

## The complaint

Mr W has complained about Francis Clark Financial Planning Ltd.'s ('FCFP') conduct in late 2020 when he states they began providing services to his wife whom he was in the process of divorcing.

Mr W has stated there was a conflict of interest between Mr W and Mrs W that FCFP didn't manage appropriately.

In addition, Mr W states that FCFP were in position of pertinent information about his pension that was not disclosed to him. Had FCFP provided Mr W with the research they had carried out on his pension at that time, Mr W believes he could have negotiated a more favourable split of his pension assets as part of his divorce settlement.

## What happened

I would like to note here that there has been extensive commentary and evidence provided by both parties in relation to this complaint. Below is a summary of what I consider to be the key points of contact and evidence in this case. Whilst not all points of contact or pieces of evidence will be specifically referenced, I would like to reassure both parties that all the documentation and commentary on file has been fully considered, whether referenced below or not.

In May 2019 Mr W informed FCFP of his separation from Mrs W and in a further meeting held in July 2019 FCFP were informed that divorce was probable.

In February 2020 Mr W informed FCFP that he had made a proposal to Mrs W of a 50/50 split of assets, including his pension.

In April 2020 there was a discussion between Mr W and FCFP where Mr W made FCFP aware that Mrs W had made a request to speak with his adviser.

In August 2020 emails were exchanged between Mr W and FCFP where the prospect of FCFP working with Mrs W was discussed.

Mr W's adviser said that *"it is likely that [Mr W's] pension fund will be shared roughly 50:50 through the settlement process... [Mr W] is comfortable with me acting for both him and [his ex-wife] ... this would be me working with [her] from the point a split of funds is agreed."*

FCFP's compliance team noted that working for both Mr and Mrs W could give rise to a potential conflict of interest and that confirmation of acceptance should be sought from Mr W in writing.

For his part Mr W emailed FCFP to confirm he had no issue with FCFP acting for his ex-wife *"once the split of funds is agreed"*.

On 2 September 2020 Mr W's adviser asked the research team at FCFP specific questions around the tax status of Mr W's pension and in what different ways this could be transferred / split.

On 11 September 2020, as part of this research, the adviser was made aware of different treatment for crystallised / uncrystallised funds.

On 15 September 2020 there was a meeting between FCFP and Mrs W. Meeting notes completed at the time make no mention of crystallised / uncrystallised pension funds with these notes confirming that the actual fund split had not yet been finalised. There were generic conversations around investment risk and potential future fee structures however the meeting notes confirm that no “*firm advice*” could be provided until Mrs W circumstances were finalised.

Notes added to Mr and Mrs W’s files at FCFP on 21 September 2020 show that the different tax treatments of the uncrystallised / crystallised pots should they be retained / transferred had been identified. It had been established that Mr W’s current provider could not facilitate a specific transfer of only uncrystallised benefits and as such further work would be needed to clarify if another provider could enable this. The note clarified that this was only preparation work and that no divorce settlement had been agreed.

Commentary provided by Mr W has confirmed that the consent order and pension sharing order eventually agreed were identical to what the parties had agreed on 29 September 2020 (and submitted to the court for approval on 30 October 2020). These were agreed by the court on 2 November 2020 with the documents dated 30 October 2020.

On 18 and 20 November 2020 FCFP were informed by SIPP providers they had reached out to that they could facilitate the split and transfer of only uncrystallised benefits should that be required, and that they did work with the same DFM as that currently used by Mr W.

Mr W’s divorce was finalised on 27 November 2020, with FCFP being informed of this by Mr W on 3 December 2020.

On 3 December 2020 there was a meeting between Mr and FCFP, there was no mention of the research conducted or about any meetings / advice for Mrs W at this time.

On 17 December 2020 there was a call between Mrs W and FCFP in which the setting up of a SIPP in Mrs W’s name to receive the now agreed pension split was confirmed. FCFP’s advice to Mrs W was detailed in their suitability letter dated 21 December 2020.

Following a meeting with his adviser at FCFP in November 2022, Mr W registered a complaint about the conflict of interest which arose once FCFP started to act for Mrs W in 2020, and the fact that he was not made aware of the specific tax treatment of the pension assets which meant he could not pursue a more beneficial split of the pension.

FCFP issued their complaint response on 6 January 2023. They stated that they had not been tasked with providing any advice regarding the potential split of Mr W’s pension or the tax treatment of the future pensions which may arise, and that even if they had been asked to perform such work they would have declined.

The agreed service for Mrs W was limited to providing best advice on where her share of the pension provision should be held once the split of assets had been agreed.

With regard to any potential conflict of interest FCFP stated that Mr W had agreed they could work with Mrs W and that he had been aware discussions were held.

Mr W referred his complaint to this service in June 2023.

Whilst the case was being investigated Mr W provided additional commentary and

documentation in support of his claim that FCFP had acted inappropriately and that he had suffered a financial loss as a result.

For their part FCFP also provided additional commentary stating that their research into the potential tax implications of transferring crystallised / uncrystallised portions of Mr W's pension was a generic training exercise designed to increase the firm's knowledge around an unusual set of circumstances.

Our investigator looked into things and upheld the complaint.

The investigator concluded that the research undertaken by FCFP was specific to Mr and Mrs W's circumstances, with further detailed research into other SIPP providers who may be able to facilitate Mr W moving only crystallised / uncrystallised funds whilst still having access to Mr W's current DFM.

Further, the research notes had been added to Mr W's file and as such our investigator concluded that it was not unreasonable for Mr W to expect to be provided with the information FCFP had discovered.

Our investigator concluded that FCFP should pay Mr W an amount of £650 to cover the distress and inconvenience caused. However, the investigator did not believe that any further redress was due. Whilst Mr W believed the information would have allowed him to negotiate a more favourable divorce settlement and a higher proportion of the pension our investigator did not agree.

Mr W did not accept the investigators findings. Mr W remained of the opinion that the financial impact of FCFPs conduct had not been considered fully and that not all FCFPs failings had been covered.

For their part FCFP also did not agree, stating that their research had concluded that Mr W's existing pension provider could not split the pension into crystallised / uncrystallised pension pots and as such there was no ability to change the benefit split. Additionally, FCFP stated that they believed they acted appropriately in conducting the research, and had they not done so could potentially have faced a complaint for negligence.

As no agreement could be reached, the case has been passed to me for a final decision.

### **What I've decided – and why**

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

Firstly, I would like to note that in his most recent communications with this service Mr W has raised concerns about the advice he received from FCFP regarding the transfer of his occupational defined benefit pension scheme in 2017. This issue has not previously been raised with FCFP nor been previously considered by the service, as such it is not something I can consider within this decision.

Mr W has sought to break his complaint down into several interlinked points. These include:

- That FCFP allowed a conflict of interest to arise in 2020.
- FCFP ignored clear written instructions.
- That FCFP prioritised his personal interests over his as his client.
- FCFP breached its duties of trust and care towards Mr W.
- FCFP acted negligently.

- Breach of contract.
- The adviser's personal conduct.
- Breaches of FCA Conduct Rules.
- Mr W suffered direct financial detriment as a result of some, or all, of the above.
- Additionally, Mr W complained that FCFP should refund the annual "advice fee" charged in relation to 2020, since it failed to give appropriate advice during the year.

Whilst I appreciate the time and effort Mr W has put into separating and identifying his concerns, I agree with the approach taken by our investigator in grouping these concerns into broader areas.

This service is not the financial regulator (this role is filled by The Financial Conduct Authority) and as such it is not my role to punish a business for breaches of individual regulations.

My role is to look at what occurred and establish if a business did something wrong. If I conclude that that a business did act unfairly any redress instructions I give are intended to place that consumer back into the position they would most likely be in were it not for that businesses error.

In response to our investigators findings Mr W has referenced the FCA principles for business and several historic decisions published by this service.

In making this decision I have fully considered the FCA principles, including but not limited to:

- Principle 2, which requires a firm to conduct its business with due skill, care, and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair, and not misleading.
- Principle 8: Conflicts of interest – a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

I would like to also be clear that all the evidence and commentary provided by both parties has been fully examined in making this decision and that where the evidence is incomplete, inconclusive, or contradictory, I have made by decision based on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Based on all the above I have reached the same conclusion as our investigator, and for broadly the same reasons. I have detailed why below.

With regard to the conflict of interest issue the evidence shows that this is something that FCFP were aware of, and that Mr W did given permission for FCFP to work with Mrs W *"once the split of funds is agreed"*. It is also clear that initial discussion and meeting were held with Mrs W before the pension split had been finalised, contrary to Mr W's email.

However, having looked at the content of the meeting notes completed at that time I cannot see any evidence to support the conclusion that Mrs W was provided with any information which had been withheld from Mr W. There is no mention of the potential taxation of any future amount which may be received with the meeting notes confirming the discussion was

limited to potential future pension providers and Mrs W's attitude to risk.

Whilst I accept that the evidence here is limited, I believe this is a reasonable conclusion to make. Had Mrs W been informed of the potential tax advantages of her receiving primarily uncrystallised pension benefits then it is reasonable to conclude that Mrs W herself would have sought to negotiate receipt of these funds rather than crystallised funds.

As explained by our investigator, whilst FCFP may have acted contrary to Mr W's email giving them permission to work with Mrs W, I do not believe this had had a material impact on Mr W's own financial circumstances.

I have gone on to consider the research carried out by FCFP and whether this should have been provided to Mr W.

FCFP have stated that conducting this research was an exercise intended to build the firm's knowledge around an unusual set of circumstances. Whilst I accept that it would be entirely appropriate for a firm to conduct such an exercise to better serve the needs of their wider client base should such circumstances arise again in the future, the questions asked, and research conducted were very specific to Mr W.

Not only were questions asked around the taxation of crystallised / uncrystallised pots upon transfer, but additional questions were also put to his specific pension provider. Further, FCFP sought to clarify if other providers would facilitate the transfer of only uncrystallised funds whilst allowing the underlying pension funds to be managed by the same DFM used by Mr W at that time.

When assessed as a whole, the questions asked and research undertaken by FCFP were very specific to Mr W, and whilst this information could also have been used to broaden the knowledge base of FCFP more widely, I do not consider it reasonable to conclude that this was the only purpose of the exercise.

This conclusion is supported by the fact that the research conducted was itself added to Mr and Mrs W's files at FCFP.

I have gone on to consider whether the information uncovered by FCFP should have been provided to Mr W, and, if so, whether this would have had an impact on the eventual agreed split of his pension assets.

I accept that businesses are not required to provide every customer with every piece of research carried out on their behalf, and that FCFP had not been asked or paid to conduct the research that they did. I also appreciate that FCFP had not been involved in providing Mr or Mrs W with any advice specific to their divorce or the splitting of assets.

However, the meeting notes between Mr W and FCFP from 2019 onwards show that Mr W had kept FCFP updated with regard to the progress of his separation and divorce. Mr W had been dealing with FCFP for a considerable amount of time and had been recorded as a *"detailed focussed guy"* in previous meeting notes. Additionally, it would have been clear to FCFP that Mr W's divorce was the most important aspect of his financial planning at that time.

As such, once FCFP were in receipt of information about Mr W's pension and how it could be impacted by divorce / a pension sharing order, I do not consider it unreasonable for Mr W to expect FCFP to provide him with that information.

Having reached this conclusion I have gone on to consider what impact, if any, this

information would have had on Mr W (and his divorce settlement) had it been provided.

I would note here it is impossible for me to know for certain what would have happened in this alternative scenario and as I have explained above, in circumstances such as this I base my decision on what I consider most likely to have happened based on the evidence available and the principles of fairness and reasonableness.

In considering this point I have reached the same conclusion as our investigator. I do not believe there is enough evidence to support the conclusion that the withheld information would have led to Mr W being able to secure a different divorce settlement.

Firstly, I would note that the divorce settlement was arrived at through many months of negotiations between Mr and Mrs W and their individual legal representatives. Documentation from 2019 onwards supports the conclusion that a 50/50 split was always likely.

Even if Mr W had been provided with the relevant research in September 2020, the information available at this time clarified the different taxation implications associated with crystallised / uncrystallised funds but also that Mr W's existing pension provider could not facilitate a transfer of only one of these pots.

It wasn't until other SIPP providers replied to FCFP on 18 / 20 November 2020 that it became clear that Mr W could, in theory, transfer his whole pension to a new provider who could then transfer all / the majority of Mr W's uncrystallised pot to Mrs W.

As such, upon receipt of the initial research conducted by FCFP, Mr W would have had to postpone / cancel the existing divorce negotiations without having confirmation at that time that a proposed transfer of only uncrystallised funds would be possible. It is unclear whether Mr W would have been willing to take this chance, factoring in the additional costs and delays this would have caused, without any certain benefit.

I have considered Mr W's point that Mrs W moved towards his position during the negotiations and as such this demonstrates he would have been able to move the split of his pension benefits in his favour. However, I do not consider this a reasonable or safe assumption. I accept that uncrystallised fund would have been attractive to Mrs W as these could provide an increased tax-free lump sum. However, as part of any further negotiations regarding this it is entirely possible Mrs W would have countered this argument with the fact that transferring uncrystallised funds also benefited Mr W by reducing / limiting a potential future lifetime allowance charge. As such I do not consider it clear that further negotiations, with all the relevant information available, would have materially impacted the end result.

Overall, whilst I have concluded that FCFP should have provided Mr W with the information they had discovered about his pension, I believe the subsequent alternative chain of events which would need to have transpired in order for Mr W to secure a beneficial change to his divorce settlement is too long and uncertain for me to state that this would, more likely than not, have occurred.

As part of his complaint Mr W has also stated that he believes the advice fee he paid to FCFP during 2020 should be refunded. I however do not agree.

Whilst I have concluded FCFP should have provided Mr W with the additional research they carried out, the evidence on file is clear that this was additional research for which FCFP were not paid. In addition to this research FCFP also carried their usual administrative and ongoing advisory services for which Mr W paid his fee. As Mr W received the services for which he was paying his fee, I do not consider it reasonable to ask FCFP to return this.

As such, in line with what our investigator said in their findings, the only redress which is required of FCFP is an amount to cover the distress and inconvenience this issue has caused Mr W.

Given the sensitive and emotional nature of the issues being faced by Mr W at the time this issue occurred I have concluded the £650 amount already recommended by our investigator is fair and reasonable in this instance.

I appreciate that this is not the outcome that Mr W wanted, however I hope that the rationale above adequately explains why I consider this outcome to be fair and reasonable.

### **My final decision**

In line with the rationale above I am upholding this complaint and require Francis Clark Financial Planning Ltd to make the payment identified above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 April 2025.

John Rogowski  
**Ombudsman**