

## The complaint

Mr C complains about advice he received from Truly Independent Limited (TIL) to transfer his ISA portfolio onto a new platform and also subsequent advice he received to invest further funds into a unit trust. He says he wasn't in a physical or mental state to make decisions, so feels he was taken advantage of by the advisor – and as a result of the advice, he has experienced a huge loss on his life savings.

## What happened

In May 2021, an adviser at TIL recommended Mr C transfer his existing stocks and shares ISA holding (valued at around £286,000 at the time) to a new platform. The recommendation report completed by the advisor confirms the recommendation was given on the basis the new platform offers a lower charging structure with potentially better performance. It also stated Mr C's attitude to risk had been assessed, and the four funds chosen matched his risk profile. It also set the charges for the advice, including a 1.5% initial advice charge and a 0.5% annual charge to provide for ongoing servicing and support.

In late 2021, TIL provided Mr C with further advice. At this time the recommendation report records that he had an objective to invest capital to try and obtain a higher return than from a deposit-based investment. It goes on to state it was recommended Mr C invests £35,000 into a unit trust, which was to be invested across the four funds that his existing ISA was invested in.

In June 2023, Mr C raised a complaint with TIL. He raised concerns about the conduct of the advisor when making recommendations for him to transfer his portfolio. He said he was cold called by the advisor, as he had previous dealings with him several years ago when the advisor worked for another firm. Mr C says he wasn't in good health and not able to make financial decisions. He said he was cajoled into parting with hard earned money when in a vulnerable position and the advisor benefitted from this financially through the fees taken. He said as a result of the advice, his life savings have lost significant value.

TIL responded to the complaint. It didn't uphold it. In summary it said

- It hadn't found the advisor was aggressive, as he merely focused on improving the lack of service, Mr C was receiving from his existing adviser.
- Its advisor assessed Mr C's objectives and risk profile before making recommendations.
- The transfer of the ISA portfolio offered a lower charging structure and potentially better performance, and it explained there was no guarantee that the new plan recommended would outperform the existing arrangement. So, the adviser made his recommendations in Mr C's best interests.

Mr C didn't agree with the outcome, so referred his complaint to this service for an independent review. One of our investigators looked into the complaint but didn't uphold it. In summary he said:

- The new ISA portfolio took into account a review of Mr C's risk profile, and the funds recommended were suitable for him taking into consideration his appetite for risk and capacity for loss.

- In respect of the fees paid, the recommendation did reduce the ongoing charge, but it was noted Mr C had an advice fee to pay. While there were concerns about whether TIL captured the information it needed at the time to consider the appropriateness of the initial fee, ultimately Mr C has now recouped the advice fee through savings on the ongoing charge. So, there was no need for it to refund any fees – as the changes recommended have been advantageous in terms of cost.
- In terms of the advice to invest in a new portfolio, in addition to the platform switch itself, the investigator was persuaded that the funds selected by TIL were sufficiently different from the ones held with the previous adviser to justify the upheaval.
- He didn't find evidence to support Mr C was pressured into accepting TIL's advice. While his testimony about his frame of mind to make financial decisions is acknowledged, it was noted following the suitability report being sent there was a period of a couple of weeks, giving him time to consider the contents before going ahead. Mr C was considering his finances at the time, as he also made a further investment a few months later. So, the evidence doesn't support TIL was overly persistent or that it knowingly took advantage of Mr C's condition.
- The further investment taken out in late 2021, was suitable for Mr C. TIL has met its obligations in respect of the advice provided at this time.

Mr C didn't accept the investigator's findings- so the complaint was to be passed to an ombudsman to reach a decision on his complaint. In summary he said:

- The adviser provided incorrect information about the benefits of the investment he sold – specifically that he would be better off. He placed trust in the adviser, but he told blatant untruths. The adviser was the real benefactor as he made money out of the situation.
- He told the advisor he was not in any fit mental or physical state to consider any investment, indeed he still isn't now.
- The recommendation report contains inaccuracies. He was cold called by the adviser and didn't ask for his existing investments to be reviewed. His poor health meant his circumstances were unclear, so the comment that his approach to investment was long term is wrong. It is incorrect to say he wanted to invest a further £35,000, he was advised that he needed to do this as his ISAs had been maxed out. He was never offered any third-party help during the advice process. He had no appetite for loss as he didn't even know his life expectancy. He was assured it was the same investment but with lower costs. He wasn't a knowledgeable investor, rather in the past he'd put his trust into advisors.

### **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.

I've considered the overall suitability to switch funds from Mr C's existing ISA to a new platform. I agree the recommendation took into account Mr C's experience and risk profile. I'm satisfied the advice didn't materially change or increase the risk level of Mr C's investment portfolio compared to where his ISA funds were held before the transfer. I think this is relevant due to the information he has provided about the uncertainty of his circumstances at the time. For much of the same reasons the investigator gave, I haven't found reason to say that the transfer in itself or the funds selected were unsuitable for Mr C.

It also appears that the switch has led to a saving in terms of fees paid – achieved as a result of the reduced ongoing charges. I note the concerns raised by the investigator about whether sufficient consideration was given to the fact Mr C was paying an advice charge of around £4,300, so this would need to be recouped before any savings on the ongoing

charge could be achieved. And in light of Mr C's personal circumstances, this should have been a factor taken into account as part of the advice. It is unclear from the advice records that this was fully considered. But Mr C has now recouped this fee, so despite my reservations, I can't say that Mr C has incurred a loss in respect of fees as a result of the advice, indeed it seems he has made a saving on the fees he's paid since the advice was given.

Mr C has raised a point that the adviser told him the transfer was into the same investment with lower fees – but he has now suffered losses as the value of his investment has fallen. As mentioned, it is correct to say the ongoing fees were lower. But in respect of it being the same investment, I'm satisfied it was made clear that Mr C's ISA holdings were being invested in different funds, as it is apparent his existing ISA was sold down and transferred as cash to the new platform to then be reinvested. As explained above, I'm satisfied the new funds recommended were in line with Mr C's attitude to risk and this was considered during the recommendation. It was made clear in the recommendation report that performance couldn't be guaranteed. While Mr C has focused on a fall in value of the new funds, the nature of investing in risk-based investments means this is always a possibility. And it doesn't necessarily mean the advice to invest must have been unsuitable. I also have no information about how the previous underlying funds have performed since the transfer, it is quite possible these funds have also fallen. But ultimately this doesn't impact the outcome I've reached because I'm satisfied the recommendation was suitable.

I acknowledge Mr C has raised concerns that some information contained in the recommendation report is not accurate. This includes the points he has referenced about the reason for the initial meeting, his investment outlook and capacity for loss. TIL has provided a number of point-of-sale documents recording details of the advice – including fact finds, risk profiling documentation and recommendation reports. So, there is quite a lot of information recorded about Mr C's circumstances and financial position. I'm satisfied during the advice process, the adviser went to some lengths to record information before making a recommendation. I acknowledge that Mr C doesn't agree with everything that is recorded and sees some parts as inaccurate, but I don't think I can dismiss this evidence out of hand. I do think it carries weight in helping me understand what was discussed as part of the advice.

Mr C has raised significant concerns about the conduct of the adviser throughout the advice process. The crux of these concerns are that he says the adviser put pressure on him and failed to take into account the information he provided about his personal circumstances – specifically that he was in no fit state mentally or physically to make any important decisions. Mr C feels he was taken advantage off and was cajoled into making financial decisions.

Firstly, I acknowledge and thank Mr C for the personal details he has provided about his health. I've considered this information in the context of the advice process, alongside the other information available. I've already reached a finding that I think the advice was overall suitable for Mr C's circumstances. In order to uphold the complaint, I would need to be persuaded that the adviser put undue pressure on Mr C to the extent that he was prevented from making his own decisions. On balance, I don't think the evidence supports this was the case, I appreciate Mr C feels strongly about the conduct of the adviser, but I haven't found this has given me reason to uphold the complaint.

It is recorded in the advice documentation that Mr C was in poor health, but nothing further is noted in this regard. TIL says it did offer for a third party to attend the advice meetings. This is something Mr C says is untrue. But the following is recorded in the recommendation report from May 2021, "In line with Compliance and FCA (Financial Conduct Authority) regulations, we have offered you the opportunity to have a third-party present in the meeting and you

have declined the offer.” It appears that Mr C’s wife was also involved in the advice process and similar advice was provided to her to transfer existing investments – which was accepted as well. After the transfer, Mr C also went on to make a further investment a few months later through a new separate advice process. This does suggest he was willing to take financial decisions, despite the fact he was dealing with very challenging personal situations. Overall, I haven’t found that the available evidence supports that there has been a failing.

Lastly, I’ve also considered the overall suitability of the additional investment into a unit trust in late 2021. Again, I haven’t found this to be unsuitable. The fact find completed at the time records Mr C’s savings had increased, and during a telephone review he informed the adviser he wished to invest £35,000 into a unit trust portfolio mirroring his current ISA investments. This new investment was in line with his risk profile that had been established. I also haven’t been persuaded that Mr C was put under undue pressure on this occasion either to accept the recommendation made.

I know this will come as a disappointment to Mr C, but for the reasons provided, I haven’t found TIL gave him unsuitable advice or that it is responsible for the losses he claims.

### **My final decision**

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 4 April 2024.

Daniel Little  
**Ombudsman**