

## **The complaint**

Mr L, through his representative, has complained that EGR Wealth Limited provided negligent advice to transfer his personal pension to a self-invested personal pension (SIPP) which has since made significant losses.

## **What happened**

I issued my provisional decision on this complaint on 20 May 2024. The background and circumstances to the complaint and the reasons why I wasn't provisionally minded to uphold it were set out in that decision. I've copied the relevant parts of it below and it forms part of this final decision.

### ***Copy of provisional decision***

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

*Mr L's complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties on 17 November 2023. The background and circumstances to the complaint and the reasons why the investigator thought it should be upheld were set out in that assessment. This has been seen by both parties and I won't repeat it all here. However to summarise, the investigator said although Mr L's representatives had complained that EGR Wealth Limited (EGR Wealth) had advised Mr L to transfer his pension to the SIPP, that advice had been given by a different firm. And the advice was about a 'switch' – not a transfer.*

*However the investigator said he thought the complaint was also about the suitability of the investments made which EGR Wealth was responsible for. He referred to the suitability rules in COBS 9 (the Financial Conduct Authority's Conduct Of Business Sourcebook) which he said applied to decisions to trade as well as personal recommendations. The investigator didn't think EGR Wealth had managed Mr L's portfolio in line with the discretionary management service that had been recommended to Mr L.*

*EGR Wealth didn't agree with the investigator's findings. To sum up, it said that EGR Wealth didn't give advice to Mr L about the transfer of his personal pension to the SIPP, and it wasn't responsible for the suitability of that advice.*

#### ***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.*

*The Ombudsman Scheme is intended to deal with complaints in an informal manner. We have an inquisitorial remit and complainants don't have to precisely define their complaint as they'd need to do in bringing legal action in court; we are able to look more widely at the correspondence to determine the scope of the complaint made.*

*In Full Circle Asset Management v Financial Ombudsman Service Nicol J said:*

1. It was, in my view, a necessary part of [the ombudsman's] function to determine the nature of [the consumer's] complaint. And as Irwin J. said in *R (Keith Williams) v Financial Ombudsman Service*, 'His jurisdiction is inquisitorial not adversarial.'

54. ...the Ombudsman was not confined to what appeared in this box on the [complaint] form in deciding the nature of [the consumer's] complaint. He was entitled, as he did, to look more widely at the correspondence which she and her adviser had written to the Claimant and to him.

So I've looked at the correspondence that's been provided to identify what the complaint is about. Mr L's representative sent an e-mail to the firm on 2 March 2023 saying, amongst other things:

Please find attached our client's complaint in relation to advice received by him from EGR Wealth Limited.

Our client was contacted by EGR Wealth Limited regarding a pension review. The client was advised to transfer his safe pension held with [pension provider's name] into a SIPP with [SIPP provider's name] as the client was told the pension transfer would be more beneficial.

EGR Wealth Limited were negligent in the advice they gave the client, and our client has suffered a significant loss as a result.

So on the face of it, the complaint was about the advice to transfer Mr L's pension. The attached letter included:

## **COMPLAINT**

[Mr L]'s complaint relates to the advice given by EGR Wealth Limited, who advised [Mr L] to transfer his Personal Pension scheme into a SIPP with [SIPP Provider's name]. [Mr L] received negligent advice from EGR Wealth Limited and has suffered loss as a result. [Mr L] seeks to be restored to the position he would have been in but for the negligent advice.

## **BACKGROUND**

The below sets out the background to [Mr L]'s claim. The background is relevant to the claim which [Mr L] seeks to bring and was relevant at the time the negligent advice was given.

The advisor owed [Mr L] a duty of care. It should be made clear at this stage that in failing to exercise a duty of care when delivering advice to [Mr L], the advisor was also negligent.

It was incumbent upon the advisor at the time they advised [Mr L] to transfer his pension that they took into account the following matters. Where appropriate we will highlight where the advisor failed in their duty to [Mr L]:

## **...CLAIM AGAINST EGR WEALTH LIMITED**

[Mr L] was originally contacted by cold call via an IFA company called EGR Wealth Limited who conducted a Pension Review and went on to provide financial advice. In doing so they owed [Mr L] a duty of care, which extended to them providing [Mr L] with correct and accurate advice, in his best interests and not to act negligently.

....EGR Wealth Limited advised [Mr L] to transfer his [name of personal pension provider] personal pension scheme into a SIPP with [name of SIPP provider]. [Mr L] was told by EGR Wealth Limited that he would make more money by making this transfer than his current pension would provide.

EGR Wealth Limited were negligent in providing the advice. [Mr L] was induced to transfer his pension to [name of SIPP provider] following the promise made by EGR Wealth Limited that the value of his pension funds would grow following the transfer at a rate in excess of any growth which may occur if the pension remained with his previous pensions. In advising [Mr L] to transfer his pension into a SIPP and how to invest within the SIPP, EGR Wealth Limited breached their duty of care of [Mr L] and were negligent.

### **...EXAMPLES OF NEGLIGENCE AND BREACH OF DUTY**

The letter went onto provide multiple examples of alleged breaches of the regulator's rules. But again, in my opinion, they related to the advice given to Mr L to transfer his pension to a SIPP.

When Mr L completed the complaint form it had a section "Tell us about your complaint – what happened?"

Mr L said:

"I was mis-sold this pension plan I was never a high earner and this was a plan for high earners."

Again, in my opinion this is consistent with the complaint being about the alleged errors and omissions relating to Mr L being advised to switch his pension to a SIPP.

As I've said above, the ombudsman service can look at the wider correspondence to determine the scope of the complaint made. And although the investigator said he didn't think the complaint was particularly clear, he thought the complaint encompassed investment suitability. I agree with the investigator that EGR Wealth was responsible for the suitability of its decisions to trade – or lack of them. But in my opinion, the examples of the alleged breaches of the COBS rules were in relation to the advice given to transfer – not to breaches by EGR Wealth Limited in the light of its own role and responsibilities.

Taking all the above into account, although I can consider the wider correspondence to identify the complaint made, in having done so, in my opinion the complaint is about the acts and omissions relating to the advice Mr L was given to transfer (or technically 'switch') his pension.

I realise my decision will be very disappointing for Mr L. But given I think it's clear that EGR Wealth didn't provide the advice to transfer, and isn't responsible for the suitability of that advice, I'm not currently persuaded there are any grounds to uphold the complaint.

### **My provisional decision**

Accordingly, my provisional decision is that I don't intend to uphold the complaint.

I asked Mr L's representatives and EGR Wealth Limited to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

EGR Wealth Limited said it accepted the provisional decision.

Mr L's representatives didn't provide any further evidence or arguments about the merits of the complaint..

### **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.

Having done so I've seen no reason to depart from the findings in my provisional decision not to uphold the complaint.

### **My final decision**

My final decision is that I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 July 2024.

David Ashley  
**Ombudsman**