

The complaint

Mrs W complains that F2 Capital Ventures LLP trading as F2 Financial Care (F2) gave her unsuitable advice to transfer her Guinness Mahon (GM) self-invested personal pension (SIPP) to a Morgan Lloyd (ML) SIPP to facilitate unregulated and high-risk investments. Mrs W believes she's suffered a financial loss as a result of the advice she received.

At the time of this advice, F2 traded under a different name. But I'll refer to F2 throughout this decision.

Mrs W is represented in bringing this complaint. For ease of reading, I'll refer to all comments and actions as being Mrs W's.

What happened

Having taken advice from a different financial adviser, Mrs W transferred two occupational pensions into a SIPP with GM.

In 2018 she approached F2 as she wanted advice about how to invest the funds held within the SIPP.

F2 recorded some information in an internal note dated 30 August 2018. It noted that Mrs W "*appears*" to have an overfunded defined benefit (DB) pension but had declined its offer to review that pension. Mrs W was prepared to take "*higher risk for higher returns*" with the funds in her SIPP and wanted to follow a "*strong recommendation*" from her husband to invest in The German Property Group (Dolphin). But as her existing financial adviser had declined to advise on investments in Dolphin following an internal compliance audit, Mrs W needed a new adviser. She appreciated there were lower risk investments available through her previous adviser but was "*fed up*" receiving indifferent returns from her investments. She'd initially chosen the GM SIPP because it allowed investments into Dolphin.

F2 prepared a risk profile report dated 5 September 2018 taking account of Mrs W's answers to questions under various headings. Those included:

Investor experience:

- She'd previously invested in a pension where she could choose the funds herself, but only after taking professional advice.
- She'd never bought or sold individual shares on the stock market.
- If the value of her pensions or investments had ever fallen substantially, she'd taken no action as she was unsure what to do.
- She was confident investing and had a reasonable understanding of the potential risks and rewards.

Attitude to risk:

- She preferred certainty about the future of her investments even if it meant making less money.

- She agreed that rises and falls in the value of her investments wouldn't worry her.
- She agreed she'd generally avoid investments whose values rise and fall over time.
- She agreed she'd frequently choose investments offering a steady return rather than those that could rise a lot in value.
- When considering investing, Mrs W described herself as "*cautiously optimistic*".

Capacity for risk:

- She didn't have any specific financial goals and her investment was intended to meet a range of goals. F2 said she should ensure she could meet her essential living costs and other important financial goals.
- She could afford a large loss with her investments without it reducing her standard of living.
- The earliest she planned to take funds from her investments was more than ten years from that point.
- She intended to leave her funds invested and withdraw amounts as a regular income.

Based on the answers Mrs W gave, F2 concluded that her risk profile was 6 out of 10 – 'high medium'.

F2 and Mrs W had a discussion on 10 October 2018. It told her that GM had decided to suspend investments in Dolphin. An alternative SIPP provider, C, was discussed but F2 later changed its recommended SIPP provider to ML. It told Mrs W that her entire portfolio could be invested in a regulated balanced fund managed by 7IM to avoid premium charges by a SIPP provider. 7IM had a good track record and would represent a better spread of risk through a portfolio of investments. Dolphin's past performance wasn't an indication of future returns. F2 agreed to let Mrs W have a "*letter of advice*" that would "*reflect her clear wish to invest in Dolphin and her wealth, her attitude to risk and her family's experience in Dolphin*".

F2 prepared a suitability report dated 11 October 2018 noting the following about Mrs W:

- She was 40 years old and had a planned retirement age of 55.
- Her basic salary was £86,000 a year and she received bonuses of around £4,000.
- She owned her own home and had an outstanding mortgage of £392,000.
- She had £58,000 in cash in a bank account and £42,000 in ISAs.
- She'd indicated she had an estimated net worth of between £500,000 - £1million.
- Her SIPP had a current value of £59,877.19 as at 17 September 2018.
- When considering her future financial security, Mrs W said her pension products were a priority (albeit that her alternative ISA arrangements would also support her lifestyle in retirement).
- She considered herself a 'balanced' investor.

F2 made the following comments:

- Mrs W's answers across the risk questionnaire were consistent. Whilst she'd confirmed she had a "*cautiously optimistic*" approach to investment, she said she sometimes took risks.
- Consideration needed to be given to whether Mrs W could afford to recoup losses to her pension from her current income.
- It deemed her to have a 'high medium' attitude to risk, which showed a willingness and ability to accept investment risk slightly above average. A portfolio matching this risk profile was likely to experience some significant rises and falls in value – even though there was potential for good returns on the investment.
- If Mrs W was to invest in Dolphin, in light of its added risk, the balance of her

pensions ought to involve a lower risk allocation, meaning the overall fund was still within her best matched risk category.

- Given GM's decision to suspend all further investments in Dolphin, Mrs W would need to switch SIPP providers if she went ahead with the Dolphin investment.

Handwritten notes that F2 completed said: *"client understands risk versus rewards"*.

If Mrs W was deemed an eligible investor she should limit her non-standard investments to 50% of the available funds and invest the remainder into a risk-based portfolio of regulated investments.

Under a heading *"Suitability for Non-Standard Investments"* F2 noted that Mrs W would need to be:

- A high net worth investor
- Or a self-certified sophisticated investor

It set out the descriptions for each category.

It noted that *"on the basis of our conversations, and the information you have shared with me, I am happy to categorise you as a High Net Worth Investor"*. F2 therefore felt that Dolphin would be a suitable investment for some of Mrs W's fund as part of a suitably balanced portfolio overall *"provided you do so with the full understanding of the risks involved with such an investment"*.

There was a further discussion on 30 October 2018. F2 checked whether Mrs W wanted to transfer her SIPP to ML in light of the GM SIPP's decision to suspend investments in Dolphin for the time being. It said ML would allow her to invest 50% of her SIPP in Dolphin. Although it didn't *"want to apply any pressure on her to invest in Dolphin Trust as clearly some SIPP providers had decided not to permit investment or to limit the amount that could be invested"*. It pointed out that Mrs W could have a cheaper SIPP containing some well-chosen regulated investments that would be lower risk. It noted that Mrs W said she was prepared to take risks with an unregulated investment as the SIPP was her *"play money"*. She also had a larger DB pension that would support her in retirement. F2 said it would respect Mrs W's decision to go ahead with a 50% investment in Dolphin via the ML SIPP and noted that it had *"tried very hard to accommodate her wishes"*.

Mrs W then signed an *"acceptance and instruction letter"* on 13 December 2018 indicating that she had read and fully understood the contents of F2's advice. She also confirmed that the information within F2's report was correct and accurately reflected her personal circumstances. She asked F2 to go ahead with the SIPP transfer to allow the investments in line with its recommendations. She added a hand-written note stating *"my understanding is that the recommendation is to invest 50% into Dolphin and 50% into 7IM"*.

A couple of months later, F2 contacted Mrs W regarding her eligibility as a high net worth investor. This issue cropped up during an internal compliance review. In an email dated 13 February 2019 Mrs W said she'd ticked *"option a"* (to do with meeting the required income threshold) because in the previous year, whilst her base salary was below £100,000, she received additional bonuses whilst covering another role along with an annual profit share bonus. That meant her *"take home salary"* was over £100,000.

In a letter dated 22 February 2019 F2 confirmed Mrs W's investment strategy following her pension successfully transferring to ML. It said her SIPP value was £58,490.69 minus its advisory fees of £1,946. Therefore £56,544.69 was available to invest. It again recommended the following investment strategy:

- 50% (£28,272.34) in a Dolphin 5-year loan note
- 50% in the 7IM Managed Portfolio service in balanced funds

It said Mrs W needed to get in touch if she wasn't happy with the recommendations or wanted it to look into alternative options.

On 2 March 2019, Mrs W signed a declaration indicating that she was a high net worth individual. When stating which of the criteria applied to her, Mrs W again referred to having received an annual income of £100,000 or more.

An invoice dated 5 March 2019 shows F2 charged £1,946.00 in respect of *"investment advice to [Mrs W] in relation to a SIPP transfer and the processing of clients instructions regarding the investment of her funds"*.

F2 wrote to Mrs W in December 2020 following an information request she made. It set out some background events leading to its advice. Those included:

- Dolphin was introduced to Mrs W by a third party, not F2.
- It wasn't involved in arranging the specific loan notes in Dolphin.
- Its services weren't retained by Mrs W on an ongoing basis.

The Dolphin fund went into administration in 2020.

Mrs W complained to F2 in May 2021, setting out, in detail, her concerns about the advice and recommendations she'd received from F2. Those included:

- It ignored her risk assessment and other statements within the risk planner.
- It incorrectly classified her as a high net worth investor.
- It failed to take account of her capacity for loss; existing circumstances or financial objectives.
- It hadn't followed the regulator's guidelines and Principles for Business resulting in an unsuitable investment being recommended.
- If F2 had given proper guidance and outlined the full nature of the investment and the risks involved, it would have deterred her from investing in the way she did.
- It was completely unsuitable for F2 to recommend that Mrs W invest a substantial portion of her pension into an investment like Dolphin when it could so easily fail - especially when Mrs W wasn't expected to make any further contributions into her SIPP. She'd also made it clear that her pension was a priority for her.
- The concerns arising from Mrs W's previous SIPP provider refusing to accept the investment ought to have raised significant concerns about the validity of the investment structure or at least warranted further investigation by F2.

In summary, Mrs W said that by conducting its business in the manner suggested, F2 hadn't treated her fairly and had breached the regulator's Principles for Businesses.

She then referred her complaint to the Financial Ombudsman Service and it was allocated to me to decide. Before issuing my provisional decision, I've given Mrs W and F2 the opportunity to provide any additional information or comments that they wanted me to consider.

F2's response

F2 made some of the same points it had already made in responses sent to Mrs W, some of which I've touched on earlier. In addition, it said:

- Mrs W confirmed on more than one occasion that she was a high net worth investor. That was one of the pre-conditions to her investing in Dolphin as it was an unsuitable investment for ordinary retail investors.
- She'd already decided to invest in Dolphin before she approached F2. And due to her former adviser ceasing all investments in Dolphin, she changed advisers in order to make the investment.
- Similarly, her previous SIPP provider had decided to suspend all further investments in Dolphin. Therefore, in order to make the investment, Mrs W instructed a SIPP transfer.
- Noting that the invoice it later issued stated "*Investment advice provided to [Mrs W] in relation to SIPP transfer and processing of client instructions in relation to investment of funds*", it said in reality its services were retained in order to undertake a SIPP transfer and implement Mrs W's instructions. It said it wasn't paid commission or otherwise remunerated in respect of the investments Mrs W made, neither did it have a financial interest in the investment strategy she pursued. And the individual advisers involved ceased to be connected with F2 in March 2019 – possibly before the investments were made by ML into the Dolphin Fund. F2 said it doesn't have the "*full story*" as to what happened after March 2019.
- It said the issue of remuneration was an important one, given the suggestion that introducers were allegedly paid large sums in commission by Dolphin. It said it was possible an unregulated introducer was involved in Mrs W's case, who may then have been paid commission for introducing Mrs W as an investor.
- It recalled that Mrs W already had a much larger DB pension to provide for her old age and regarded the funds in her SIPP as a small amount of money to be invested in a much higher risk investment. F2 felt that put Mrs W in a completely different position to other clients.
- It felt it was obvious that any investment in a loan note of an unlisted overseas property developer was high-risk. Despite that, Mrs W would likely have been willing to invest 100% of her SIPP in Dolphin. It felt this demonstrated a high appetite for risk in respect of the SIPP.
- Mrs W had shown a "*very clear determination*" to invest in Dolphin and F2's role was as a facilitator to implement her wishes. It felt that Mrs W did not rely on its advice as she'd already made up her mind about what she wanted to do before she contacted F2.
- It went as far as it could to accommodate her wishes as expressed on calls and in advice but it was only acting as a facilitator. The fact it wasn't paid any commission to make investments is evidence that its real role was to arrange a SIPP transfer rather than provide investment advice. It said the provision of advice was merely a mechanism to enable, ML, the SIPP provider, to make an investment in Dolphin as it couldn't allow an execution only investment.

Mrs W's recollections

- At the time of this advice Mrs W was on maternity leave. Therefore, although she had a job to return to, her career path would have been unclear and her future pension provision uncertain. Yet, F2 ignored these facts.
- She went to work for her current employer in 2008. However, she only became eligible to join its non-contributory DB pension scheme after three years. So, she only started to accrue benefits from 2011 onwards. She wasn't a member of any

- other pension scheme between 2008 and 2011.
- She continued to accrue benefits until 2016 when the pension scheme changed. From 2016, she accrued benefits on a defined contribution basis. That meant benefits were accruing at a much lower rate than before.
- Mrs W recalls that her defined contribution pension was worth approximately £44,000 at the time of the advice and although she didn't have a value for the DB pension at the time, the "*pensionable pay*" would have been around £5,700 a year at her normal retirement age.
- Mrs W said she was an "*open book*" when discussing her financial position with F2. When asked for information, she would have provided as much detail as she could.
- As noted in her complaint, F2 had a responsibility to obtain sufficient information about her financial (and other) circumstances in order to provide a suitable recommendation. This included acquiring basic facts such as whether she had a pension through her employer. However, it's apparent that F2 felt the focus should be on her GM SIPP; the Dolphin investment and 7IM.
- F2's advice was based on a review of Mrs W's GM SIPP only and this was the context of the risk profiling; her capacity for loss and the investment advice in general. It would be logical to assume that had the advice been expanded to encompass all of Mrs W's pension arrangements, the risk assessment result would have been impacted proportionately.
- Within the advice notes it states Mrs W could afford a large loss. Mrs W is adamant that she couldn't afford losing around £30,000 - roughly the amount she invested in Dolphin.

My provisional decision

I sent Mrs W and F2 my provisional decision on 12 February 2024. I've referred to the relevant extracts below:

Mrs W has made detailed submissions to demonstrate why she believes F2's advice was unsuitable. Whilst I've considered each of her points very carefully, I don't intend to address each one individually. Instead, I'll focus on those that I see as being at the heart of this complaint and the reasons for my decision.

An issue I first need to address is whether F2 gave Mrs W investment advice at all. That's because when providing comments to this Service, F2 said its role was merely as a facilitator to enable Mrs W to carry out her wishes.

Did F2 give Mrs W advice?

F2 said that Mrs W approached it having already decided how she wanted to invest. It said that showed she had a "clear determination" to invest in Dolphin. So, as I've indicated, its position now is that it merely acted as a facilitator. And it seems to be suggesting that naturally reduces any responsibility it might have now for the fact that Mrs W's Dolphin investment failed.

I've thought very carefully about F2's position. And, having done so, I'm satisfied that it did give Mrs W investment advice. I'll explain why.

There's little doubt that when Mrs W first got in touch with F2, she was keen to explore the possibility of investing in Dolphin. And I think the notes made at the time show that. For instance, they refer to Mrs W being keen to explore a "strong recommendation" from her husband to invest in Dolphin. As I understand it, her husband had made a similar (successful) investment previously. Therefore, in those circumstances, I can appreciate why

Mrs W might have been keen to pursue a similar investment.

But there's no evidence of Mrs W approaching F2 having already decided that she definitely wanted to invest in Dolphin. Had that been the case I'd expect to see a clear instruction from her showing how she wanted to invest and when. I've seen no such evidence. And Dolphin's own notes state that Mrs W was looking for advice about how best to invest the funds from her SIPP. Whilst the suitability report does mention Dolphin as a possible investment idea, it also clearly states that Mrs W was looking for F2 to review the Dolphin investment and "advise as to whether it would be possible and appropriate" for her to make such an investment as part of her pension planning. That reinforces my view that Mrs W didn't approach Dolphin with a fixed idea about how she wanted to invest.

Further, the client agreement mentions that as part of the service offered, following a personal consultation, F2 will set out the investment objectives within a personal suitability report to explain the recommendations made. That's precisely what happened in Mrs W's case and is the service that I think she'd have been expecting based on her earlier discussions with F2.

Within the written advice that F2 sent Mrs W in October 2018, it set out why it considered Dolphin a suitable investment for her along with the proportion of her funds it recommended she invest. I wouldn't expect to see that kind of detail if F2 were simply executing an instruction from Mrs W.

Further, when F2 sent Mrs W a quote for its services, it said it intended to charge for:

- Investment advice review on current investments within your pensions*
- Risk profile assessment and suggested reallocation where required*
- Due diligence and advice on any particular investments as requested*
- Recommendation of alternative SIPP provider as requested*
- Assistance with SIPP transfer process*

And under the heading of 'Payment' in the written advice, F2 said:

"Lastly, as per our fee schedule, agreed at the outset, the advice has now been completed and received and therefore our fee is now due. As agreed, we shall invoice your pension shortly for this fee (3.25% of the investment value advised upon) which equates to a sum of £1,946".

F2's position now is that any fees charged were simply for arranging a SIPP transfer. And whilst it accepts that the invoice refers to "investment advice" it's adamant that the fees were only in relation to a "SIPP transfer and processing of client instructions in relation to investment of funds". It added that it wasn't paid commission or otherwise remunerated in respect of the investments Mrs W made, and neither did it have a financial interest in the investment strategy she pursued.

Again, I've thought very carefully about the points F2 has made. I accept that the invoice doesn't mention what proportion of charges, if any, would be applied once the investments were actually made. But I don't think that detracts from the fact that F2 expected to give Mrs W advice and charge her accordingly. It's notable too that there's no mention of 'execution only' in any of the documentation F2 sent, including the invoice for payment.

For all of the reasons I've set out, I'm satisfied that F2 gave Mrs W investment advice. And with that advice came a number of important responsibilities as I'll set out below.

What was F2 required to do?

The regulator, the Financial Conduct Authority, sets out a number of fundamental considerations that an advising firm had to have regard to when providing investment advice.

COBS 2.1.1 requires a firm to act honestly, fairly and professionally in accordance with the best interests of their client (the client's best interests rule).

Those relevant to the suitability of advice, which is the key issue to be determined here, are mostly set out in Section 9 of the Conduct of Business Sourcebook (COBS). Specifically, COBS 9.2.1R requires firms to take reasonable steps to ensure that a personal recommendation is suitable for the consumer.

COBS 9.2.2R requires firms to, amongst other things, gather such information from the consumer as is necessary for them to understand essential facts about them. Such facts typically include things such as the consumer's investment experience; their attitude towards risk taking; their risk profile and information about their wider financial position, including regular financial commitments. That's important if they're able to properly assess the risk a consumer is willing and able to take and has the financial means to withstand those risks and any losses that might ensue.

There are other important obligations placed on firms. These are set out in the Principles for Businesses (PRIN) within the FCA Handbook. Those that I consider most relevant to Mrs W's case are:

Principle 1 – a firm must conduct its business with integrity;

Principle 2 – a firm must conduct its business with due skill, care and diligence;

Principle 6 – a firm must pay due regard to the interests of its customers and treat them fairly;

Principle 9 – A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely on its judgement.

What the regulator has said?

Suitability of advice

In March 2011 the then regulator, the Financial Services Authority, (FSA) issued guidance for assessing suitability. It said that firms shouldn't rely solely on risk profiling tools to establish their client's attitude to risk. Rather, they needed to have a robust process for assessing the risk a customer is willing and able to take, which includes assessing their capacity for loss; appropriately interpreting customer responses to questions; not attributing inappropriate weight to certain answers and even where the consumer's risk profile is correctly assessed, advisers had chosen products (and underlying asset allocation) which didn't always match the profile.

A general alert was issued in 2013 regarding advice to invest in SIPPs and other pension wrappers. In short, the regulator was concerned that firms were advising on the pension transfers or switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. It mentioned in particular, instances where advisers had recommended moving consumers retirement savings to SIPPs that invested wholly or primarily in high risk, often illiquid unregulated investments (some of which may be in Unregulated Collective Investment Schemes).

The FSA's view was that provision of suitable advice generally required consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration

of the suitability of the overall proposition. That is, the wrapper and the expected underlying investments in unregulated schemes. It made clear that, where a consumer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is considering.

Unregulated collective investment schemes

In addition, in 2010, the FSA issued a “Good and poor practice report” for advisers to use when advising clients on unregulated collective investment schemes (UCIS).

Amongst other things, the FSA gave an example of poor practice where a firm didn’t assess their customer’s knowledge and experience in the investment field relevant to the specific type of investment, yet still recommended the UCIS, believing the customer was a sophisticated investor.

The report also gave examples of good practices such as where a firm had set a maximum portfolio proportion for UCIS investments within their client’s portfolio. This level was between 3% and 5% and was backed up by the firm’s robust and on-going due diligence and monitoring.

In April 2014, the Financial Conduct Authority (FCA) also issued an alert to remind businesses of their responsibilities when advising on pension switches where monies were being invested into unregulated products. It said;

“We believe pension transfers or switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers. Firms operating in this market need to be particularly careful to ensure their advice is suitable.”

The FCA said it had seen many cases relating to consumers who’d held traditional pension plans invested in mainstream funds, with no experience of non-mainstream propositions and limited experience of standard investments. The new arrangements proposed by businesses were typically into unregulated, high risk and illiquid investments. It said such transfers were unlikely to be suitable for the vast majority of retail customers.

The FCA also said that if the underlying investment is unsuitable for the customer, then the overall advice isn’t suitable. It also said the firm needed to understand the underlying investment proposition in order to be able to assess its suitability.

I’ve set out below what all of this means in the context of Mrs W’s particular complaint and whether, in my opinion, F2 did enough to discharge its responsibilities.

Did F2 do enough?

I’ve seen evidence to show that F2 gathered a certain amount of information from Mrs W. It also asked her to complete a risk profile which it used to assess her attitude to risk. But bearing in mind all of the regulatory responsibilities I set out earlier, I’m not persuaded F2’s actions went far enough here.

Investment goals

Mrs W approached F2 because she wasn’t content with the investment performance she’d seen previously. And she was clearly interested in exploring whether the Dolphin investment was a better investment opportunity. She was apparently looking to meet a “range” of goals by investing. What those goals were is unclear, as there’s little information recorded. It’s equally unclear what Mrs W’s essential living costs would be in retirement. And whilst F2

said she should ensure she could meet them, without seeing what those were and how her investments might support them, it's difficult to see what factors F2 took into account when making its investment recommendations. I'd expect that kind of detail to be clearly recorded in line with a robust fact find process. In my opinion, F2 hasn't satisfied the regulator's expectations in that regard.

Attitude to risk and investment experience

F2 assessed Mrs W's attitude to risk, based on answers that it felt were fairly consistent throughout a questionnaire she completed. It then deemed her to have a risk level of 6 out of 10 which described an investor with a 'medium high' attitude to risk. Based on the evidence I've seen, I'm not persuaded F2 carried out that assessment properly or acted in line with the guidance the regulator issued in 2011, which I referred to earlier.

First, I don't think Mrs W's answers to the risk questionnaire were consistent throughout. For instance, she agreed that rises and falls in the value of her investments wouldn't worry her. But she said she'd generally avoid investments whose values rise and fall over time. Elsewhere, she said she neither agreed nor disagreed with the statement that she'd take more financial risk if there was a chance she could make a lot of money. But she also said she frequently chose investments offering a steady return rather than those which could rise a lot in value.

Here, in order to comply with the regulator's guidance, F2 needed to appropriately interpret Mrs W's answers and question any apparent contradictions. That was important to ensure it didn't attribute inappropriate weight to certain answers and could satisfy itself about the level of risk Mrs W was actually willing to take. I've seen no evidence that F2 probed in the way the regulator expected. Rather, it appeared to accept the answers at face value. And despite Mrs W categorising herself as a 'balanced' investor, F2 ultimately concluded that she had a 'medium high' attitude to risk. This was another contradiction that F2 needed to address in order to fully understand the risk Mrs W was actually willing to take. I've seen no evidence that F2 took those additional steps in line with COBS 9.2.2R.

And from the answers Mrs W gave, I'd be more inclined to agree that she was a balanced investor. For instance, she said she preferred certainty about the future value of her investments even if it meant making less money. And, as I've said above, she indicated she'd frequently choose investments offering a steady return rather than those which could rise a lot in value. Those strike me as the kind of answers a more balanced investor might give.

F2 clearly relied more on its own categorisation to determine that Mrs W was a 'medium-high' investor. It then reflected that categorisation in the investment recommendations it subsequently made and when determining that Dolphin was a suitable investment for Mrs W. I think this was problematic for a few different reasons.

F2 ought to have known that Dolphin was an unregulated and high-risk investment. So, it wasn't suited to an average investor. Therefore, before recommending it, F2 needed to make sure, amongst other things, that it had accurately assessed Mrs W's attitude to risk. It also needed to satisfy itself that she had the right amount of investment experience to understand the risks associated with such an investment.

Although Mrs W indicated that she had some investment experience, none of her answers suggested she was a particularly experienced investor. For instance, she said she'd never bought or sold individual shares on the stock market and any previous investment decisions she'd taken followed professional advice. She added that if the value of her pensions or investments had ever fallen substantially, she'd taken no action as she was unsure what to

do. Again, those answers, in my opinion, are indicative of an investor that's relatively inexperienced. So, on the face of it, investments like Dolphin wouldn't be suitable.

This is another area of the advice process in which I think F2 should have done more. It was paramount that it had a good understanding of Mrs W's attitude to risk and investment experience (amongst other things) in order to satisfy itself that any recommendations it made were suitable for her. That's all the more important when it comes to non-standard investments such as Dolphin. And, despite what F2 might now think or be suggesting, it wasn't there simply to do what Mrs W wanted. It was there to ensure that its advice and recommendation fully reflected Mrs W's circumstances and goals and was suitable for her overall. Suitable advice may just as easily have been saying that investing in Dolphin wasn't appropriate for Mrs W.

Capacity for loss

F2's suitability report suggests that Mrs W's SIPP was her main source of income for retirement. There's brief references to her having a DB pension, but no other details are recorded, such as the amount of income Mrs W might expect to receive from that pension in retirement. There's also a suggestion that she could rely on her ISA and savings in the event she suffered a loss in her investments. Again, there's limited detail recorded here.

In reality, I don't think F2 had enough information upon which to fairly assess Mrs W's capacity for loss. A note made within F2's files suggests that Mrs W had declined for her DB pension to be reviewed as part of the investment advice F2 gave her. But, regardless of whether Mrs W wanted that pension to be reviewed or not, F2 still needed to take it into account when giving her a suitable recommendation about how to invest the funds from her SIPP. And I think F2 ought to have known that and made it clear to Mrs W.

It's made statements such as Mrs W being able to withstand a large loss from her SIPP. But it's difficult to see how F2 could have fairly assessed Mrs W's capacity for loss whilst apparently having only part of the information it needed to make such an assessment. As part of a robust advice process, and in line with the regulator's expectations as set out earlier, I'd expect a firm like F2 to gather as much information as possible. That included obtaining information about things such as other pension provision, so it could take account of everything it needed to when assessing the extent to which Mrs W could withstand any potential losses from her SIPP. F2 didn't do that.

High net worth investor

Mrs W has taken issue with the fact that F2 treated her as a high net worth investor. She believes this directly influenced the advice to invest in Dolphin. I'm aware that such investments are generally only suitable for investors with the highest attitude to risk or who otherwise meet specified criteria, one of which is being a high net worth investor.

I've looked at the information that F2 recorded about Mrs W's financial position. And I agree that, according to what's documented within the suitability report, she doesn't appear to meet the required income threshold to be categorised as a high net worth investor. Despite that, I can see F2 told her "on the basis of our conversations, and the information you have shared with me, I am happy to categorise you as a High Net Worth Investor".

But it wasn't a question of F2 being "happy" to categorise Mrs W in such a way. It needed to satisfy itself that Mrs W met the relevant criteria set out by the regulator. There's no suggestion that F2 queried the apparent income shortfall recorded at the time of the advice. And I think it should have done. That's largely because, as I've said above, certain types of investments such as Dolphin will only be suited to certain individuals.

However, it seems that the issue cropped up again when F2 completed its own compliance checks a few months later. And at this point it did clarify the position with Mrs W. In response, she confirmed she'd ticked "option a" on the form (indicating she had an income over £100,000) on the basis that, in the previous year, whilst her base salary was below £100,000 she received additional bonuses and an annual profit share bonus increasing it to that level. That meant her "take home salary" was over £100,000. Shortly after, Mrs W signed a declaration to that effect.

F2 was right to clarify the position here, albeit it was after the event. That said, given Mrs W's response and subsequent signed declaration, it seems likely that had F2 taken these additional steps sooner, she'd have given a similar response. Therefore, as she confirmed she earned over £100,000 in the year before the advice was given (as the rules require) I don't agree with Mrs W that F2 was wrong to treat her as a high net worth individual.

Was F2's advice suitable?

As I've set out above, there were various stages of the advice process, which in my view, fell short of the regulator's expectations. It seems to me that stemmed in part at least, from F2 being unclear about its role. It wasn't there simply to help Mrs W fulfil her wishes. It was required to gather all of the necessary information upon which to base its advice and give Mrs W a recommendation that was suitable for her overall.

Omissions in an advice process wouldn't automatically make an investment recommendation unsuitable. But for the reasons I'll set out, I don't think F2's recommendation was suitable for Mrs W. I'll explain why.

Dolphin was an unregulated and high-risk investment. Therefore, in order for F2 to satisfy the regulator's requirements (as also set out earlier) it was paramount that F2 ensured Mrs W had the necessary experience to understand and withstand the risks associated with the investment. Otherwise, according to the regulator if the underlying investment wasn't suitable, then neither was the over-arching advice.

Based on what F2 knew about Mrs W's investment experience, regardless of whether she was a high net worth investor or not, I think F2 ought to have known that Dolphin wasn't suitable for her. And I think it should have explained that. Whilst I can see that F2 did give Mrs W various warnings about the risks involved, that doesn't suddenly make an unsuitable investment recommendation become suitable.

Also, F2 recommended that Mrs W invest 50% of her funds in Dolphin and 50% in the 71M balanced fund. In doing so, F2 seemed to be satisfied that such a combination of investments met Mrs W's 'high-medium risk' profile. I disagree that she was a 'high-medium' investor for the reasons I set out earlier. But even if it did match Mrs W's risk profile, the regulator had already set out what it considered to be best practice regarding the proportion that should be invested in high-risk investments such as Dolphin. According to the regulator, between 3% and 5% would be considered a suitable proportion of an investment. Therefore, it stands to reason that recommending 50% of an investment in Dolphin, a single, non-standard investment, was too high for the majority of investors, let alone one who described herself as a 'balanced' investor. And regardless of whether I use Mrs W's own assessment of her attitude to risk or the outcome from the dynamic risk planner that F2 relied on, the upshot would be the same – Mrs W was exposed to investments that carried too much risk and didn't reflect her actual attitude to risk.

It's relevant that Mrs W's previous financial adviser and SIPP provider had stopped allowing

investments into Dolphin. And F2 knew that at the time of giving Mrs W advice. I think those developments ought to have acted as warning signs to F2 meaning that it needed to proceed with caution if it was intending to recommend an investment in Dolphin nonetheless. Again, that meant ensuring it had gathered all of the necessary information to demonstrate that the investment was suitable for Mrs W.

In practice, in line with the 2014 FCA guidance I referred to earlier, that meant F2 needed to carry out its own checks into Dolphin to understand the underlying investments and assess its suitability for Mrs W. It's evident that some checks were carried out. But even though F2 was aware that other advisers and providers had suspended investment in Dolphin, other than suggesting that Mrs W might invest her funds in more mainstream investments, F2's solution appeared to be to source another SIPP provider that would allow the Dolphin Investment. In my opinion, again, F2's actions fell short of the regulator's expectations.

Even though the new SIPP provider, ML, was still allowing investments in Dolphin, it clearly still required investors like Mrs W to take regulated financial advice first. Presumably, that's intended to act as a safeguard to ensure that the client understands the investment and its associated risks. And also, that the adviser has recommended such an investment because they're satisfied it is suitable for the client. F2's position now is that the provision of advice was merely a "mechanism" to enable ML to make an investment in Dolphin as it didn't allow 'execution only' transactions. I think this again demonstrates that F2 didn't understand its role. It wasn't for F2 to find a way to ensure Mrs W could invest in Dolphin and in doing so potentially circumvent the various regulatory responsibilities it had. Rather, it was to give her a recommendation that was suitable for her – even if that was to say an investment in Dolphin wasn't recommended.

Summary

It's worth saying that there will be instances where a client seeks financial advice with preconceived notions about the type of investments they want to make. From the information available to me, it seems that Mrs W's husband had experienced some success by investing in Dolphin. So, I accept that Mrs W might well have been leaning towards making a similar investment herself when she sought advice. And F2 made comments along the lines that it tried to accommodate her wishes. But F2 wasn't tasked with simply facilitating the investment options Mrs W might have found attractive. Giving investment advice isn't simply about wish fulfilment. The adviser's role was to really understand what Mrs W needed and wanted and recommend what was suitable for her. And, for the reasons given above, I don't think an investment in Dolphin was suitable for Mrs W or in her best interests. Also, given that the recommendation to transfer her SIPP to ML only came about to enable the investment in Dolphin, it follows that I also find the advice regarding the SIPP transfer unsuitable.

Was F2 the cause of Mrs W's loss?

In order to direct F2 to take steps to put things right, I'd first have to determine that it was the cause of the financial loss that Mrs W says she's suffered. So, a key question I have to consider here is whether Mrs W would likely have gone ahead with the investment even if she'd received suitable advice from F2.

There are a number of factors relevant to this consideration.

First, I have to take account of the fact that Mrs W's husband appeared to have had some success investing in Dolphin. And from the contemporaneous note that F2 made at the time, her approach to F2 was prompted by her husband's "strong recommendation" that she invest in a similar way. That's certainly a factor in favour of Mrs W potentially going ahead –

especially as she'd likely been aware of the kinds of returns her husband had seen.

On top of that, at the point at which she approached F2, Mrs W was already aware that her existing financial adviser had temporarily ceased recommending Dolphin as a suitable investment. This seems to be what prompted her to contact F2 in the first place.

And during the course of the advice process, F2 made Mrs W aware that her existing SIPP provider, GM, had ceased accepting investments into Dolphin. And Mrs W and F2 then discussed sourcing an alternative SIPP provider that would allow investments in Dolphin.

But I have to consider those things alongside the fact that Mrs W doesn't appear to have been a particularly experienced investor. And based on what she told F2 about her previous investment decisions, any choices she made about which funds to invest her pension in were only taken after seeking advice. Mrs W also indicated she'd never bought or sold individual shares on the stock market. I think those things add weight to the fact that she wasn't a particularly experienced investor and was likely to rely on the professional advice she'd sought from F2.

One of the arguments F2 made here is that if Mrs W "had her way", she'd have invested 100% in Dolphin. It felt this showed her high appetite for risk. But even if that had been her initial intention, the fact remains that Mrs W opted to invest 50% of her SIPP funds in Dolphin based on F2's advice. I think that shows she was prepared to listen to professional advice. It's equally reasonable to assume she'd have done so if F2 had advised her not to invest in Dolphin at all.

Again, whilst there's no doubt that Mrs W was clearly interested in investing in Dolphin (and had apparently transferred her funds to the GM SIPP to explore the possibility of doing that), she didn't ask F2 to execute a transaction she'd already decided upon. Regardless of what she may or may not have been interested in, as I've said above, she was looking to F2 for its advice about how to invest her funds. And F2 was the professional party here. I think the fact that two other financial firms had decided not to engage in investments in Dolphin ought to have acted as a warning sign to F2 too. And, again, bearing in mind that F2 wasn't simply there to do what Mrs W wanted, if it had given her unequivocal advice that investing in Dolphin wasn't in her best interests, on balance, based on the factors I've referred to, I think Mrs W would have listened and given up on the idea of investing in Dolphin. So, she'd have had no need to transfer her SIPP either and would likely have remained in her existing SIPP, albeit I think she'd have invested in a different way. It follows therefore, for the reasons I've set out, I think F2 is responsible for the loss that Mrs W has suffered.

Putting things right

My aim is that Mrs W should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I think Mrs W would have remained in her previous SIPP, however I cannot be certain how she would have invested. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs W's circumstances and investor profile at the time.

What must F2 do?

To compensate Mrs W fairly, F2 must:

- *Compare the performance of Mrs W's SIPP with the benchmark I've shown below. If the fair value is greater than the actual value the difference must be paid in compensation. If the actual value is greater than the fair value, no compensation is*

payable.

- *If there is a loss, F2 should pay it into Mrs W's pension plan to increase its value by the amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.*
- *If F2 is unable to pay the compensation into Mrs W's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs W won't be able to reclaim any of the reduction after compensation is paid.*
- *The notional allowance should be calculated using Mrs W's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume that Mrs W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.*
- *If either F2 or Mrs W dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mrs W receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*
- *Income tax may be payable on any interest paid. If F2 deducts income tax from the interest, it should tell Mrs W how much has been taken off. F2 should give Mrs W a tax deduction certificate in respect of interest if Mrs W asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.*

<i>Portfolio Name</i>	<i>Status</i>	<i>Benchmark</i>	<i>From (start date)</i>	<i>To (end date)</i>	<i>Additional interest</i>
<i>Mrs W SIPP</i>	<i>Some liquid/some illiquid</i>	<i>The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index)</i>	<i>Date funds received into the SIPP</i>	<i>Date of my final decision</i>	<i>8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)</i>

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the actual value of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as appears to be

the case for part of Mrs W's SIPP. F2 should assume that, for the purposes of the calculation, the Dolphin investment has nil value.

F2 may require that Mrs W provides an undertaking to pay it any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

F2 will need to meet any costs in drawing up the undertaking.

Fair Value

This is the value of Mrs W's investment had it been invested in line with the benchmark suggested above until the end date.

Any additional sum paid into Mrs W's SIPP should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from Mrs W's SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if F2 totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- *Mrs W wanted Capital growth and was willing to accept some investment risk.*
- *If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.*
- *The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.*
- *Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs W's circumstances and risk attitude.*

Responses to my provisional decision

Mrs W indicated she accepted the findings set out in my provisional decision.

F2 has made a number of points in response to my provisional findings. It also confirmed it had spoken to the adviser who gave Mrs W advice whilst working for F2 before preparing its response. Its comments can be summarised as follows:

- *It still doesn't agree that it gave regulated investment advice. It maintains it was only engaged to facilitate a pension transfer and that the fee it received reflected that.*

- The role of Mrs W's husband in this matter has been "*severely downplayed*" in my analysis and is crucial to my understanding of the events. As far as it's concerned, Mrs W's husband was the "*driving force*" behind her decision to invest in Dolphin.
- Mrs W made two pension transfers *before* she made contact with F2 because she'd already decided to invest in Dolphin and her existing financial adviser had ceased to arrange such investments.
- F2 didn't promote Dolphin. And Mrs W didn't make the investment due to advice from F2, but due to strong guidance from her husband. She merely wanted the adviser to implement her wishes.
- There has been a material failure on Mrs W's part to disclose how she'd heard about Dolphin and who really arranged for her to make the investment.
- Mrs W's recollections about her alternative pension provision are at odds with further evidence F2 has since obtained showing different values (reference to which is made below). F2 thinks this is a very material difference "*which should shake the confidence*" of this Service.
- Mrs W has told polar opposite stories to it and this Service by suggesting that her ML SIPP was important to her retirement planning. It again referred to the funds within her SIPP as being her "*play money*".
- According to the adviser who was involved at the time, Mrs W wasn't "*persuadable*" to invest her funds in the 7IM balanced fund because she wanted to make the investment in Dolphin. And Mrs W specifically asked the adviser to "*tailor*" his advice to enable her to do so. He understood his role was to make sure she could make the investment in Dolphin.
- F2 thinks I should exercise a much greater degree of caution in holding it responsible for a service that it was not paid to carry out.
- My provisional decision is at odds with other similar decisions made by this Service.
- It's questioned what it believes to be flaws in our process, such as the inability to require consumers to provide evidence and the lack of opportunity to cross examine witnesses.

F2 also sent me a retirement planning report prepared for Mrs W by a different advising firm in December 2019 (over a year after it completed its own suitability report for her). This sets out the nature of the advice that Mrs W was seeking and touches on things such as her investment experience and overall pension provision.

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.

Many of F2's comments call into question the veracity of Mrs W's evidence. And whilst I've considered all of its points very carefully, I'm not intending to address each individual comment here. I say that because many of them aren't relevant to the complaint that I'm considering, which is whether F2 gave Mrs W suitable advice in accordance with its regulatory responsibilities. Also, as F2 will have noted, I've already addressed many of the same points in my provisional decision.

Here, I'll only address those issues that I believe go to the heart of the matter I'm deciding and the findings I've reached.

The role of this Service and the provision of evidence

F2 has referred to what it sees as “*flaws*” in our process. Those alleged flaws concern the inability to require full disclosure of evidence by somebody such as Mrs W along with the lack of opportunity to cross examine witnesses.

It might help to explain that although we’re an alternative to the courts, we’re not a substitute. So, ours is not an adversarial process. We’re expected to resolve disputes between consumers and respondent businesses quickly and with minimal formality. However, we do have an inquisitorial remit, and powers we can exercise should we need to, concerning the provision of evidence.

F2 clearly thinks I should have required Mrs W to provide further evidence. It previously suggested I should obtain further evidence relating to her tax position along with evidence of communication to show that she was determined to invest in Dolphin. It also thinks I should have asked for statements relating to other pension provision she had.

Whilst noting F2’s position, I haven’t found it necessary to exercise my powers concerning the provision of information, or to request some of the information it’s referred to. I’m satisfied I’ve already gathered enough evidence upon which to base my findings. For instance, I’d already concluded that Mrs W was a high net worth investor. So, it wasn’t necessary for me to seek evidence of her tax position to illustrate that point. I was equally satisfied that Mrs W’s husband’s own investments in Dolphin were a factor in her wanting to explore a similar investment. And I’d made that precise point in my provisional decision. So, there was simply no need for me to require further evidence on these, and similar points.

As far as Mrs W’s other pension provision is concerned, as I said in my provisional decision, that’s information I’d have expected F2 to gather during the fact-find process if it was to take account of all relevant information. It was needed in particular if F2 was to be able to assess Mrs W’s capacity for loss. There’s no specific detail recorded in the fact find or suitability report about other pension provision that Mrs W had.

In any event, as I also indicated in my provisional decision, I did ask Mrs W for details of other pension provision she had at the time of F2’s advice. And I reflected her responses in my provisional decision. F2 has now called those responses into question on the basis of other evidence it’s recently obtained. I’ve referred to this evidence in more detail below and I’ve set out my findings in terms of whether I think it makes a material difference to the provisional findings I’ve reached.

Other decisions made by this Service

As I’ve mentioned above, F2 thinks my provisional decision is at odds with other decisions made by this Service. Whilst I’ve considered what’s set out in the decisions F2 has referenced, it’s important to make clear that each case is considered on its own merits and is distinguishable by the specific evidence and facts of the individual case.

Given F2’s specific comments, I’ll again address the question of whether it gave Mrs W advice.

Did F2 give Mrs W advice?

F2 maintains it didn’t give Mrs W advice and was merely there to help her fulfil her wishes to invest in Dolphin. It’s again made the point that it wasn’t paid a fee commensurate with giving investment advice. It said it was simply paid a small sum to arrange a pension transfer.

These are arguments F2 has made previously and which I've already addressed in my provisional decision. So, I don't intend to repeat all of the same points here - especially as F2 hasn't given me any new evidence to consider in relation to this matter.

I will say though that if F2 clearly believed it was simply transacting for Mrs W, it doesn't explain why it sent her a quote for its services stating (amongst other things) that it intended to charge for an *"Investment advice review on current investments within your pensions"*.

Similarly, it doesn't explain why, at the end of the process, F2 sent an invoice to Mrs W which said *"Lastly, as per our fee schedule, agreed at the outset, the advice has now been completed and received and therefore our fee is now due. As agreed, we shall invoice your pension shortly for this fee (3.25% of the investment value advised upon) [my emphasis] which equates to a sum of £1,946"*.

Again, as I said in my provisional decision, I don't know why F2 says it was only paid a fee for a pension transfer, rather than a much larger sum. But that doesn't detract from the findings I reached. All of the evidence I've seen persuades me that F2 gave Mrs W advice. And nothing it has said since causes me to change my opinion about that. If anything, some of its points serve to reinforce the position I reached. I say that in particular because if F2 was offering no advice, I can't see why it would have been a concern for the adviser that Mrs W wasn't *"persuadable"* to invest the whole of her SIPP in the 7IM fund. It wouldn't have needed to persuade her about anything if it was acting on an execution only basis. F2 also hasn't explained why its contemporaneous notes from the time say that Mrs W was looking for F2 to review the Dolphin investment and *"advise as to whether it would be possible and appropriate"* for her to make such an investment as part of her pension planning. In a similar vein to what I said above, it wouldn't have been necessary for F2 to review and advise Mrs W about the appropriateness of a Dolphin investment if it was simply transacting for her. For all of these reasons and those I set out in my provisional decision, my opinion about whether F2 gave advice is unchanged.

Many of F2's comments suggest again that it misunderstood its role when giving Mrs W advice. And that might account for some of the gaps in the advice process.

I've again considered the suitability of F2's advice taking account of its further comments in response to my provisional decision

The role of Mrs W's husband

F2 has gone to great lengths to describe the significance of Mrs W's husband's role leading to her investment in Dolphin. As far as F2 is concerned, it's a role that has been *"severely downplayed"* in my analysis but is something that it feels is crucial to my understanding of the events. F2 feels that the new evidence it's supplied in the form of a different adviser's report from 2019 served to corroborate points it had previously made about Mrs W's husband having invested in Dolphin.

But I don't think the fact that Mrs W's husband had invested in Dolphin or had clearly played a part in Mrs W wanting to pursue a similar investment was ever in dispute. Again, in my provisional decision I said I was satisfied that Mrs W was keen to follow a strong recommendation from her husband who had apparently made his own successful investment in Dolphin.

Suitability of the advice

A theme that runs throughout F2's response to my provisional decision is that Mrs W was extremely determined to do what she wanted. It's also gone as far as saying that the adviser

was “*manipulated*” into ensuring that Mrs W could invest in Dolphin. And as Mrs W needed a financial adviser to endorse the investment (because SIPP providers generally wouldn’t accept execution-only investments into schemes like Dolphin) she apparently asked the adviser to “*tailor*” his report to allow her to make such an investment.

If I’ve understood F2 correctly here, it seems to be suggesting that it merely ‘rubber stamped’ the investment recommendation as a means of enabling Mrs W to circumvent the important safeguards that ML and other providers had to have regard to. In doing so, that appears to have enabled the SIPP transfer and Dolphin investment to go ahead. Assuming that is what F2 is saying, its actions here would almost certainly fall foul of its regulatory responsibilities on a number of fronts, including those I set out in my provisional decision.

For instance, in line with the 2014 FCA guidance I referred to in my provisional decision, F2 needed to carry out its own checks into Dolphin to understand the underlying investments and assess its suitability for Mrs W. If F2 is saying that it merely gave the impression of having completed checks and given Mrs W regulated advice, then it’s difficult to see how it could be said to have acted in Mrs W’s best interests. So, I can’t fairly say it acted in line with COBS 2.1.1R.

On a similar note, regardless of how determined Mrs W was or how “*manipulated*” the adviser felt, he had to give advice and a personal recommendation that was suitable for Mrs W and was in her best interests overall. As I said in my provisional decision, fulfilling that duty could just as easily have been to say he didn’t recommend an investment in Dolphin at all. And if the adviser didn’t think it was a suitable investment, that’s what he should have said.

It’s in that context that I’ve considered whether these and the other points F2 has made in response to my provisional decision would cause me to change what I said.

F2 believes that Mrs W has misrepresented the position in terms of her other pension provision (both a defined benefit and a defined contribution pension). In particular, it says that the recollections she’s given to me about the value of her pensions are at odds with the detail included in a different adviser’s report from 2019. Specifically, it’s questioned the value of Mrs W’s DC pension of £44,000, whereas the adviser’s report from 2019 refers to a value of around £80,000. It’s made the point that the value is probably greater in 2024.

F2 has also pointed out that Mrs W was a member of a DB pension scheme with a fund worth around £191,000 whereas she’s given me the impression that her DB pension would pay her a pension of roughly £5,700 a year in retirement. It says this compares with an expected amount of around £26,000 at the normal retirement age as noted in the adviser’s report from 2019. Again, F2 thinks this makes a material difference.

F2 again disputes Mrs W’s suggestion that her ML SIPP was a very important part of her retirement planning given that she had other pensions to rely on. It seems to have referred to the amounts of her other pensions to reinforce that point. It also said her reliance on the SIPP is in contrast with what she told it in 2018 when she referred to the funds in her SIPP as being her “*play money*”. According to F2, Mrs W represented that she wanted to take a higher risk with her SIPP by investing in Dolphin because she had other pensions to fall back on if things didn’t work out.

I’d already referenced the fact that Mrs W apparently called the SIPP her “*play money*” in my provisional decision. So, this isn’t new information.

I agree that, on the face of it at least, it does appear that Mrs W’s other pension provision is greater than the amounts recalled to me. But it’s difficult to make a meaningful comparison

as F2 didn't record any specific detail in its suitability report. And the amounts F2 has recently referred to were recorded by a different adviser a year or so after F2 gave its advice. Also, according to the 2019 adviser's report, the value of Mrs W's pension fund had apparently changed due to some contributions made by her employer following changes in her role. That might account for some of the differences at least.

But having greater alternative pension provision, as seems to be the case here, wouldn't in itself persuade me that Mrs W *definitely* wanted to take more risk with her SIPP. I say that especially because I've decided that the risk profiling reports that F2 completed at the time indicated she was a more balanced investor. If she was an investor that *definitely* wanted to take more risk, it doesn't explain why the risk profiling reports suggested otherwise. At the very least, I'd have expected F2 to have addressed any apparent anomalies in the risk profiling questionnaire with what it believed Mrs W's true risk profile to be. As I've already said, F2 didn't do that.

None of these points detract from the fact that, regardless of whether Mrs W indicated that she wanted to take a higher risk with her SIPP or not, F2 was there to give her suitable advice and a personal recommendation that reflected, amongst other things, her attitude to risk.

However, given F2's response, I have thought about whether any of it changes what I said about whether F2 acted in line with the regulator's best practice guidance concerning the proportion of Mrs W's portfolio invested in high risk investments. I'm not persuaded it does change what I said.

The 2019 adviser's report suggests that Mrs W had other investments jointly with her husband. It's not entirely clear though when those investments were taken out. But on the face of it at least, given the investment periods and maturity dates mentioned, it does appear that some, if not all, were in place at the time of F2's advice. Again, I can't see that F2 explored Mrs W's wider investment structure when it gave advice. As I've already mentioned, it's evident too that it didn't ascertain her full pension provision. So, in these circumstances, I don't think F2 could be reassured that Mrs W was able to take the level of risk associated with Dolphin and still remain within her overall attitude to risk. Also, without taking account of how Mrs W's remaining wealth was invested, I'm not satisfied that F2 could rely on the fact that 50% of her SIPP was an acceptable amount of exposure to this type of investment.

It remains the case therefore that, in my opinion, this investment in Dolphin, a single, non-standard investment, was too high for Mrs W, who described herself as a 'balanced' investor. So, regardless of Mrs W's own assessment of her attitude to risk or the outcome from the dynamic risk planner that F2 relied on, the upshot would be the same – Mrs W was exposed to investments that carried too much risk and didn't reflect her actual attitude to risk at the time. If F2 is saying that it didn't realistically have enough information about Mrs W's investment experience, or her answers were at odds with her true appetite for risk, in order to say whether Dolphin was suitable, that's something it should have satisfied itself of at the time.

In summary, for the reasons I've set out above, I can't fairly say that F2 acted in line with the regulator's best practice here, or that Dolphin was a suitable investment for Mrs W.

Was F2 the cause of Mrs W's loss?

Again, I have to consider whether Mrs W would likely have gone ahead with the investment even if F2 had given her suitable advice. I've given very careful thought to this question.

As I mentioned earlier, F2 has gone to great lengths to explain, in particular, the role that Mrs W's husband played in her wanting to make an investment in Dolphin. But that's something I was already aware of when I drafted my provisional findings. I've already set out in some detail why I'm satisfied that Mrs W was clearly interested in an investment in Dolphin when she approached F2. I've also referred to F2's records stating she was keen to follow a "*strong recommendation*" from her husband. The fact that she approached F2 in light of her previous financial adviser and SIPP provider ceasing to arrange or accept investments in Dolphin reinforces that view.

A key factor here remains that, according to F2, if Mrs W "*had her way*", she'd have invested 100% of this pension fund in Dolphin. It felt this showed her high appetite for risk. But, as I said in my provisional decision, even if that had been her initial intention, the fact remains that Mrs W opted to invest 50% of her SIPP funds in Dolphin based on F2's advice. I think this makes it difficult to argue that she wasn't prepared to listen to professional advice. Again, notwithstanding her husband's investment, it's equally reasonable to assume she'd have followed F2's advice if it had advised her not to invest in Dolphin at all as it wasn't a suitable investment for her. In my opinion, that's what F2 should have said.

Regardless of what Mrs W may or may not have been interested in, there's no evidence that she asked F2 to execute an instruction on her behalf. She sought its advice about how to invest the funds from her SIPP. And F2 was the professional party here. I think the fact that two other financial firms had decided not to engage in investments in Dolphin ought to have acted as a warning sign to F2. Despite its strong protestations to the contrary, F2 wasn't there to simply do what Mrs W wanted. So, if it had given her unequivocal advice that investing in Dolphin wasn't in her best interests, on balance, based on the factors I've referred to, I think Mrs W would have listened and given up on the idea of investing in Dolphin. So, she'd have had no need to transfer her SIPP either and would likely have remained in her existing SIPP, albeit I think she would have invested in a different way.

Conclusion

After very careful consideration, for the reasons I've set out above and in my provisional decision, my opinion remains that F2 gave Mrs W unsuitable advice and is responsible for the financial loss she suffered as a result.

My final decision

I uphold this complaint. F2 Capital Ventures LLP now needs to put things right as I set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 14 June 2024.

Amanda Scott
Ombudsman