

The complaint

Mr B complains that True Potential Wealth Management LLP (TP) gave him unsuitable advice to transfer his With Profits (WP) pension with another provider.

What happened

Mr B had a pension with a provider I'll refer to as provider A. He said that he had originally taken out a personal pension with a different provider over 30 years ago to contract out of SERPS. He said he'd never made any personal payments into the pension.

Mr B said that in either 2001 or 2002, he began receiving financial advice from a local adviser. He said that he'd been advised to move his personal pension from his then provider to provider A. And, although he was apprehensive about this advice, given he was happy with the performance of his original provider, he felt obligated to change his pension to provider A. He said this was because the adviser had been attentive, and Mr B hadn't paid him for his services as he felt he'd received commission.

Mr B said that provider A had turned out to be a very good provider. And that because his pension funds were invested in a WP fund he also received a bonus each year. He also said that between 2002 until January 2022, when his pension was with provider A, he didn't receive any correspondence from his adviser.

Mr B said that his original adviser called him on the 15 December 2021 to let him know that he was now working for TP. He said the adviser must've gained access to his pension fund information, as he talked about it during the call. He said the adviser then asked him if he would consider moving his pension from provider A to TP. The adviser also wrote to Mr B on 16 December 2021 to let him know he'd started working with TP, and that it would be taking over the servicing of Mr B's investments.

Mr B said he told the adviser that he'd never thought about moving as he was happy with his pension where it was. He said he reminded the adviser to consider that he was now aged 60 and that he would retire soon. He said he also mentioned that he'd been with provider A for 20 years and his pension was due to mature in around seven more years. But he said the adviser gave him all the positives about moving to TP. And said he would send Mr B a link with a video which would give him an insight into TP. Mr B said he told the adviser that he would think about it. And that he would contact him in a couple of weeks.

The adviser sent Mr B an email with the TP brochure on 15 December 2021. He said this explained more about its support and technology and how this would give Mr B more control over his investments. Mr B replied the following day to say he would read over the documents over the next few days. But would probably have more time over the Christmas period to make a decision.

Mr B said that on 21 December 2021, he received an email from his original adviser with a link to the TP video. He said he watched the video. And on 6 January 2022, he said he sent the adviser an email with a series of questions about transferring his pension.

The adviser responded to each of Mr B's questions on 8 January 2022. He also emailed Mr B on 12 January 2022 to tell him that TP had released a new step-by-step guide that day to help clients with their transfer. He shared this guide with Mr B. And suggested what else he might want to do if he did decide to transfer.

Mr B decided to transfer his pension from provider A. But he had some difficulty with the administration of the transfer. He exchanged emails with his adviser in January 2022 about the difficulties he was having and the frustration it was causing him. The adviser said he would help Mr B.

In January 2022, Mr B transferred his WP pension from provider A to TP. He invested his pension funds into the True Potential Cautious Plus portfolio provided by True Potential Investments.

In September 2022, Mr B complained to TP as he felt he'd been given unsuitable advice to transfer his pension. He said he'd realised after a couple of months that the value of his pension had fallen from nearly £89,000 to £82,000. Mr B said he became very concerned about the situation as he'd never experienced any kind of drop in the 20 years he'd been with provider A. He said he called TP about his concerns and was told that the present financial climate had affected everyone's pension.

Mr B also said that he'd spoken to both Pension Wise and Moneyhelper. And that they'd both said that by moving to the type of pension he had with TP from his WP fund with provider A, he would've been exposed to the current financial crisis. But he would've been protected if he'd stayed with provider A. He said they'd questioned why he would've been given such advice. He also said that Moneyhelper had felt he'd been cold-called. And that he should never have been advised to move out of a WP fund at that stage of his life.

TP issued its final response to the complaint in November 2022. It didn't think it had given Mr B any advice. So it didn't think it had done anything wrong. It made the following points:

- The transfer from provider A had been arranged on a non-advised basis, after a Digital Direct Marketing Offer. TP occasionally put such offers to existing, newly joined clients or potential new clients where their adviser was joining TP. But only if the client held comparatively similar policies to the ones offered by True Potential Investments. It said this was why such offers could be conducted on a non-advised basis.
- To access such an offer, a client would access an email on their Client Website, through a unique link. Clients would have to log in using their own log in details to review the transfer offered on a non-advised basis. TP said the first page a client would then see when reviewing the direct offer stated: *"Your financial adviser has not assessed your individual circumstances to enable individual financial advice to be provided in respect of this transaction, nor whether your existing investments are higher charged than those available from True Potential Investments. This offer is designed for investors who wish to make their own investment decision - If you are unsure of whether this is suitable for you, you should contact your financial adviser and request a personal recommendation."*
- TP said that Mr B then ticked a box to confirm that he accepted the terms and conditions and had read the above statements. So it felt that he'd been aware that the offer was made on a non-advised basis. It also said it had no record that he'd asked his adviser for a personal recommendation. So it felt it hadn't provided him with any advice. But asked Mr B to provide such evidence if he had any. TP also said that the fact that no initial advice charge had been levied on the transfer was

evidence that the extensive work required to advise a client hadn't been carried out.

- TP acknowledged that Pension Wise and Moneyhelper told Mr B that a transfer shouldn't have been considered. But said that the transfer had taken place on a non-advised basis. This was different from the circumstances when Mr B had spoken to both Pension Wise and Moneyhelper, as he'd discussed the advantages of his previous WP fund with them. and said that he wouldn't have agreed to the transfer if he'd had this information in January 2022.

TP said it had clearly stated during the transfer process that the financial adviser hadn't assessed Mr B's individual circumstances. And that the offer was designed for investors who wished to make their own investment decisions. It said it had provided Mr B with information, including fund factsheets which showed he wouldn't be investing in a WP fund if he transferred.

- TP acknowledged that there had been email communication about the transfer between Mr B and its adviser. But felt that its adviser had only provided factual information when Mr B had asked for it. It said he hadn't made any recommendation. And that there was no evidence that the adviser had provided Mr B with advice within the email exchanges.

Mr B was unhappy with TP's response. So he brought his complaint to this service in January 2023. He felt that TP hadn't acknowledged that its adviser had discussed the transfer with Mr B on the phone and had advised him to go ahead with it. He also felt TP had failed to acknowledge that the adviser had helped him to complete the online application, which he said he had guided him through, from start to finish.

Mr B said that although there was no initial charge, he had apparently agreed to an ongoing charge of 0.5% each year. He said that he understood from provider A that the adviser hadn't received any commission from his pension. But he still strongly believed that the adviser had put his own interests before Mr B's when he convinced him to carry out the transfer.

Mr B felt that if he'd been given the proper information and advice at the time, he wouldn't have transferred away from the WP fund with provider A. This was because he felt his pension with provider A carried no risk and was protected. He also felt that due to his age and how close he was to retirement, he shouldn't have been contacted about a potential transfer.

Mr B told this service how distressing he'd found the whole situation. He also said that provider A had given him a valuation of his pension as of 2 September 2022 if he'd not transferred. He said this was £89,729.31. And that the value of his TP pension on the same date had been £82,831.34. He wanted TP to compensate him by matching the projected investment he would've received if he'd stayed in the WP fund with provider A until its maturity date of his 67th birthday.

Our investigator didn't think the complaint should be upheld. He felt that the process TP had followed simply provided factual information without any pressure or obligations to continue. He didn't believe there was any requirement to accept the initial offer. He said that a risk warning had been prominently displayed at the start, and during the process. And that it had been necessary for Mr B to confirm that he'd understood the terms and conditions. Our investigator felt that the information TP had given Mr B, including the fund fact sheet, was balanced, clear and sufficient for him to make an informed decision, without the need for advice.

Our investigator acknowledged that Mr B felt TP had advised him to transfer, but didn't feel that any advice had been provided. He felt it had been Mr B's decision to proceed on a non-advised basis with the transfer. He also felt the fund Mr B had been offered by TP was "comparatively similar" to the WP pension Mr B had held before. He said this was because the cautious risk profile and the composition of the holdings within the investment portfolio reflected a choice made by a cautious investor.

Mr B didn't agree with our investigator. He made the following points:

- He still felt the adviser had cold-called him. And that he'd then highlighted all the advantages of transferring his pension to TP. He said he'd been apprehensive about making the transfer, but that the adviser had put his mind at rest when he'd answered all of his queries. Mr B said he'd specifically asked the adviser for his advice and had put his trust in his experience as a financial advisor.
- Mr B said he'd had a series of problems with the transfer. And that the adviser had said: "*we would do it together*". He said he'd logged onto the link. But that the adviser had told him what to do as he went through the questions. Mr B also said that the adviser asked him if he wanted to read all the terms and conditions or just carry on. He said he just agreed, as he wanted the transfer completed, but it was under duress.
- Mr B said that the adviser had told him to go ahead with the transfer despite knowing it wasn't practical or logical to move from provider A. He felt the adviser had only done so for his own benefit and the 0.5% payment he would receive.
- Mr B didn't agree with our investigator that there was no guarantee with a WP pension, or that the TP pension was a like for like.
- He also said he was really disappointed that the telephone conversations he'd had with the adviser weren't available. He felt they would show that the adviser had convinced him to make the transfer.
- Mr B felt that he'd lost a considerable part of his pension due to the unsuitable advice. And said he'd spent many hours preparing his complaint. He also said his mental health had been affected.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm not going to uphold it for largely the same reasons as our investigator. I can see that Mr B feels very strongly about his complaint, so I know my decision will be disappointing. I'll explain the reasons for it.

I want to acknowledge that I've carefully considered all of Mr B's testimony, and the documentary evidence both he and TP have provided. I understand that TP doesn't have access to any telephone recordings. And I can see why this is disappointing for Mr B. But without the recordings, I can't know what exactly was said between Mr B and the adviser during the December 2021 and January 2022 calls.

I first want to give a brief background to WP funds as I will need to refer to this later in my

decision.

WP funds

WP funds used to be the most common way of investing in a pension in the 1980s and 1990s. They were generally thought to be more cautious than an investment which was linked directly to the rise – or fall – in the value of particular assets, such as shares. This was because the insurer took on some, but not all, of the risk of providing the benefits to the consumer.

Rather than passing on all the investment growth or reductions to policyholders, the insurer either promised them a certain annual pension, or a fund value, in return for the contributions they were expecting to receive. So, a WP fund was a bit closer to the type of guaranteed pension people might've expected to get from a workplace pension they joined in the 1980s and 1990s, but it wasn't fully guaranteed.

WP funds, including Mr B's, could often be reduced by the provider if the consumer wanted to transfer to another provider before their selected retirement age. A Market Value Reduction (MVR) might be used to reduce their fund value.

I next considered whether Mr B could've fairly been considered to hold a "*comparatively similar*" policy with provider A to the one TP offered him. I needed to do this in order to be able to assess whether it was fair for TP to have contacted him about its offer.

Did Mr B hold a comparatively similar policy with provider A to the one TP offered him?

Mr B said that due to his age and how close he was to retirement, he shouldn't have been contacted about a potential transfer. He also felt that his WP pension with provider A carried no risk and was protected. Mr B also felt that his adviser had access to all the information about his pension fund with provider A.

TP said that it provides offers to existing, newly joined or potential new clients when an adviser joins it, as was the case here. And that it only provides such offers to clients who hold comparatively similar policies. It said that Mr B's adviser had joined it on a restricted adviser self-employed basis in October 2021. An introductory letter was then sent to Mr B on 16 December 2021. TP said that the offer was clearly optional.

TP said it only had limited information about Mr B's history with the adviser. It said that in cases like Mr B's where an offer was sent to someone who wasn't an existing client, it would only be provided with basic information about the individual by the adviser such as their contact information for the offer to be sent to.

I need to decide if the Cautious Plus Portfolio fund TP offered Mr B when it contacted him was "*comparatively similar*" to his WP investment with provider A.

I agree with our investigator that although these are very different products, they both have a cautious risk profile and a similar composition. And I'm satisfied that both would be suitable for a cautious investor.

Therefore I'm satisfied that the fund Mr B was offered was comparatively similar to his WP investment.

I acknowledge that Mr B didn't agree with our investigator that there was no guarantee with a WP pension, or that the TP pension was comparatively similar. But I don't agree.

I say this because Mr B has shared with this service some of the information provider A sent him about the WP fund he was invested in with it. This information stated: *"It's important you know the final bonus is not guaranteed and will depend on investment conditions at the time"*. So I'm satisfied that Mr B knew, before he brought his complaint to this service, that his WP fund wasn't guaranteed and could fall in value. As I noted earlier, WP funds were thought to be more cautious than investment directly linked to the value of particular assets, but that didn't mean they were guaranteed. And Mr B's previous pension allowed provider A to apply an MVR, which meant it wasn't ever guaranteed to increase as Mr B said he expected.

I acknowledge that Mr B considered that as his adviser knew how old he was and how close his retirement was, he shouldn't have been contacted. But I don't agree.

I say this because TP has confirmed that it didn't base its offer to Mr B on his history with the adviser. Instead, it only had basic information about him. It did contact Mr B to make him an offer, but that offer was entirely up to him to accept or reject, depending on his own circumstances. Overall, I'm satisfied that it was fair for TP to have contacted Mr B about its offer.

I next considered how the offer to transfer was communicated to Mr B. I also considered whether it was made clear that the transfer would be carried out on a non-advised basis.

Were the communications TP sent Mr B clear?

Mr B felt the adviser had cold-called him. And then highlighted all the advantages of transferring his pension to TP. He said he'd trusted his experience as a financial advisor. He also felt that the adviser had told him to go ahead with the transfer despite knowing it didn't suit his circumstances.

Mr B said he'd logged onto the link TP had provided for the offer. But that his adviser had told him what to do as he went through the questions. Mr B also said that the adviser had asked him if he wanted to read all the terms and conditions or just carry on. He said he just agreed, as he wanted the transfer completed, but it was under duress. But he acknowledged that he had ticked a box stating: *"I have read and understood the terms and conditions ... and wish to proceed"*.

TP provided this service with screenshots of the offer it sent Mr B. It said that he would've had to use a unique link to accept the offer. It said: *"only the client could complete this application as it would require them to use the unique link provided in the email sent to them, as well as requiring them to log into their own personal Client Site, for which the adviser would not have held a password for"*.

The information TP provided showed that there was an initial warning for potential customers which said:

"Transferring a pension might not be right for everyone. Before deciding whether to transfer, please refer to the information below. If you decide to proceed, it's a simple process to transfer your pension".

TP said that once Mr B had decided to accept the offer, he would've seen the following risk warning at the start of the process:

"Your financial adviser has not assessed your individual circumstances to enable individual financial advice to be provided in respect of this transaction, nor whether your existing investments are higher charged than those available from True Potential Investments. This

offer is designed for investors who wish to make their own investment decision – If you are unsure of whether this is suitable for you, you should contact your financial adviser and request a personal recommendation.”

TP said this clearly showed that the adviser hadn't assessed Mr B's individual circumstances. And that the offer was designed for investors who wished to make their own investment decisions. It said it had provided Mr B with information which showed he wouldn't be investing in a WP fund if he transferred.

TP said Mr B would've been given opportunities to have asked for help during the process. And he had been required to confirm that he'd read and understood the terms and conditions before proceeding. It also said that Mr B would've been presented with possible portfolios to transfer into, including the Cautious Plus Portfolio.

This fund was summarised as being for investors who:

“...want exposure to a select group of investment partners and the potential for greater returns, whilst remaining within the Cautious risk profile.”

TP said that the relevant fund factsheet would've been automatically uploaded to its system based on which investment portfolio a client had selected. So, after Mr B had chosen the Cautious Plus Portfolio, its fund factsheet would've been generated to view.

The fund factsheet for this fund also confirmed the objective as:

“...to provide investors with a way to achieve their investment goals. The Portfolio offers exposure to a select group of investment partner and range of risk profiles (Defensive to Aggressive) whilst remaining within the Cautious risk profile.”

TP also said that as Mr B had confirmed he'd read and understood the terms and conditions, it felt he'd been aware that the offer was made on a non-advised basis. It also couldn't find any evidence that he'd asked his adviser for a personal recommendation. It felt this showed he'd not been provided with any advice.

I've reviewed the terms and conditions TP provided Mr B. These stated the following:

“Non-Advised Investments and Pensions

Any Direct Marketing Offer, either by post or online, which was initiated by True Potential Wealth Management sending you an offer, will only have an ongoing advice fee”.

From what I've seen, I'm satisfied that TP made it clear that the transfer would be carried out on a non-advised basis. I can see that Mr B felt that he was given advice about his transfer, but I've not seen any evidence that this was the case.

I say this because I consider that the questions Mr B asked his adviser in his 6 January 2022 email show that he had carefully considered the transfer. And then tried to find out if it was in his best interests. From what I've seen, the adviser then provided factual information to help Mr B make an informed decision on whether or not to transfer.

The terms and conditions clearly explained that any direct marketing offer would be non-advised. And Mr B confirmed he'd read the terms and conditions. Other risk warnings provided through the application process also confirmed this.

I acknowledge that Mr B felt that the adviser had responded dishonestly when he'd told him

the current value of the final bonus that would be included in his transfer value, rather than telling him that this bonus would probably be worth a lot more if he stayed with provider A until the maturity date. But I'm persuaded that Mr B would've already understood how WP funds worked anyway, as he provided this service with WP information from provider A. I also don't think the adviser could've known what might happen to final bonuses with provider A in the future, or whether or not it would need to apply an MVR. Therefore I'm satisfied he couldn't reasonably have told Mr B that he would definitively get more if he stayed with provider A.

I also acknowledge that Mr B felt that he'd been made to accept the offer under duress, but I've seen no evidence of that.

While I'm satisfied that TP made it clear during the transfer process that the transfer would be carried out on a non-advised basis, I went on to consider whether TP gave Mr B advice to transfer his pension from provider A during that process.

Was advice given during the transfer process?

Mr B said he'd had a series of problems with the transfer. And that the adviser had said: "*we would do it together*". He said the adviser had told him what to do as he went through the transfer process. But that TP had failed to acknowledge that the adviser had helped him to complete the online application.

Mr B also felt that TP hadn't acknowledged that its adviser had discussed the transfer with him on the phone and had advised him to go ahead with it.

TP acknowledged that there had been email communication about the transfer between Mr B and its adviser. But said that its adviser had only provided factual information, not a recommendation.

As I noted earlier, Mr B asked his adviser a number of questions in his 6 January 2022 email. And the adviser responded to each of them on 8 January 2022. Subsequent emails between Mr B and the adviser make it clear that the adviser didn't yet know what Mr B had decided. For example, in his 12 January 2022 email, in which he alerted Mr B to a step-by-step guide that had just been produced, he stated:

"I'm not sure if you've had a look at True Potential or not."

So I'm not persuaded that the adviser had advised Mr B to transfer before this point. I consider that this email shows that the adviser had provided, and continued to provide, information which Mr B was considering.

I've read all of the emails between Mr B and his adviser between 12 January 2022 and 19 January 2022, when the adviser said to Mr B: "*we'll do it together*".

I can see from these emails that Mr B was having a frustrating time trying to set up his transfer. He said in his 17 January 2022 email to his adviser: "*I am finding it very difficult to transfer my pension to True Potential, I will phone you tomorrow after work*".

From this point on, I'm satisfied that Mr B's adviser simply tried to help him to process the decision Mr B had made to transfer.

I say this because the adviser told Mr B on 19 January 2019 that his account had been reset. When Mr B told him he was still having problems, the adviser said he would get it sorted. The adviser then emailed Mr B and said:

“The account was fully locked out [name] and the password resets wouldn’t have worked - [name] has now unlocked and sent a new activation.”

From what I’ve seen, Mr B was struggling to complete the process so the adviser simply helped him with the administration of the set up. I’ve seen no evidence that the adviser gave advice, or coerced Mr B into setting up the transfer. So I can’t fairly say that the adviser gave Mr B any advice during the transfer process.

I appreciate that this process has caused Mr B significant upset and I’m sorry that he’s been through a difficult time. I can see that he felt he’d been given advice to transfer by a person he’s trusted in the past, and that he now believes that he’s lost out because of this. So I understand why he’s been upset by this complaint. But I’ve not seen any evidence that Mr B was advised to transfer. Nor have I seen any evidence that he was put under pressure by the adviser to transfer.

Therefore, I can’t fairly say that TP has done anything wrong. And I don’t uphold the complaint.

My final decision

For the reasons set out above, I don’t uphold Mr B’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 8 August 2023.

Jo Occleshaw
Ombudsman