

## The complaint

Ms B complains that Elmfield Financial Planning Limited (Elmfield) has unfairly charged her an initial advice fee despite her not following the recommended advice. Ms B said that the advice wasn't in her best interests.

To put things right, Ms B would like Elmfield to waive the fee and to compensate her for the distress and inconvenience caused.

## What happened

Ms B said she didn't know a lot about pensions. So she approached Elmfield to help her to review her current pension position. She said that Elmfield called her on 16 February 2024. And that during that call it explained that it would carry out the initial research free of charge to see if it would be beneficial for her to change her current pension position.

Ms B said she told Elmfield that her aim was to increase her pension pot as much as possible before her planned retirement within the next three to five years. She said Elmfield told her that it wouldn't propose any changes if it couldn't improve her pension position.

Ms B met Elmfield on 22 February 2024. She said that during this meeting, both Elmfield representatives restated that any work they carried out up to their final proposal would be free of charge.

Elmfield said that during the 22 February 2024 meeting, Ms B discussed her two pensions held with one of her existing providers, and her three pensions with another existing provider. She also asked Elmfield to trace some other pensions for her.

The same date, Ms B signed Elmfield's Data Consent Form and Letters of Authority so it could start to trace her pensions.

On 26 February 2024, Elmfield said it started to request information about Ms B's existing pensions.

I understand that Ms B completed a fact find on 12 March 2024. And an Attitude to Risk (ATR) Questionnaire on 15 March 2023. She was assessed as having a cautious to moderate ATR. This was defined as follows:

*"You are prepared to take a limited investment risk in order to increase the chances of achieving a positive return but you only want to risk a small part of your capital to achieve this."*

*A typical Cautious to Moderate portfolio will have up to half invested in fixed interest products which are low risk but have low returns. The larger part of the portfolio will be invested in equities and property which can boost longer term returns but are associated with more risk."*

On 18 April 2024, Ms B said that Elmfield called her to say it had everything it needed. A meeting was set up for 3 May 2024. During that meeting, Elmfield said it discussed its

findings with Ms B. It said it also discussed its initial adviser charge of 2% and explained its ongoing service charge.

Ms B told this service that her recollection of the 3 May 2024 meeting differed from Elmfield's. She said the meeting was a generic presentation rather than specific to her pensions and her circumstances.

Ms B said that Elmfield had told her that it could improve her pension position for her older pensions. And that it'd said she should move all of those pensions to a with profits account with a named provider that I'll refer to as provider P. She said Elmfield had told her that provider P worked well for all its clients and that was why it'd recommended it for her.

Ms B also said that Elmfield had discussed its charging structure and quoted a 2% transfer fee and a 0.5% fund fee. She said she'd understood these to be:

1. *"a one-off fee if I moved all my pensions to a new pension plan and*
2. *an ongoing 0.5% as the pension fees charged by provider P and Elmfield together to manage the fund."*

On 10 May 2024, Elmfield emailed Ms B with information about the individual fund analysis it'd carried out on her three biggest existing arrangements. It said that Ms B's biggest fund had performed well. But felt that this was because it was invested fully in shares. It said that this could change at any time and that it would therefore be: *"prudent to consolidate the profit now and de-risk the portfolio more in Line with your Attitude to Risk, whilst at the same time targeting growth."* Elmfield also said that the stock market was currently at an all time high.

Elmfield felt that the performance of Ms B's next two biggest pensions had been average at best over the medium to long term.

Elmfield attached a copy of its new client agreement to this email.

On 21 May 2024, Ms B emailed Elmfield to ask it about the initial consolidation charge. It replied the same day to confirm that it would charge Ms B: *"2% of the value as at date of the transfers which would equate to an initial fee of just over £5000"*.

While the email didn't clearly state - in line with the client agreement - that Ms B would be charged 2% if she commissioned the work but didn't then go ahead with the recommendations, it did offer Ms B the opportunity to call Elmfield to discuss: *"any details of our proposal"*.

Ms B then emailed Elmfield on 28 May 2024 to state that she wanted to proceed with the full consolidation.

Elmfield replied on 29 May 2024, stating:

*"As per your instruction, we will now commence work on your Pension Transfer file."*

The email stated that Elmfield was recommending that Ms B transferred her existing pension plans to provider P as it provided Elmfield and its clients with excellent service. It said it had also made this recommendation as provider P ran a fund which it felt matched Ms B's current ATR. And which also used a smoothing process which should help to protect Ms B against any market volatility while also targeting growth.

Ms B signed and returned the client agreement on 30 May 2024. This stated the following under section 2. *Our Advice Process*

*Initial Consultation*

*This meeting will be conducted free of charge.*

...

*At this meeting we will:*

...

- *Discuss our Client Agreement and Service Proposition to ensure all your questions are answered fully.*

*Reminder: This Initial Consultation will not cost you anything and you do not have to take up our services at this point.*

*...Our work will not commence until agreement has been reached and the Client Agreement has been signed. Once signed, all initial fees will be charged regardless of whether you, the consumer, proceed with the advice or not.*

Elmfield said that on 31 May 2024, it ran an illustration for provider P based on the charges set out in its client agreement. It then emailed Ms B on 3 June 2024 with copies of her provider P illustration alongside other supporting documents, including the fund it'd recommended based on her current ATR. The email said that it would send its Suitability Report under separate cover. This was also sent on 3 June 2024.

On 10 June 2024, Ms B emailed Elmfield to ask it to put her transfer on hold. Then on 24 June 2024, she emailed it to say she no longer wanted to proceed. She said that after getting a second opinion, she could now see that the proposed transfer would cost her significantly more. She said there were also charges which Elmfield hadn't made clear. She said she would withdraw from the client agreement with immediate effect.

Elmfield responded to Ms B the same day. It said that it'd already carried out the work she'd asked it to do. It felt that all charges had been made clear, noting that page 5 of its client agreement stated: *Our work will not commence until agreement has been reached and the client Agreement has been signed. Once signed, all initial fees will be charged regardless of whether you, the consumer, proceed with the advice or not.*

Elmfield said that this meant that its initial fee of 2% of the proposed transfer was still applicable.

Ms B replied the same day to say she felt she'd cancelled within the 30-day cancellation period. On 26 June 2024, Elmfield responded to say that the cancellation rights Ms B had referenced didn't relate to its initial charge, as that was something agreed separately between the client and the adviser. Elmfield said that Ms B had agreed to its recommendation by email and had signed its client agreement instructing it to carry out the pension transfer consolidation on her behalf. It said that its initial adviser fee was therefore due, regardless of whether she chose to proceed with the advice or not.

Ms B raised a formal complaint with Elmfield on 26 June 2024. She said it'd only become clear to her that its proposal wouldn't help her to achieve her objectives when she'd received the full report. She felt that the recommendation would lead to her moving her pensions from

low fee environments to a much higher fee pension with provider P. She also felt that the fees that provider P would charge her hadn't been clearly disclosed. Ms B said that if Elmfield had clearly documented and explained the negative impact on her pensions earlier, she wouldn't have proceeded.

Ms B also felt that all the work Elmfield had carried out had been done under the free of charge service. She felt that it'd simply copied and pasted earlier work into a formal report.

Elmfield issued its final response to the complaint on 15 August 2024. It didn't think it'd done anything wrong. It said that Ms B's chain of events didn't tie in with its own. It also issued Ms B with an invoice for its initial fee.

Unhappy, Ms B brought her complaint to this service. She felt that the contents of the report Elmfield had issued differed significantly from all of her previous discussions with it, so she was confused and started to doubt the integrity of the proposal. She said that Elmfield hadn't highlighted any additional costs from provider P with her before it'd issued its suitability report. She felt it'd allowed her to believe that all ongoing fees would be within the 0.5% fee it'd quoted. Ms B felt that Elmfield's recommendation had failed to improve her retirement plans.

Ms B didn't think that Elmfield had carried out work after she'd signed the client agreement on 30 May 2024. She felt that it'd always intended to recommend switching all of her pensions into a with profit plan with provider P.

Ms B also felt that Elmfield's recommendation didn't reflect her original objective of improving her pension position over the next three to five years. She felt it did the opposite, as it showed a worse position across short, medium and long term projections.

Ms B also complained that her Elmfield adviser was the same person who'd considered her complaint.

Our investigator didn't think the complaint should be upheld. She first noted that this service doesn't have the power to recommend changes to a business's complaint process. Therefore she couldn't consider the complaint about Elmfield's complaint handling.

Our investigator felt that Elmfield had acted in accordance with the client agreement, She therefore felt that it had fairly charged for the service provided.

Ms B didn't agree with our investigator. She made the following points:

- Elmfield hadn't treated her fairly against the FCA's Conduct of Business (COBS) provisions. She felt that as our investigator had stated that Elmfield should've provided the client agreement at the initial consultation meeting, she'd agreed that Elmfield had broken those provisions.
- She felt that all the work Elmfield had done before she'd signed the client agreement couldn't be considered, as Elmfield's own rules stated that the client agreement must be provided before such services were provided.

Our investigator agreed that Elmfield should've provided the client agreement at the initial consultation meeting. But she explained that this service aimed to put consumers back in the position they would've been in had a mistake not been made. She felt that as it had been Ms B who had sought advice about whether it was best to consolidate her pensions, she would've still proceeded with the advice if Elmfield had provided her with the client agreement at the initial consultation meeting, and if it hadn't then proceeded with any other

work until Ms B signed the client agreement.

Our investigator felt that Elmfield would've needed to go through its formal advice process so it could determine whether it was best for Ms B to consolidate her pensions or not. She didn't consider that the actions Elmfield could take under its free of charge initial consultation alone would've been enough to establish this. She also noted that Elmfield had provided Ms B with the client agreement before she'd been bound by it. She felt that if Ms B hadn't signed the client agreement, Elmfield wouldn't then have been able to charge for services already provided. She therefore didn't think that the COBS rule voided the fee.

As agreement couldn't be reached, the complaint has come to me for a review.

### **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'm not going to uphold it. I know this will be disappointing for Ms B. I'll explain the reasons for my decision.

Before I start, I agree with our investigator that this service doesn't have the power to recommend changes to a business's complaint procedure. Therefore, while I acknowledge that Ms B is unhappy that her Elmfield adviser himself investigated her complaint, I can't consider this point in my decision.

I first considered whether Elmfield provided Ms B with its client agreement during her initial meeting with it.

*Did Elmfield provide Ms B with its client agreement during the initial meeting. And were the fees discussed at other meetings?*

Ms B said that Elmfield didn't provide her with its client agreement during her initial meeting with it. She said she first received a copy on 10 May 2024. She felt that this might've been because it was in the process of changing its client agreements following an upheld complaint through this service at the time of her initial meeting.

Ms B felt that Elmfield had hastily and clumsily put together a new client agreement without much thought or review. And that the new client agreement was unclear, ambiguous and misleading.

Elmfield said that it'd gone through its client agreement with Ms B during the initial meeting. It said it did this for all clients as part of its procedure. But it said that it couldn't provide an exact figure at that point as it didn't know the pension values it'd yet to trace. It also said that during that meeting, its adviser pointed out the fee tier structure within that document and also discussed the fact that its client agreement was in the process of being updated. It said it would provide Ms B with the updated version as soon as possible, which it did on 10 May 2024.

Elmfield also said that it'd discussed the fees at length during the second meeting, when it had also discussed various investment strategies.

Where recollections differ about what happened, as they do here, I have to decide on balance of probabilities what I think happened. In this case, I think it's more likely than not that Elmfield did provide Ms B with a copy of its then client agreement during the initial meeting. I say this because I consider it unlikely that the fees wouldn't have been discussed

at all during that first meeting. And because that was in line with Elmfield's usual process.

In any event, I'm not persuaded that it makes any difference to my decision here whether or not Elmfield gave Ms B a copy of its then client agreement during the initial meeting, given its clear that it gave Ms B a copy of its updated client agreement on 10 May 2024.

I understand that there were limited changes to the updated client agreement. The following wording was added to section 2. *"Our advice process"*:

*"Once signed, all initial fees will be charged regardless of whether you, the consumer, proceed with the advice or not."*

Therefore, while I acknowledge that Ms B felt that Elmfield had hastily put together its new client agreement, I can't fairly agree.

I next considered whether the wording in the client agreement was clear and not misleading about the initial and ongoing annual fees.

*Was the client agreement clear and not misleading?*

Ms B said she'd understood she'd only have to pay an initial fee of 2% of the value of the pension transfer if it actually went ahead. She signed the updated client agreement on 30 May 2024 on that basis.

Ms B said Elmfield had never told her the fee would be payable even if she decided not to go ahead with its recommendations. She said that although the fee seemed expensive, she'd relied on the statement in the client agreement that said the implementation involved often complex processes and paperwork. She also said that this had reinforced her understanding that an initial charge would only be made if she ultimately transferred her pensions.

While I can understand why Ms B took this view, I can't fairly agree with her that the client agreement was misleading about when the initial fee would be payable. I say this because the client agreement states the following:

*"Once signed, all initial fees will be charged regardless of whether you, the consumer, proceed with the advice or not."*

I think this clearly states that once Ms B had signed the client agreement, the initial fee would be payable regardless of whether or not she proceeded with the advice.

I agree with our investigator that as Ms B had herself approached Elmfield to understand whether it was best to consolidate her pensions or not, it then needed to carry out work beyond its free of charge initial service in order to establish the best course of action. Therefore, given Ms B wanted to know how best to proceed with her pensions, a fee was always going to be chargeable for the work Elmfield would need to undertake.

I acknowledge that Ms B feels that Elmfield didn't treat her fairly against the FCA's COBS provisions. But given she signed the client agreement, thus agreeing to pay for the further work Elmfield needed to carry out on her behalf, I can't fairly agree.

I also agree with our investigator that if Ms B had never signed the client agreement, Elmfield may not have been able to charge her for any of the work it'd done on her behalf. But the evidence shows that Ms B had all the information she needed about the initial advice fee before she signed the client agreement.

Ms B also said she believed that Elmfield's annual ongoing service charge fee of 0.5% would cover all additional costs with provider P. She said that Elmfield hadn't explained to her that she'd be charged additional fees by provider P on top of Elmfield's 0.5% ongoing service charge.

Having reviewed the wording in the client agreement on Elmfield's ongoing service charge, I was satisfied that it was clear that the ongoing service charge simply covered the work Elmfield would carry out. So I asked Ms B why she thought otherwise.

Ms B said that Elmfield had verbally led her to believe this was the case. She said the only fees discussed and shared with her before she received the Suitability Report was the 2% initial advice fee and the 0.5% ongoing fee. She said that she'd felt misled as soon as she'd seen the full charging position.

While I don't doubt Ms B's recollections, I've not been provided with any written evidence that Elmfield ever told Ms B that its ongoing service charge would cover all other charges associated with pension investment and management. I can't therefore fairly hold Elmfield responsible for Ms B's misunderstanding here.

Ms B felt that Elmfield shouldn't be able to charge her for the work it'd undertaken before she'd signed the client agreement. So I've gone on to consider this point.

*What work should Elmfield be able to charge Ms B for?*

Ms B said that as she hadn't received the client agreement until 10 May 2024, it was reasonable to assume that as Elmfield had done all of its fact finding, research and recommendations before ever discussing fees then it wouldn't charge for that element of its work.

Elmfield told this service that it started its chargeable work after Ms B signed the client agreement. It provided evidence to show this.

I agree it was reasonable for Ms B to assume that the initial fact-finding work had been carried out without charge, as this was in line with the wording in the client agreement. But I can't fairly agree that it would be fair to assume that all of the recommendations had been reached at the time Elmfield sent Ms B its updated client agreement on 10 May 2024.

I say this because the evidence shows that the work required for the recommendation was undertaken after Ms B signed the updated client agreement. And because the client agreement explained that this would be the case.

Ms B said that our investigator hadn't considered the fact that Elmfield had told her that no charges would be made unless it could improve her position. She said that until she received the Suitability Report on 3 June 2024, she hadn't been aware that the overall fees would be significantly higher than leaving everything untouched. Nor had she been aware about the proposed performance of her pension if she followed the advice. She said that as soon as she'd seen how much worse off she would be with Elmfield's proposal, she put a hold on things and got advice. She felt Elmfield had intentionally misled her for its own gain. So I've gone on to consider this point.

*Was Elmfield's advice in line with Ms B's objectives?*

Ms B had a short time horizon for her retirement as she wanted to retire within the next three to five years. Elmfield assessed her ATR as cautious and her capacity for loss as low.

When it reviewed her existing pensions, Elmfield identified that they were largely invested in assets that weren't in line with Ms B's assessed ATR and capacity for loss. It therefore recommended a lower risk investment with provider P, in line with Ms B's ATR and capacity for loss. This would inevitably lead to lower projected benefits at retirement, but would also reduce the risk of Ms B's pension value falling significantly in the period to her planned retirement.

Therefore, while I understand that Elmfield told Ms B it would only make a proposal to consolidate her pensions if it made financial sense for her and improved her position, I don't consider its recommendation to be unreasonable given Ms B's assessed ATR and capacity for loss.

I also acknowledge that Ms B is unhappy that the charges provider P would take from her pension would've been greater than those she was already paying. But this is not surprising given the recommendation was to invest in a with profits fund, as these can be more expensive than other types of investments given the smoothing mechanism used. Again, based on Ms B's ATR and capacity for loss, I don't consider that this was an unreasonable recommendation.

Overall, I can't fairly and reasonably uphold the complaint. This therefore means that Elmfield's initial fee of 2% of the proposed transfer is still applicable.

### **My final decision**

For the reasons explained above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 4 June 2025.

Jo Occleshaw  
**Ombudsman**