

The complaint

Miss I says True Potential Wealth Management LLP (TPWM) was responsible for poor handling and the failure to provide advice within the required timescale in relation to the transfer of one of her defined benefit (DB) pensions. She says this has led to her financial detriment, taking premature retirement and considerable worry.

What happened

Miss I approached TPWM in October 2021 for advice about her retirement plans. She wanted to explore whether it would be possible to retire from public service in March 2022. She had an initial meeting with an adviser (Mr X) on 4 November 2021.

Miss I had a personal pension and was a member of two DB schemes. TPWM's adviser asked her to complete letters of authority so he could obtain information about these from her current providers. Miss I chased progress throughout January 2022 and in an email on 2 February 2022 she said:

"I also wanted to let you know that I am growing increasingly anxious by the day, as you have said that my Pension Companies have not come back to you, despite the authority forms being completed on 5th November of last year..."

"As you are aware I have to give an absolute minimum of 28 days' notice (preferably more, up to 4 months) to retire from [my role] and the fact that you state that these companies have not provided these packs yet is now causing me sleepless nights..."

The information was received shortly after this communication and a meeting was arranged between Miss I and Mr X for 9 February 2022. The meeting lasted for over two hours. Miss I said she'd originally planned to meet in October 2021 and thought six months would be plenty of time in advance of her planned retirement in March 2022. There had been some delays in obtaining the information and this was discussed in the meeting.

The main elements of the meeting focussed on Miss I's objectives and circumstances. It also covered her attitude to risk. Her three pension plans were discussed, along with the benefits each provided for. She set out her financial position and what she thought her income and capital requirements would be in retirement. The adviser provided some thoughts on the options available to her.

In respect of her main DB pension the adviser noted that TPWM wouldn't be advising her to move this provision. And she confirmed it hadn't been her intention to do so. The main discussion here was about how to take the benefits and what they would be used for.

Miss I wanted to take tax-free cash (TFC) from this DB pension and use it through her 'offset' mortgage account. She estimated her home to be worth around £300,000. There was an outstanding interest only mortgage of just over £100,000. Together, her existing savings and the TFC from her main DB scheme meant she wouldn't have any interest payments to make. That would leave her with a cushion of around £10,000.

Miss I would also receive a pension income of about £800 per month from her main DB scheme, but that would need to be uplifted so she could make ends meet and fund her life plans. She didn't want to retire and not be able to do things. She already had holiday plans for the coming year and intended to travel in retirement. She said she didn't want to give her notice to retire until she knew it was financially viable to do so.

After TPWM had explained some of the options available to her, Miss I was attracted to the idea of switching her personal pension and her smaller DB pension pot into a drawdown plan so that she could take her benefits flexibly. The former had a fund value of over £41,000. And the latter had a transfer value of over £107,000 (guaranteed until 28 April 2022). Based on the conversation, Miss I wanted to press ahead.

TPWM's adviser outlined the next steps. He explained he would need to complete the fact-find and upload the information gathered. He explained he would need to make a recommendation on transferring her smaller DB pension and this would need to be checked by the compliance team because such a decision would need to be shown to be in her best interests.

TPWM explained to this Service how its process worked:

"Miss I wished for us to transfer her [smaller] Occupational Pension. [TPWM] provide a service whereby a financial adviser who does not hold the necessary qualifications, having carried out an initial fact and data gathering, can refer a potential Occupational Pension transfer case to our Occupational Pension Transfer ("OPT") team, for one of our Pension Transfer Specialists ("PTS") to ultimately review the case, once the OPT admin staff have gathered the necessary information, which is what has taken place in this instance, when [Mr X] referred the case to TPWM."

Although the fact-finding meeting between Mr X and Miss I took place on 9 February 2023 and he indicated it would take up to 10 days to submit the paperwork to TPWM's specialist DB team to assess the suitability of the transfer, this wasn't attempted until 9 March 2022. Mr X says this was because he was still gathering information about her state pension entitlement and her main DB scheme pension. Miss I disputes this was necessary because she says the information was already available.

Unfortunately when Mr X tried to submit her paperwork there was a technical problem. TPWM provided a timeline from its adviser which indicates he was informed it would be quicker to resubmit Miss I's paperwork and he says this was done on 17 March 2022. TPWM also says its OPT team ultimately didn't receive this until 29 March 2022.

On 7 April 2022 TPWM's OPT team sent its adviser a notification stating it was declining the case. The letter provided a list of generic reasons why such a decision might be arrived at. These were focussed on the suitability of a transfer. But it emerged the decision to decline was because its team believed there was insufficient time remaining on Miss I's existing guaranteed transfer value for it to be executed.

I understand Mr X contacted Miss I around 7 April to inform her there was a problem. But it wasn't until 27 April 2022 that he had a full conversation with her. She sent him an email the next day in the following terms:

"To say I'm still reeling from yesterday's conversation regarding the decision to decline releasing the funds from my [small DB scheme] is an understatement."

"You stated that this was a guaranteed offer and bearing in mind that due to this assured guarantee of funds and reinvestment of the remaining 75%, I retired from the [public service] and as you are aware I have no alternative employment. I had not been previously made

aware by you that this decision was means tested. Can you clarify this process and by whom it is carried out please."

A further guaranteed transfer value was requested from the provider of her small DB scheme. On 6 July 2022 it informed her that the new value was about £79,000. This represented a fall in value of over £28,000.

Mrs I complained to TPWM on 6 August 2022 about what had happened. In summary she said:

"The guaranteed transfer value has dropped to £78,837.17. A shortfall of £28,684.16 from the original transfer value offer. I retired from the [public service] based on the original pension offers to support my retirement which I currently don't have to offer me that support required as my income is 2/3 down on what I was earning. This has caused me considerable stress over the last 4 months since retiring as this pension has not been fulfilled offering me the financial security I was led to believe I would have."

TPWM responded to Miss I on 4 October 2022. It acknowledged a series of issues with its handling of her case, but ultimately it said this hadn't led to any material delays nor any financial detriment:

"We do agree that there have been some delays in your case being reviewed on each occasion. On review however, I don't think that this means that TPWM are responsible for the drop in your CETV value. I say this because while there were delays, they were not for an extended period on either occasion, and the initial CETV expired as there was insufficient time for us to review the case under our process."

"Further to which, our PTS ultimately have determined that they would not be in a position to recommend a transfer in this instance, based on the information that we have received to date. As such, I don't agree that these delays have financially disadvantaged you, so I will not be upholding this complaint."

TPWM later set out some of its rationale for why it wouldn't have recommended Miss I should transfer her DB pension funds. These included that she didn't have children or other dependents; she had no inheritance tax concerns; she had little investment experience; she had limited capacity for loss; she had an income shortfall; and it wasn't clear that she didn't need a secure income from her second DB scheme.

Subsequent to Miss I bringing her case to this Service TPWM offered Miss I £2,500 compensation in recognition of the loss of expectation she experienced. But given the erosion in the transfer value of her small DB scheme which she attributed to its handling, she didn't think the offer was sufficient.

An Investigator looked into Miss I's complaint. She didn't uphold her case because she thought TPWM would have advised her that the transfer was unsuitable. Miss I remained within her DB pension scheme, so no loss had crystallised. And she didn't think the initial transfer value that she was quoted was decisive in her decision to retire.

Miss I responded to the Investigator's view with a detailed submission setting out why she disagreed. For example, she wasn't persuaded that a transfer of her small DB funds would've been unsuitable. And she challenged the view she would've retired in March 2022 in any event – she says this was dependent on the financial advice she received.

As both parties couldn't agree with the Investigator's findings and conclusions, Miss I's complaint has been passed to me to review afresh. I issued my provisional decision in

December 2023. Miss I provided further evidence and arguments in support of her case which I've carefully considered in arriving at this final decision.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Miss I's complaint, but not to the extent she'd like. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by TPWM for Miss I. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to 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.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Miss I's complaint.

I've reviewed the evidence submitted by both parties, including Miss I's recording of the meeting she had with Mr X on 9 February 2023. And call recordings she made of subsequent meetings with him, including in October and November 2022 after she submitted her complaint.

There are significant weaknesses evident in TPWM's handling of its advice process for Miss I. These include, but are not limited to:

- At the meeting between Mr X and Miss I on the 9 February 2022, its adviser gave her unbalanced, incomplete and unclear advice about her pension planning. This was particularly the case in respect of the small DB scheme fund she was interested in transferring. She wasn't given a clear explanation of the adviser's role and the status of what he was saying to her. There was a failure to make clear he wasn't qualified to advise on such a pension. Neither did he set out clearly the hurdle to be cleared, nor the timetable for securing a suitability assessment.
- There were several examples of poor handling and delays of Miss I's affairs, both by the adviser and by TPWM's other teams. It has submitted evidence from different areas of its business which are in conflict without providing a clear explanation of

these, nor where it sits on the matter. It hasn't been fulsome with its records or evidence. And its arguments that the delays it was responsible for weren't material are flimsy.

- For example, where did responsibility for the technical fault lay which meant the adviser's submission of the paperwork necessary for its specialist teams to consider Miss I's case on 9 March 2022 failed? Was the request for the adviser to resubmit the paperwork correct, and why didn't this happen until 17 March 2022? TPWM also suggests that ultimately its internal specialist team didn't receive the information until 29 March 2022. I note the entry on its system said:

"Case is just above the value threshold we accept and was added on without approval with only 4 weeks remaining [presumably reference to the transfer value guarantee period]. Looking over previous cases we usually take weeks to get the necessary information from this scheme. We would therefore not be able to proceed without a new value or an extension."

There's no explanation of what this all means, particularly reference to a value threshold. And it wasn't until 7 April 2022 that it informed the adviser of the position.

- Further Miss I has indicated she has evidence available from her small DB scheme provider which is in direct conflict with the testimony of her adviser concerning the timing of his initial and certain ongoing contacts with that firm to obtain relevant information. Clearly this will have undermined her confidence in his recollection of events.
- TPWM has constructed arguments about why it wouldn't have advised Miss I to transfer her DB pension, some of which were weak. For example, matters around death benefits and inheritance tax don't weigh heavily in the balance in Miss I's circumstances about the suitability or otherwise of a transfer of her benefits. Parading arguments like this might give the impression of a generic and poorly considered response, which undermines other stronger points it had to make.

TPWM failed to take the opportunity of my provisional decision to address these questions and concerns. It's failed to provide the further evidence I requested. It has failed to engage effectively with my provisional decision, which is clearly disappointing.

Miss I said that a business manager at TPWM had 'behind the scenes' indicated the firm would've accepted Miss I's transfer request, hence its request to her pension provider for an extension to the guarantee period for the first higher transfer value. And she made accusations about the pressure brought to bear on Mr X, who she says was initially supportive of her complaint and thought she had a strong case.

I asked Miss I to submit any other evidence she had that she wanted me to consider. She did so, including recordings of conversations she had with Mr X after she'd submitted her complaint.

Having listened to the recordings of conversations between Mr X and Miss I, I can understand why she points to discrepancies between what he was saying at different points in her journey with him. Having listened to and read the information provided by him, I must conclude that he was seeking to serve two masters, both TPWM and Miss I. I also think he was trying to cover for his own shortcomings in this matter. Inevitably then, I find it difficult to rely too heavily on his contributions.

For example, with regards to any 'behind the scenes' indications that Miss I's pension transfer application would be accepted, where there may or may not have been some quick

informal review of her paperwork by other TPWM staff, the fact is no formal suitability assessment was done.

I've concluded TPWM was responsible for delays in the consideration of Miss I's pension transfer application and poor handling of her affairs. But in my provisional decision I went on to set out questions about what, if any impact, these failings had.

Firstly, I note Miss I didn't end up transferring her pension benefits. So, although the transfer value of these did decline during her engagement with TPWM, no loss was crystallised.

Most telling, the Conduct of Business Sourcebook (COBS) at 19.1.6 (2) makes the following specific point about firms advising on a transfer from DB schemes:

When a firm is making a personal recommendation for a retail client who is, or is eligible to be, a member of a pension scheme with safeguarded benefits and who is considering whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable.

It's appropriate to have a strong regulatory framework around the transfer of defined benefit pensions. That's because decisions about these benefits, which are often accrued over many years, are fundamental to peoples' income in retirement. They are irreversible and can have life-changing consequences.

In its most recent submission to this Service, TPWM again asserted that had it considered Miss I's request to transfer benefits from her small DB scheme pension, based on the information it had about her circumstances, it wouldn't have recommended the transaction. In what was a more considered response compared to its earlier submissions it said:

"Whilst it is the client's opinion that a transfer is a "no brainer", in our professional opinion, and based on the FCA's starting point of not transferring a DB scheme, we strongly believe that a transfer was not suitable for Miss I."

"...Death benefits therefore had no impact on our decision of whether we would have recommended a transfer or not."

"...[inheritance tax] had no impact on our decision of whether we would have recommended a transfer or not."

"Investment experience – As supported by both FCA guidance and previous FOS decisions we have received, we must consider a clients investment experience to assess whether a client understands the risks of a transfer and whether they will be in a position to manage their own pension fund through to their death, as opposed to the nil management of a DB scheme."

"Cash holding - The client had a large cash holding (noting this was for mortgage repayment in the future), but given she had not invested this sum to build a fund to repay the mortgage potentially faster, it shows a clear tendency to risk aversion. A client who only holds cash and had no previous investment experience is less likely to be suitable for a DB transfer."

"Considering that the cash would be used to repay the mortgage leaving just £17,500, the client was then solely reliant on this DB scheme, without any other assets or even a partner's state pension to provide additional income support in retirement. It is therefore clear based on the FCA's guidance that Miss I was not a suitable candidate for a DB transfer."

"Income need – Miss I notes here that she has a shortfall of £1,400pm as renting a room out was not a successful venture. It is therefore clear that she requires a greater level of guaranteed income."

“The income she has quoted of £1,400pa is at the date of leaving [the DB scheme] in 1999, which would have benefitted from 24 years revaluation to date – this again evidences her clear lack of understanding of the valuable benefits she had accrued within the scheme and therefore why a DB transfer was not suitable for her.”

“Based on her very limited assets, sole income and significant income shortfall of £1,400pm, it is clear that she was not suitable to take a risk with her income. In the event of a transfer out, it is likely she would deplete the transferred fund quickly, resulting in her running out of pension funds and therefore suffering a significantly greater financial detriment later in retirement.”

Miss I acknowledged she wasn't experienced in DB pension matters. That's why she sought advice. She noted that her offset mortgage arrangement meant that she paid no interest on her outstanding loan, and this was a more effective strategy than investing.

Miss I said she'd been aware of the pension available from her small DB scheme was being uprated each year and had various quotes over the past 5 years. But she still considered the transfer value of £107,000 was a good offer – a point Mr X had endorsed in their meeting of 9 February 2022, where he noted such offers were likely at their high point. She said from 2030 she'd have access to her state pension to support her income.

If TPWM had provided Miss I with advice about the suitability of transferring her DB pension, its role would've been to discern what her wants and needs were and why. Its role wouldn't have been to facilitate what she wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in her best interests.

TPWM would've been responsible for analysing, testing and challenging Miss I about what was in her best interest for retirement planning. It knows pension pots built up over years are to provide for retirement. Transferring benefits is a very significant decision.

The regulations on firms when dealing with DB transfers are extensive and strict. That's as it should be. The decision to transfer a pension can have impacts that are felt for a lifetime. In recent years, some businesses have failed to meet their regulatory obligations, giving rise to harm to affected consumers, and substantial costs to customers and the finance sector.

Looking at matters after the event is always tricky. But, I've concluded that it is more likely than not had TPWM proceeded to provide Miss I with advice in March 2022 about her small DB pension, it wouldn't have recommended she transfer her benefits. I say this because I think the questions about Miss I's capacity for loss, her income requirements in retirement and her attitude to risk, mean that it's unlikely the firm would've been able to construct a case that such a transaction was *clearly* in her best interests – and that was the hurdle it needed to meet.

Miss I has said that as a result of TPWM's actions she effectively retired prematurely. In a recent submission she told this Service:

“No, I wouldn't have retired at that point if the transfer was not possible. We were going into a cost of living crisis as from 1st April 2022. I made it clear in the meeting that I needed to be financially secure to support and supplement my [public service pension] that reduced my income down to a third of my net salary.”

“The whole 2.23hrs meeting [on 9 February 2022] discusses how a combination of both the [small DB pension and personal pension] funds @ £150,000 transferred into a flexible drawdown pension would support me until my state pension.”

“I have never stated exactly how long I would have remained working until, it would always have been dependent on my financial circumstances at the relevant review time. I did state

in my recent email dated 2nd May 2023 that I wouldn't have retired at that stage and would've stayed longer to boost my [public service] to at least 20 years service, falling in line with my 60th Birthday...It could have been longer but would have been at least until this June."

Miss I has confirmed her actions were guided by the verbal advice she received from Mr X, in particular the meeting she had with him on 9 February 2022. While I've noted the serious flaws with that session, I think it's a leap to suggest that she had good reason to think that matters were 'done and dusted' at that point.

Even during the flawed meeting between Miss I and Mr X on 9 February 2022 there were occasions during that conversation in which the adviser stated the paperwork he was pulling together would need to go for checking – there were more hurdles to clear. And I understand she would've signed certain documentation or passed through certain screens in the process which could've alerted her to the nature of the process and the stage she was at.

TPWM's adviser said:

"There seems to be no acknowledgement of the conversations I had on calls following the 9th or the 35 mins spent on 17 March, running through her words / response to questions, the warnings, declaration on fees and a full explanation for the next steps including outcome if declined. [Miss I] read each part and wanted clarification before agreeing to accept the transfer to the Occupational Team. Due to her questions, I made it very clear again that this could be declined. This is following having had previous cases that did not proceed."

"I have obtained a copy from Vodafone received this weekend which confirms in addition to the 17 March, I [had a] call on 22 February for 30 minutes and 41 seconds – On this call [Miss I] wanted to know which box to complete for her retirement concerning other pensions at day of her retirement end of March. I again went through the process, time frame and confirm this could be declined which means she would retire on her [public service] pension only."

"7 March - Call for 38 minutes and 1 second. Again, answering queries discussing the submission process and in view of her [public service] pension, that her plan was to live off her...pension, tenant income and use the Lumps sum from the [public service] pension for additional spending until she received her state pension or downsized her home to pay off her mortgage."

Miss I says she based her decision to retire on the strength of the meeting of 9 February 2022. If so, I think that was precipitate. For example, she hadn't received a suitability report with recommendations about what she should do with her DB scheme. With matters still being determined, this isn't a firm basis from which to take the major decision to stop working, handing in her resignation as she did on 10 February 2022.

TPWM's adviser said:

"I refer to all conversations with [Miss I] that she was taking advantage of the opportunity to retire now to enjoy life and travel. This was always the case and [her] purpose when we first spoke, was to see if she would be ok on her [public service] pension and lump sum. [She] already had two holidays aboard booked in April and with her other travel commitments spent only a few days a home for the first months of her retirement. She retired because she wanted to prior to meeting me and her comment in her email of 15 February 2022 [about making further contributions to her state pension] also confirms her plan to not work in coming years. "I just think that at the moment it's best left, as even though I don't intend working again things could change within the next 8 years and end up paying into it again unnecessarily.""

Miss I had been considering retirement for some time. And like the Investigator, I think it's more likely than not her decision to retire didn't hinge on the initial transfer value she received. While the second transfer value for her small DB scheme was significantly reduced, in the context of her retirement plans it's not clear this was telling.

I understand that Miss I has taken the opportunity of not working to pursue some of her wider life plans. And I note she hasn't returned to work since she left public service in early 2022.

Putting things right

The purpose of redress is to put Miss I back into the position she'd have been in now, or as close to that as reasonably possible, had it not been for True Potential Wealth Management LLP's failings.

I've decided that it's more likely than not TPWM wouldn't have recommended Miss I transfer her smaller DB pension. And that given the resources available to her in retirement, the initial transfer value quoted by her pension provider wasn't the main determining factor in her handing in her notice.

Miss I has suffered a significant loss of expectation considering the difference in transfer value between her DB scheme provider's first and second quotes. And it's clear that True Potential Wealth Management LLP is responsible for poor handling of her affairs.

When I'm considering a complaint like Miss I's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

True Potential Wealth Management LLP's final response to Miss I was to reject her complaint. But after she brought her case to this Service it eventually offered her £2,500 for the distress and inconvenience it had caused her. That is a substantial offer and properly reflects the seriousness of the things it got wrong and the impact this had on her.

I require True Potential Wealth Management LLP to honour the offer of redress it has made to Miss I.

My final decision

For the reasons I've already set out, I'm upholding Miss I's complaint and require True Potential Wealth Management LLP to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 8 April 2024.

Kevin Williamson
Ombudsman