

## The complaint

Ms A has complained that True Potential Wealth Management LLP (TPWM) advised her to opt out of her Occupational Pension Scheme (OPS), but then subsequently declined to offer advice on whether she should transfer her (by then deferred) defined benefits from that OPS.

Ms A has said that she's been financially disadvantaged by the drop in the cash equivalent transfer value (CETV) which she eventually obtained by transferring with another business.

## What happened

According to TPWM's records, Ms A first met with its adviser formally in April 2022 with regard to her pension arrangements. At this point, the adviser undertook some factfinding about Ms A's circumstances, and TPWM's position is that Ms A had already secured a CETV from the scheme administrator of £503,151, and that she had said that she'd already opted out.

Ms A has said, on the contrary, that she hadn't by this time opted out of the OPS and that the adviser said that she would need to do so before TPWM would be able to provide any transfer advice.

In support of this position, Ms A has provided a screen shot of a text message sent to her by the adviser on 8 April 2022, which read as follows:

*"We have reviewed the case and think it should be ok, so you will need to opt out. Let me know once completed so we can make the request."*

Ms A then met the adviser again on 27 April 2023 at which point further fact finding was undertaken and a letter of authority (LOA) was completed to enable the adviser to request further information on Ms A's behalf and establish whether a transfer would be in Ms A's best interest.

The LOA was then sent to the scheme administrator on 3 May 2022. On 17 May 2022, TPWM contacted Ms A to say that the OPS hadn't received confirmation of Ms A having opted out of the scheme from the HR/payroll department.

Ms A responded to say that she'd confirmed to the OPS that she'd opted out and that she was now contributing to the defined contribution scheme. But she said she would contact the scheme administrator to find out what had happened.

Ms A then received a further CETV on 7 June 2022 of £469,173 with an expiry date of 31 August 2022. This was shared with TPWM's adviser on 14 June 2022.

A further meeting was arranged for 17 June 2022 to discuss the next steps.

The adviser reviewed the scheme information and then passed the case to a pension transfer specialist within TPWM for review on 23 June 2022.

In an email to Ms A dated 8 July 2022, TPWM said the following:

*“[The adviser] has asked me to contact you in connection with a possible transfer of your [OPS]. I understand that he has advised you that you need to arrange to opt out of the scheme before we can provide any advice. Could you please let me know what “Date of Notice” and “Expiry” dates you used please, as I will need to send your letter of authority to obtain information, once the notice period has expired.*

*We will also need to assess your attitude to investment risk for any new recommendation we make for the potential transfer of your pension, and I have attached our Risk Tolerance Questionnaire. Would you please complete this (there are no right or wrong answers) and return it to me at your convenience.”*

Having received the relevant information, the OPS team assessed it but then issued a “Decline to Advise” notice on 25 July 2022 confirming that it was unable to move forward with the case. TPWM said that this was communicated to Ms A on 8 August 2022 after the adviser had returned from holiday – he’d been on holiday from 22 July 2022 until 8 August 2022. TPWM has said that it’s its policy for the adviser concerned to notify the client of such an outcome to maintain the adviser-client relationship.

This does however, run somewhat contrary to the text message sent by the adviser to Ms A on 19 August 2022, in which the adviser said the following in a text to Ms A:

*“Unfortunately it is not good news and I’ve just spoken with [separate client] too. Call me when you can to discuss options.”*

If the outcome had already been communicated to Ms A before then – on 8 August 2022 as asserted by TPWM – then there would seem little need for this “news”.

Ms A then sought advice from a different business, and there was contact between that business and TPWM on 22 August 2022, in which the former requested information. The TPWM adviser provided the information on the same day.

Ms A then proceeded to transfer her defined benefits, but this was on the basis of a new, lower, CETV.

Ms A complained to TPWM, but it declined to uphold the complaint, saying the following in summary:

- Although it conceded that the wording of the text message from the adviser to Ms A about opting out of the OPS could have been worded better, it didn’t think that the adviser had told Ms A to opt out. This hadn’t been the adviser’s intention – rather he had sought to inform Ms A that she couldn’t transfer out whilst an active member of a defined benefit OPS.
- Regardless of the wording of the text message, however, Ms A intended to proceed with the transfer in any case. It knew, for example, that it was Ms A’s intention to retire, as she had an elderly mother who required ever increasing care and Ms A had decided that she wished to spend more time with her – as set out in the letter of complaint. Ms A also had health issues. Ms A’s immediate intention to retire was also reflected in the fact find.
- Further, Ms A did then proceed to transfer through another business. The transfer was therefore driven by Ms A and opting and out and transferring is something that Ms A would have done, irrespective of TPWM’s involvement.

- All of Ms A's interaction with her scheme administrator and employer was undertaken without the involvement of the adviser. There was no evidence of any advice being provided in respect of Ms A opting out of the OPS.
- Ms A had been informed that "Decline to Advise" was a potential outcome of the review of her information and circumstances by its specialist team. It provided screenshots of the information Ms A would have received regarding this.
- Although Ms A had said that the adviser only notified her that TPWM wouldn't be advising on her case nine days before the CETV was due to expire, the records indicated that TPWM was contacted on 22 August 2022 by Ms A's new adviser – and so it was fair to assume that the "decline to advise" outcome had been communicated to Ms A sooner than this.
- That Ms A then proceeded to transfer through her new adviser indicated that she had every intention of transferring no matter the situation or cost, particularly given that the income from the scheme would have sufficient for her needs. If Ms A had concerns about the advice to transfer, she was encouraged to raise these with her new adviser.

Dissatisfied with the response, Ms A referred the matter to this service.

Having reviewed the complaint, our investigator didn't think that it should be upheld. He said the following in summary:

- TPWM wasn't obliged to proceed to a formal recommendation as to whether Ms A should transfer.
- Once TPWM had become aware that Ms A was still an active member of the OPS, it told her that it couldn't advise on a transfer in those circumstances. There was an email from TPWM which read as follows:
 

*"I understand that [the adviser] has advised that you need to arrange to opt out of the scheme before we can provide any advice"*
- But this wasn't enough to demonstrate that TPWM had advised Ms A to opt out of her OPS. The word "advised" could readily be replaced with "informed" and the statement would still make sense.
- TPWM had undertaken information gathering ahead of the provision of advice, but there was no evidence to indicate that it had given Ms A a personal recommendation to either opt out or transfer. There was no letter or suitability report recommending this course of action. Rather, TPWM provided Ms A with factual information that it couldn't advise on the transfer whilst she was still an active member of the OPS.
- The investigator had nevertheless proceeded to consider what Ms A would have done had there been no misunderstanding relating to what she considered to have been "advice" to opt out of the OPS.
- It wasn't entirely clear what had prompted Ms A to approach TPWM about transferring her OPS benefits, but it did seem to be the case that transferring was Ms A's objective, which she then achieved through another advising firm.
- Even after opting out of the OPS, Ms A had the option of remaining a deferred

member. That she instead chose to transfer through a different adviser was a good indicator as to what Ms A wanted to achieve. Ms A would therefore have transferred whether or not TPWM had advised her to opt out of the scheme first.

- There was a short delay between TPWM deciding that it wasn't going to provide advice on the transfer and this being communicated to Ms A. And so the investigator considered whether this had caused Ms A a loss due to the reduction in the subsequent CETV.
- But as the new adviser didn't complete the transfer until January 2023, the investigator didn't think that the short delay would have meant that Ms A would still have been able to capitalise on the existing CETV.

Ms A thanked the investigator for his assessment, but wished to clarify some points as follows:

- She hadn't intended on opting out of the OPS – she would have remained in the scheme until it was transferred, and if the transfer couldn't be facilitated, she would have remained in the scheme.
- Once she'd left the scheme, she couldn't re-enter it, and so she would accumulate no further benefits.
- This was the reason she referred the matter to the new adviser to see if the benefits could be put somewhere where they would accumulate further value.
- She had intended to retire due to her mother's ill health, but because she'd lost so much, she now couldn't and her mother had needed to be placed in a nursing home.
- The reason the transfer had taken until January 2023 was because she'd needed to pay for a new CETV. This was due to the delay in informing her that TPWM wouldn't be advising her on the transfer, which then left her with one week to complete it.
- She then had to wait two weeks for a new CETV, and so by the time she received it, she thought that her new adviser did a good job as the recipient provider for the pension funds also delayed things for a month.
- She now found herself needed to work until she was 68, and TPWM was at fault as the adviser had asked her irrelevant questions to stall for time.
- She queried as to why one adviser was able to facilitate the transfer when TPWM hadn't been able to.

As agreement couldn't be reached on the matter, it's been referred to me for review.

At my request, the investigator asked Ms A for more information, specifically the recommendation report which had been provided before she did transfer, and also information relating to why she'd felt she needed to transfer her OSP benefits in the first place and why the format of those OPS benefits wouldn't have sufficed.

In response, Ms A said that she'd wanted advice on her pension due to her mother's poor health. She wanted to look after her mother and was told that she would need to opt out of her OPS to access her pension funds if she felt she needed to retire.

She was told too late that she didn't need to opt out, but by that time it was too late.

I issued a provisional decision on the matter on 21 June 2024, in which I set out my reasons as to why I considered the complaint should be upheld. The following is an extract from that decision.

*“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*And having done so, I’ve noted that it’s TPWM’s position that Ms A was determined to transfer and that she’d already made her mind up. But I don’t think that’s been clearly demonstrated here. Ms A has said that she was looking at options in terms of accessing her pension for various reasons.*

*And I think it’s clear that Ms A wanted to retire in order to look after her mother, and also taking into account her own health issues. But Ms A didn’t need to necessarily transfer her defined benefits to do so.*

*Before informing Ms A that she needed to opt out of her OPS before it could give her transfer advice, my view is that TPWM should have informed her that she ought to think very carefully about whether this was the right course of action for her – and that she should seek advice on this.*

*Instead, and as set out above, the text message of 8 April 2022 from TPWM’s adviser read as follows:*

*“We have reviewed the case and think it should be ok, so you will need to opt out. Let me know once completed so we can make the request.”*

*I don’t think there’s much room for ambiguity here. There’s no sense that, as Ms A would be embarking upon a likely irreversible course of action by opting out, she should consider her options carefully, and seek advice on this, before doing so. Rather, she was in essence instructed to opt out of her OPS.*

*The email of 8 July 2022 then said the following:*

*“[The adviser] has asked me to contact you in connection with a possible transfer of your [OPS]. I understand that he has advised you that you need to arrange to opt out of the scheme before we can provide any advice.”*

*This was perhaps clearer in terms of what needed to happen before advice was given, albeit there was still no mention of her seeking advice about opting out and determining whether this was right for her, but by this time, as confirmed by Ms A in her response, it seems that she’d in any case already opted out.*

*However, I can’t ignore the fact that, when Ms A was then advised by another firm in relation to her, by then, deferred benefits, she was advised to transfer out rather than take the scheme benefits. And to reiterate, I’m comfortable with the notion that Ms A did wish to retire and so that, either by way of the scheme benefits, or transferred benefits, she would have begun to access her pension.*

*And so, given that Ms A did transfer her defined benefits and then annuitise with the proceeds, I think it’s likely that, even if TPWM had recommended that she initially seek advice on whether to opt out of the OPS, her membership of the defined benefits OPS would have come to an end – either by transferring out, or beginning to take the scheme benefits.*

*Whether or not Ms A should have taken those scheme benefits or transferred out and*

*annuitised is not a matter for which TPWM can be held responsible – this was the responsibility of the second advisory firm.*

*But notwithstanding the above, my view is that there was a period before the actual transfer in which, but for TPWM's intervention, Ms A wouldn't, or shouldn't, have been outside of the main defined benefit scheme. I'm confident that there will be advisory businesses which will consider the overall suitability of opting out and then transferring, and so an individual need not opt out of the scheme until the whole proposition has been assessed. And as I've set out above, I'm satisfied that Ms A was instructed by TPWM to opt out of the OPS, rather than being guided to seek advice on whether this was appropriate for her in the first place.*

*As Ms A was in any case intending on retiring, opting out of the scheme to either take the scheme benefits or to transfer was an inevitable process she would need to go through. But she needn't have opted out of the OPS until a firm had confirmed it was prepared to advise on whether to take the OPS benefits or transfer.*

*As it turned out, TPWM declined to advise on the transfer, and this was its prerogative. But as Ms A had opted out of her OPS, she then spent an unnecessarily long time outside of the scheme before she could receive advice on whether or not to transfer out of the OPS to access her pension benefits. This may have had no meaningful impact on the CETV which Ms A was ultimately able to receive, but I think TPWM should ensure that this was the case – see further below.*

*In terms of any delays, I've noted that there were delays in informing Ms A that TPWM had declined to advise on the transfer. But as with the investigator, given the amount of time it did then take for the transfer to complete after Ms A approached another adviser, I don't think this will have contributed to her missing out on the initial CETV. There wouldn't have been enough time to process the transfer even if Ms A had been notified of TPWM's decision on the day it was issued – 25 July 2022 – rather than 19 August 2022.*

### **Putting things right**

*As I've said above, I think it's likely that, due to TPWM's instruction for Ms A to opt out of the OPS, she was outside of the defined benefit scheme for longer than she should have been.*

*As I've also said, this may not have made a difference to the CETV which Ms A ultimately received, but in order to determine whether this was the case, True Potential Wealth Management LLP should approach the scheme administrator and ask it whether, had the subsequent CETV which Ms A was able to capitalise upon been issued with Ms A's membership of the OPS running up to the date of the recommendation letter, the CETV would have been higher.*

*If it would have been higher, then True Potential Wealth Management LLP should pay to Ms A the difference in the tax free cash which she would have received when she transferred out. To the difference in the amount should also be added 8% simple interest pa from the date of the payment up to the date of settlement.*

*True Potential Wealth Management LLP should also pay to Ms A the residual difference in the CETV (the amount with which Ms A would have been able to buy a higher annuity) as a lump sum, but with a 20% deduction to reflect the assumed basic rate tax which she would have paid on this if it had been translated into pension income.*

*If that amount had been translated into pension income, the payments would have been made gradually over Ms A's lifetime, but calculating the interest payable on the missed amounts at 8% pa from the date of each missed payment up to the date of settlement would*

*be a complex undertaking.*

*As such, True Potential Wealth Management LLP may instead add 8% simple interest to that additional lump sum amount from the date that Ms A started receiving her annuity up to the date of settlement.*

*It's fair to say that, as Ms A joined the defined contribution scheme when she opted out of the defined benefit scheme, she would have accrued a benefit within that former scheme. And so, before undertaking the above, True Potential Wealth Management LLP may deduct from any higher CETV quoted by the scheme administrator the value accrued up to the point of the transfer out.*

*But this should only be in respect of the amount accrued as a result of the same contribution rate which Ms A had been paying from her salary to be member of the defined benefit scheme.”*

In response, TPWM offered to settle the matter. It said that, although it had contacted the scheme for the relevant information, this hadn't been forthcoming. It therefore proposed an alternative, using assumptions which I considered to be reasonable.

The investigator put this proposal to Ms A and, whilst commenting that the amount which would be offered would be lower than the original CETV, she understood that this wasn't the one being considered.

### **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 noted Ms A's disappointment that she's not being compensated for missing out on the original CETV, but for the reasons set out in the provisional decision, I don't think that TPWM could fairly or reasonably be held responsible for this.

As to the proposal made by TPWM, I maintain that I consider this to be a reasonable alternative to the proposal set out in the provisional decision, and meets the requirement of placing Ms A, as closely as possible, into the position she would otherwise have been in had she not been outside of the defined benefit scheme for too long.

### **Putting things right**

True Potential Wealth Management LLP should arrange to make payment to Ms A in line with its proposal made in response to my provisional decision.

### **My final decision**

My final decision is that I uphold the complaint and direct True Potential Wealth Management LLP to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 30 September 2024.

Philip Miller  
**Ombudsman**