

## The complaint

Mr C complains about the advice Equilibrium Financial Planning LLP ('EFP') gave to him in connection with the transfer of benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr C to bring this complaint. But, for ease of reading I will refer to the representatives' comments as being Mr C's.

## Provisional decision

On 27 February 2024 I issued a provisional decision. For ease of reference I've copied the relevant extracts below. I said:

### ***"What happened***

*Mr C was a deferred member of his former employer's DB scheme.*

*In 2015 Mr C approached EFP for wealth management advice. EFP conducted a fact-find with him and an assessment of his attitude to risk, which it deemed to be 'cautious'. One of the wealth management topics discussed was Mr C's DB pension. At that time EFP noted that the pension was "fit for purpose" and "perfectly suited" to Mr C's situation.*

*Mr C didn't take any action at that time but approached EFP again around eight months later, in April 2016. He had recently received a cash equivalent transfer value quote for his DB pension of £1,751,358. He was considering transferring the value of his DB pension to an alternative arrangement. EFP referred Mr C to another firm, which I'll call Firm R, to give regulated DB pension transfer advice.*

*In May 2016 Firm R provided its suitability report setting out its analysis and recommendations. It concluded that "a transfer can be recommended". Mr C accepted Firm R's recommendation to transfer. In June 2016 EFP sent Mr C an investment report. In that it proposed an investment strategy for Mr C's transferred pension funds to be invested within a named SIPP. EFP also provided an ongoing service to Mr C as his discretionary fund manager and financial advisor.*

*In December 2022 Mr C complained to EFP that its advice to transfer out of his DB scheme wasn't suitable for him. Amongst other things he said:*

- He wasn't a high earner and as such the SIPP wasn't suitable for him.*
- He had no investment experience, a low capacity for loss and a low attitude to risk and EFP's recommendations were not suitable for him.*
- EFP recommended he invest 90% of his pension in high risk, unregulated overseas property investments.*

*EFP replied. It said it hadn't given Mr C advice to transfer his DB scheme pension, Firm R had. It added that it had conducted a fact-find with Mr C and recommended investments*

*which were in line with his cautious attitude to risk. It said the recommended SIPP was low cost and suitable for him.*

*Mr C brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. The Investigator didn't think EFP had treated Mr C fairly. He concluded that EFP had gone beyond its role as an introducer to Firm R and had persuaded Mr C to transfer out of his DB scheme. The Investigator said a transfer wasn't in Mr C's best interests, He added that EFP hadn't explained why Mr C needed a SIPP rather than a standard pension. The Investigator also said that Mr C didn't require the discretionary management service which EFP had provided.*

*EFP didn't agree with our Investigator's complaint assessment. Amongst other things it repeated that it hadn't provided advice to transfer. It said its agreement with Firm R was that Firm R would accept full responsibility for its own advice. Firm R had recommended a transfer and without that recommendation the transfer couldn't have gone ahead.*

*EFP also said it didn't persuade or encourage Mr C to transfer. It added that its role was limited to providing an investment strategy. It disagreed that a personal pension would have been cheaper for Mr C than a SIPP, noting the recommended SIPP's product charge was 0.35% and its asset charges also low at around 0.76%. It explained it had recommended a SIPP as it allowed Mr C to access his funds in the manner he wanted. It also believed that ongoing advice was absolutely essential for Mr C and as such its discretionary management service was of value to him.*

*As the original Investigator left the Financial Ombudsman Service another of our Investigators considered EFP's comments. He agreed that the SIPP and discretionary management service were appropriate for Mr C. However, he agreed with our first Investigator's opinion that EFP had provided advice to transfer. He said he didn't consider Firm R's suitability report to be a full report reflecting the complexity of the transfer. He added that Firm R's suitability report had recommended a transfer on the basis that Mr C invested into a medium risk portfolio but EFP had recommended Mr C invest in a cautious portfolio.*

*EFP didn't accept our Investigator's assessment of the complaint so it's been passed to me to make a final decision.*

### **What I've provisionally 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.*

*In bringing this complaint and in responding to it, Mr C and EFP have made a number of detailed points. I've carefully considered everything on file. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key matters at the heart of Mr C's complaint and the reasons for my decision?*

*I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*

*Did EFP give Mr C advice to transfer out of his DB scheme?*

*I'll briefly explain that where a DB pension is valued at more than £30,000, before a consumer can transfer it they must receive advice from a suitably qualified and authorised regulated financial adviser.*

*EFP is authorised to provide DB transfer advice. But it told us that, in order to manage any conflicts of interest for consumers who it may charge for ongoing advice, it would refer a consumer interested in a transfer to Firm R to give the transfer advice. That's what happened in this case. EFP did so on the understanding that Firm R would provide advice about the suitability of a DB transfer and EFP would remain Mr C's financial advisers for ongoing investment advice.*

*EFP has given us a copy of its introducer agreement with Firm R. That clearly shows that Firm R would take responsibility for the advice it gives. I'm aware that after Firm R provided its suitability report EFP advised Mr C on the investment strategy and also helped to arrange the transfer between the DB scheme and the SIPP providers. But those things are not the same as giving regulated advice on the suitability of a transfer from a DB scheme. And, I don't think it is uncommon in a situation like this involving two firms, for the firm which will provide ongoing financial advice to take on the lion's share of the administrative tasks in arranging a transfer after an advising firm has given regulated advice. And, without Firm R's advice the transfer could not have gone ahead. So I don't think EFP's introduction to Firm R, its investment strategy or assistance in arranging the transfer is the same as providing regulated advice to transfer.*

*Further, as I've said above, the agreement between EFP and Firm R is clear that Firm R will accept full responsibility when discharging its obligations. And it's notable that, as the regulator required, Firm R provided a certificate confirming it had given Mr C regulated advice regarding the DB transfer. So, while EFP initially got the ball rolling and assisted with the process, that doesn't mean it is responsible for the regulated advice which Firm R gave.*

*I'll add that I haven't seen any persuasive evidence EFP gave Mr C what could be considered positive advice to transfer. The notes from its meetings with Mr C indicate that while EFP asked Mr C to think about the potential advantages and disadvantages of a transfer, including how Mr C would feel if his investment were to suffer significant losses, its discussion with him didn't amount to encouraging or persuading him to transfer.*

*It follows that I'm satisfied that EFP's role in the DB transfer was limited to making an introduction to Firm R, advising on investment strategy and helping with the process. So it didn't carry out the regulated activity of providing advice in respect of a pension transfer. And as such, I find that it isn't in any way responsible for the advice Firm R provided to Mr C to transfer the benefits from his DB scheme to an alternative arrangement. It follows that, any flaws in the advice to transfer would be Firm R's alone to shoulder and respond to. I don't think it would be fair and reasonable to suggest that EFP should be in any way liable for Firm R's advice.*

*EFP's investment strategy*

*Mr C alleged that EFP's recommendations were not suitable for him. He said its recommendations were not in line with his attitude to risk and included a recommendation to invest in unregulated overseas property.*

*EFP carried out an assessment of Mr C's attitude to risk. It deemed him to be a cautious investor. And I note that Mr C agreed that he saw himself as cautious and enjoyed stability.*

*And I've seen nothing, other than Mr C's comments in his complaint, to suggest that EFP over-estimated Mr C's attitude to risk.*

*In June 2016 EFP produced an investment report for Mr C. This clearly shows Mr C's attitude to risk was 'cautious' and the investments it recommended were in line with that attitude to risk. I understand that the portfolio EFP recommended was made up of a basket of collective investment funds from mainstream providers, offering an appropriate degree of diversification and managed in line with an overall cautious attitude to risk. And there's no evidence – beyond Mr C's comment – that EFP recommended investing in high risk or unregulated products not in line with his attitude to risk.*

*Similarly, I note Mr C said that as he wasn't a high earner then a SIPP wasn't appropriate for him. But, the recommended SIPP was a fairly low cost product. I don't think it's the case that it would only be suitable for high earners or high net-worth individuals. And, as well as allowing Mr C to invest in a wide range of funds the recommended SIPP would allow him a flexible access drawdown facility. So I think it was suitable for his situation.*

*Also I note that one of our Investigators said that EFP's discretionary management service wasn't suitable for Mr C. But, given the size of his investments I think that active management of the fund would be necessary to ensure it remained balanced in an effort to meet Mr C's requirements and attitude to risk. Further I note that this was an in-house service EFP provided which was given as part of its overall fee of 1% of the fund value. And ESP clearly made Mr C aware of its charges at the time. So I think EFP's recommendation to provide that service was reasonable in the circumstances.*

*I've noted our Investigator's comments that EFP's recommended investment strategy was to invest in cautious funds whereas Firm R said that investment in a medium risk fund would be appropriate. As I've said above EFP had clearly identified Mr C as having a cautious risk appetite before it referred Mr C to Firm R. So that's something Firm R should have been aware of. But, in any event, EFP's explained that it uses a five level classification of investment risk, with cautious being the second lowest risk tolerance level. In contrast Firm R operates a three level classification, low, medium and high. And, as there isn't a standard classification definition, Mr C's attitude to risk could be considered at the lower end of medium. But even if that wasn't the case if Firm R recommended a transfer on the basis of investing in a risk portfolio that didn't meet Mr C's risk appetite, then that would be a matter for Firm R to address. I'm not persuaded that it is fair or reasonable in the circumstances to hold EFP responsible for Firm R's advice. So I think EFP treated Mr C fairly overall in its dealings with him."*

## **Developments**

EFP didn't have anything further to add. Mr C didn't provide any comment on my provisional 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.

Neither Mr C nor EFP have raised any points that call my provisional decision into question. So I see no reason to change it.

## **My final decision**

For the reasons given above I do not 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 10 April 2024.

Joe Scott  
**Ombudsman**