysis Form".*

I think that this meant that, based on a pension value of £45,558, the increase in yearly costs for Mr H was £818 or 1.8%, and not the figure of £363, or 0.8%, as True Potential had stated in the *"Replacement Analysis Form"*.

True Potential did show their initial advice fee of 1% in the "*Replacement Analysis Form"*. However, to show the impact of this initial fee True Potential had divided the fee by the "*Term in years/term to retirement*", which they had shown as 33 years.

This meant that True Potential showed the impact of their initial fee of 1% (which was £545) as only 0.03% a year, which equalled £13.80 a year.

Mr H was age 49 when he received advice from True Potential in 2021. Therefore, by using a term of 33 years to show the impact of their initial fee, True Potential have assumed that Mr H would retain his pension plan with them until he was age 82.

However, the term to Mr H's retirement was 18 years, and True Potential's analysis shown elsewhere within the suitability report showed that Mr H would exhaust his pension fund by age 76. I therefore don't think that using a term of 33 years was fair or reasonable. I think that a term of 33 years was too long and had the effect of reducing the impact of the initial advice fee in True Potential's "*Replacement Analysis Form*".

I therefore don't think that Mr H was clearly shown details of the full additional yearly costs that he would pay in True Potential's "*Replacement Analysis Form".*

I've also considered the total charges that Mr H would've had deducted from his True Potential pension in the first year following the transfer of his Firm A pension. In addition to the annual charges applied by True Potential, Mr H would also have had True Potential's initial fee taken from his pension in the first year. The initial fee was 1%, so when added to the annual fees of 2.2%, a total 3.2% in costs was deducted from Mr H's True Potential pension in its first year. Mr H had no financial capacity to make any pension contribution to try and offset some of these extra costs.

I have therefore decided, for the various reasons detailed above, that the advice given to Mr H by True Potential for him to transfer his pension plan from Firm A to a new True Potential pension wasn't suitable and I'm therefore upholding Mr H's complaint.

Putting things right

For the reasons given above, I'm satisfied that Mr H should not have been advised to transfer his Firm A pension into a True Potential pension. I therefore think that a reasonable approach would be for True Potential to put Mr H back in the position he would have been in, as far as is reasonably possible, had it not been for their failings.

True Potential have however said that: "*The existing investment with (Firm A) was subject to higher risk than the clients Attitude to Risk ("ATR"), and as such asking for a comparison to that fund as redress is in our view unjust and inaccurate".*

However, I haven't seen any evidence to show whether or not Mr H would've changed the investment in his Firm A plan if it had been retained. Also, when True Potential picked an alternative Firm A fund in their analysis for Mr H, they selected a higher risk fund. I therefore think that it's reasonable to use the fund that Mr H's Firm A pension was invested in at the time True Potential provided advice when calculating redress.

I think that True Potential should therefore make an assessment to consider what, if any, losses Mr H suffered as a result of their failings. True Potential should:

- Contact Firm A to obtain the current notional value of Mr H's pension plan had it remained invested in the same fund that it was invested in at the point that the pension transfer to True Potential was made. This is figure "X".

- Calculate the current actual value of the transfer value invested into Mr H's True Potential pension. This is figure "Y".

- The actual value ("Y") should be compared with the notional value ("X") of Mr H's pension. If the actual value ("Y") is greater than the notional value ("X"), there is no loss and no compensation is payable. If the notional value ("X") is greater than the actual value ("Y"), there is a loss and compensation is payable.

- If, having completed their calculations, True Potential identify a loss they should also pay interest on this loss, calculated from the date that Mr H's Firm A pension was transferred to True Potential to the date of settlement at 8% simple per annum.

If there is a loss, True Potential should pay into Mr H's pension plan to increase its value by the amount of any compensation and interest.

Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance. If True Potential is unable to pay the compensation into Mr H's pension plan, it should pay that amount directly to him. However, had it been possible to pay into the plan, it would have provided Mr H with a taxable income. Therefore, if compensation has to be paid directly to Mr H then 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. I think it reasonable, based upon Mr H’s financial position as set out in the fact find completed by True Potential, to assume that Mr H will be a basic rate income tax-payer when he retires.

However, if Mr H would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

I also think that True Potential need to pay Mr H £200 for the distress and inconvenience he has suffered as a result of their failings.

My final decision

My final decision is that I uphold Mr H’s complaint against True Potential Wealth Management LLP who now need to compensate Mr H as detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 26 September 2023.

Ian Barton
Ombudsman