

The complaint

Mr H complains about that F2 Capital Ventures LLP advised him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP') which was then invested in high risk, unregulated investments. He says the advice was unsuitable for him and he believes this has caused a financial loss.

Mr H was advised by an appointed representative firm of F2's but for ease of reference however, I shall refer to the respondent firm as F2 throughout this decision.

What happened

Mr H was a member of his employer's DB pension scheme in which he had accrued almost 38 years of pensionable service. In 2017 he approached the administrators of the DB scheme to enquire about his benefits. On 11 October 2017, the administrators sent Mr H the information he had requested. The information showed that the cash equivalent transfer value of his DB benefits was £341,513.35 (a valuation guaranteed for three months until 17 February 2018) and that his preserved pension was £13,555.85 per year. Mr H also signed and completed the SIPP provider's (I shall call the provider 'C') application and transfer in forms on 14 October 2017. Mr H signed the DB scheme's discharge form on 5 November 2017.

Throughout this period of time Mr H was advised by another individual who purported to be a regulated financial adviser (I shall refer to this individual as Mr R). Mr R introduced Mr H to his business partner (an individual I shall refer to as Mr M). Mr M also purported to be a regulated financial adviser.

Mr R and Mr M told Mr H that the investments he should invest in were regulated and safe.

On 7 December 2017, Mr M emailed a bespoke pension manager [which I will refer to as 'B'], attaching the 'transfer pack' (DB scheme information, B's application form, ID documents for Mr H). Mr M stated to B, "*[Mr H] has maximum service even though he's still employed he cannot achieve anything more than what is attached, hence he wished to transfer now effect the tax free cash and pay off his mortgage. So this should be fairly straightforward. [DB scheme] do need an IFA to confirm that [Mr H] approached them for Advice. Once through the client wishes to invest in [two property funds] and a London Stockbroker.*" [my emphasis]

On 5 January 2018, Mr M emailed B to give it further information about Mr H's DB scheme.

Later in January 2018, Mr M approached F2 and asked it to prepare a transfer value analysis report ('TVAS') for Mr H. Mr M gave information to F2 regarding Mr H and his pension entitlement.

F2 produced a TVAS report on 22 January 2018 and sent it to Mr M. The report contained no advice, only analysing Mr H's DB benefits at his normal retirement date ('NRD') against a generic pension plan. Along with the report, F2 sent Mr M: -

- its standard client agreement (to be signed by Mr H);
- a letter of authority to the DB scheme administrators (to be signed by Mr H);
- a retail client pension fact find (to be completed by Mr H);
- a SIPP bank account opening form;
- a pension trust bank mandate form and,
- a copy of C's transfer in form.

The email F2 sent Mr M containing the report and the forms stated, *"Please see the attached forms we will require to formally engage [Mr H] as a client to offer advice on the transfer of his pension. I have also attached a preliminary report. We need in particular the attitude to risk questions asked in the fact find. The request for the transfer needs to be with [the DB scheme administrator] before 17 February to maintain the transfer value given, and we will need to send the application to [the SIPP provider] to set up the SIPP. I have asked the [sic] to draw up the Deed and will let you have this shortly along with their HNW [high net worth] and or Sophisticated Investor declarations."*

On 24 January 2018, F2 sent Mr M the SIPP (trust) Deed and the two declarations he had previously mentioned. F2 said the Deed was 'urgent' as it was needed to set up the SIPP. F2 also told Mr M that C would only work 'off the originals' and to *'please make sure [Mr H's] signature is witnessed by an independent party.'*

On 25 January 2018, Mr H signed F2's client agreement.

On 31 January 2018, Mr H signed C's Statement for Self-Certified Sophisticated Investors and its Statement for Certified High Net Worth Individuals.

On 14 February 2018 C let F2 know what Mr H's SIPP membership number was and what the name of the SIPP would be. In response, F2 asked C to arrange an illustration, enclosing C's completed New Illustration form which showed that the product Mr H wanted was C's Bespoke SIPP, that F2 was the adviser and that its fee was £3,000. On the same day, F2 wrote to the DB scheme administrators enclosing his completed member discharge form (dated 5 November 2017) and also confirming that Mr H had received advice. Mr H had ticked the box on the discharge form that said, *'A statement from my FCA authorised adviser confirming I have obtained appropriate independent advice is enclosed'*.

Also on 14 February 2018, F2 wrote to Mr M to let him know that the scheme administrators had said they would accept the confirmation of advice in the form of an email which F2 said it would send once it had the SIPP number. F2 also said it would speak to Mr H 'at some point' and that it had his home and mobile number. F2 also mentioned that the mention of its £3,000 fee on the SIPP application had been crossed out despite it appearing (on the front) of the TVAS.

On 16 February 2018, Mr M wrote to F2 and said, *"I confirm that [Mr H] is simply not prepared to pay for any investment advice or services from [F2] other than the Pension Transfer Report for £3,000. He already has to pay [Mr R] and I and [C] in respect of the making of the pension transfer and investments. Therefore he does not see the need to pay extra for advice from your firm as well. **He had already decided to transfer his pension and chosen investments well before your firm became involved** (at the insistence of [B]). Your role is to satisfy the requirements of [C] and that is it. To be clear, [Mr R] and I and [B] will share commissions in connection with the investments. I am sorry that on this occasion I cannot do more."* [my emphasis].

Also on 16 February 2018, C sent the DB scheme administrators Mr H's completed discharge form, a deed of appointment for member trustees, a master trust deed, Mr H's

identification documents and the rules for C's private pension. C also provided Mr H's bank details. The signed deed of appointment had been witnessed by Mr R.

Mr H's DB scheme was transferred to C on the same day.

C sent F2 illustrations for Mr H on 19 February 2018.

On 21 February 2018, C sent F2 a copy of the letter it was sending to Mr H admitting him as a member trustee.

On 6 March 2018, C emailed F2 to say that it had sent Mr H an application form so he could request his 25% tax free cash. C also said that as the transfer was now complete it would be arranging F2's adviser charge to be paid.

On 15 March 2018, Mr H partially completed F2's retail client information form and its attitude to risk ('ATR') questionnaire. No details were given by Mr H on the form as to his income, assets, or any existing investments. Mr H ticked a box which stated his net worth was between '£250-£500k' and another to describe himself as inexperienced as an investor. Mr H's ATR was assessed to be twelve on a scale of one to twenty or 'progressive'.

On 22 March 2018, F2 sent Mr H a Suitability Letter/Report as well as an illustration from C. The Suitability Report advised on the suitability of the two non-standard investments Mr H wished to make within his SIPP. The report was based on Mr H's stated 'progressive' ATR as well as the fact he had signed forms stating he was a high net worth individual and a sophisticated investor. The report noted that Mr H held substantial investments and property assets and that his SIPP formed only a relatively small portion of his overall wealth. F2 said the investment decision was motivated by the opportunity to maximise returns and enhance Mr H's retirement benefits. The report went on to acknowledge that there had been detailed conversations between F2 and Mr H concerning the investment choice and that the critical yield of 6.83% cited in the TVAS was achievable for someone whose ATR was progressive. F2 also cited the risks associated with making high risk investments but confirmed that Mr H was aware of them and thus was comfortable with proceeding to invest £100,000 each into two separate investments. The report further noted that upon the transfer of his DB scheme to the SIPP, Mr H had taken 25% of it as tax-free cash to clear his mortgage.

On 23 March 2018, Mr H completed two of C's non-standard asset questionnaires – one for each of the investments he wanted to make from with his SIPP.

On 29 March 2018, C advised F2 that for the SIPP to hold more than 50% of its value in non-standard assets, its chief operating officer was required to sign off the permission. C said to F2 that its chief operating officer had queried why such a high level of non-standard investments were proposed for Mr H. So, C asked F2 to obtain evidence that, if the investments Mr H intended to make did not go according to plan, he would be able to absorb any potential losses. F2 referred C's query to Mr M and on 3 April 2018 Mr H emailed F2 and C and said, *"Following my recent request to invest 75% of my pension fund into Non-Standard Assets I have completed and signed a High Net Worth Statement which I believe demonstrates that I am able to receive such financial promotions that are considered a non-standard asset. I am also very comfortable investing in such and having invested this way am happy that it will not affect other investments and assets I have as it does not form part of my major assets that I hold. Please accept this as my instruction to invest and that you will carry out my wishes as initially instructed."*

On 19 April 2018 Mr H made a £100,000 investment in property in the form of a loan note and on 27 April 2018 he made a second £100,000 investment in overseas property also in the form of a loan note. Mr H's SIPP went on to be managed by 'B'.

In May 2018, Mr H completed an application to open a personal trading account with a stockbroker I shall refer to as S. The form required him to record his personal circumstances. These were: -

- he was aged 55 and married.
- He was employed full time with a monthly net income of £3,500.
- He owned his own home with his wife, valued at £350,000 with no outstanding mortgage.
- He had £50,000 held in cash, £200,000 in gilts, bonds and collective investments and had a SIPP worth £200,000.
- He said he had a 100% capacity for loss, good investment knowledge, and had carried out share dealing transactions.
- His investment objective was noted as 'balanced' and his overall ATR as 'high risk'.
- In his own words, Mr H wrote, in response to the question, 'What do you understand to be the main risk associated with share investments?', "*I could lose my investment.*"
- In response to some statements on the form about the risks around leveraged trading, Mr H wrote, "*I could lose more than my initial margins*".

In around April 2019, Mr H moved to a different wealth management company. On its application form he stated that his annual income was £42,300 per year and that he had £20,000 in savings. No other investments were mentioned. Mr H also ticked a box to say his investment experience was 'limited'.

In June 2021, Mr H was told that one of his £100,000 property fund investments had been declared illiquid and an administrator appointed.

In February 2023, Mr H complained to F2. When no response was received from F2 to his complaint, Mr H complained to the Financial Ombudsman Service on 28 March 2024.

F2 issued its response to Mr H's complaint in May 2024. It said it had never had direct contact with Mr H and had not provided him with any advice to transfer his DB scheme. In respect of Mr H's complaint about the investments he made being unsuitable for him, F2 said that it had not introduced Mr H to them and that he himself was well aware that they were high risk who had claimed to have undertaken his own due diligence about them.

One of our Investigators looked into Mr H's complaint for him and during the course of her investigation, Mr H told our Investigator that he was unhappy with the advice he had received to transfer and that he had first realised there was a problem in June 2021 which was when he received a letter regarding his £100,000 overseas property investment that had gone into administration. Mr H also said that he had never met with F2 as everything had been done by Mr M and Mr R. Mr H said F2 had reassured him that even though the funds he had invested in weren't regulated, it would protect/guarantee them.

Our Investigator looked into Mr H's complaint and recommended that it was upheld. She said F2 had provided Mr H with unsuitable advice to transfer his DB scheme and that the underlying investments were too high risk to be suitable for someone with Mr H's circumstances.

Mr H accepted our Investigator's findings but F2 didn't. It responded to say it had never advised Mr H to transfer his DB scheme nor had it ever met him. It said the TVAS was only ever provided to Mr H's advisors – Mr M and Mr R – and that it was a mechanical comparison exercise based on information it had been given. F2 said that the TVAS contained no advice and that Mr H had not been a client at the time of the transfer. F2 also

said that it had not been involved in promoting or selecting the investments Mr H made. F2 also provided some additional evidence in support of its statements.

Our Investigator thought about what F2 had said but wasn't persuaded to change her mind. She said that as a regulated financial business, F2 should have refused to advise Mr H as it had done in the TVAS. She said F2 had not been forced to advise Mr H and could not understand why it had agreed to do so but as it had provided the confirmation of advice to the DB scheme it was responsible for the unsuitable advice provided to Mr H.

The complaint was passed to me and I issued a provisional decision earlier this month where I explained why I thought that this was a complaint that should not be upheld. I made the following provisional findings: -

“Mr H's complaint

Mr H has complained that Mr R and Mr M told him that they were regulated financial advisors. When he realised that they were not in fact regulated he says he was reassured that a regulated advisor, in the form of F2, was involved and was overseeing the transfer and subsequent investments he made. As a consequence of being told about F2's oversight, Mr H says he was comforted and had no reason to disbelieve what he was told about the nature of the investments he went on to make.

Mr H has also said he was given a TVAS, the purpose of which was to provide information about the possible transfer of his DB scheme. Mr H says that in hindsight he should never have been advised to move his DB scheme. He also says that he was unaware that the investments he made were unregulated and that he was told in 2021 that one of them was lost.

The transfer of Mr H's DB scheme

I have purposely set out the sequence of events in some detail above. I have done so in order that the parties can see that I have understood what happened and when, as well as which party was responsible for what.

From what I have set out above it can be seen that the transfer of Mr H's DB scheme was well progressed before Mr M approached F2 and asked it to prepare a TVAS. It was Mr M that gave F2 the information regarding Mr H and his pension entitlement. By his own admission, at no point did Mr H have any contact with F2. F2 has also said the same so I fail to understand why it said in its suitability letter that there had been 'detailed' discussions between them.

I've read the TVAS and am satisfied that it contains no advice about whether Mr H should transfer his DB scheme. As Mr H himself says, the purpose of the TVAS was to provide information and I am satisfied that that is all it did. The TVAS was dated 22 January 2018 and in its introduction it stated, "The purpose of this analysis is to provide information... the analysis does not, on its own, show whether or not transferring your benefits is advisable...it does however, give an indication of the likelihood of being able to match or exceed the benefits provided by your existing scheme..." The report was sent by F2 to Mr M; F2 did not send it to Mr H. And I note that the report was only obtained at the behest of B.

Thereafter, prior to the transfer proceeding on 16 February 2018, there were a handful of emails between F2 and Mr M, C and the DB scheme administrator – as set out above. Also on 16 February 2018, in response to F2's query about its £3,000 fee being crossed out on the SIPP application, Mr M wrote to F2 to state in no uncertain terms that Mr H was not prepared to pay for any advice from F2 and that he had already decided to transfer his DB

scheme – and had chosen his investments – well before F2 became involved. The letter also makes it clear that F2 only became involved at the insistence of B and to satisfy the requirements of C. So, I think this letter is unequivocal evidence as to the nature of F2's involvement in the transfer. It's role was solely confined to the provision of the TVAS and it was not engaged in any way to advise on the transfer.

Whilst it is not altogether clear to me that Mr H is in fact alleging that F2 provided him with unsuitable advice to transfer his DB scheme, if he is then I am satisfied, for the reasons I've given here, that there is no evidence that any such advice was provided. I appreciate that Mr H was advised to transfer his DB scheme – by Mr M and Mr R – however, this complaint is not about anything they did or didn't do. I can only look here at the actions of F2 and I am satisfied that I've seen no evidence it advised Mr H to transfer his DB scheme.

And whilst I've noted that Mr H has said he was reassured that F2, a regulated adviser, was overseeing the transfer he has not said who reassured him. I have certainly seen no evidence that F2 did so. I am not without sympathy for the position Mr H now finds himself in but I can't, in all reasonableness, find that F2 advised Mr H to transfer his DB scheme.

The investment advice

Mr H invested a considerable portion of his CETV in two, unregulated investments. One of those investments has failed and he has suffered a total loss. Mr H says he should never have been advised to make those investments and was unaware when he did so that they were unregulated (and therefore, high risk). Mr H has said that F2 reassured him that even though the funds he had invested in weren't regulated, it would protect/guarantee them. As I have said above, both parties to this complaint have said they had no contact so it unclear to me where the reassurance Mr H has referred to emanated from. Furthermore, in the suitability report F2 made it clear that both of Mr H's chosen investments were classified as speculative and were not protected by the Financial Services Compensation Scheme ('FSCS').

I refer again to the sequence of events above. It can be seen that after the transfer of the DB scheme to the SIPP, F2 received three emails from C and that Mr H partially completed its retail client information form and its ATR questionnaire (although it is unclear from the evidence I have seen when he sent these to F2). F2's next engagement comes in the form of the suitability letter it sent Mr H on 22 March 2018.

It is unclear to me, given the letter dated 16 February 2018 from Mr M, why F2 wrote the suitability letter. It was clear from what Mr M had said that F2's role was confined to the provision of the TVAS and that it would be paid £3,000 for its production and for nothing else. Why, post-transfer, F2 produced a suitability report for Mr M is confusing. F2 itself has proffered no explanation as to why either. But a brief report was indeed provided, much of which was out of date because it commented on the suitability of a transfer that had already occurred. But in addition to doing so F2 also commented on the suitability of the investments Mr H proposed to make and, in so doing, strayed into advising Mr H.

F2 has said that it did not introduce or promote any investments to Mr H, nor was it retained or remunerated to do so; I don't disagree with F2 about this. Despite this, I do think that some of the language used by F2 in the report did stray into the language of advice and that using it meant it did advise Mr H as to the suitability of the investments he had decided to make. F2 has argued that the advice contained in the letter relates only to the (out of date) transfer of the DB scheme and not the investments but I am unable to agree. I say this because F2 made the following comments in the report: -

“Given your risk profile and the level of due diligence carried out I can confirm that given your attitude towards risk and your investment requirement, that it is appropriate to invest £100,000 in each, via your SIPP.”

*“We ...feel that **the investments are suitable for you** and your requirements.” [my emphasis]*

In both these statements, F2 is advising Mr H about the suitability of the investments he wanted to make. I accept that F2 hadn't promoted them to Mr H and I accept that it's advice on the investments was based on Mr H's stated ATR and the sophisticated investor and high net worth client forms he had completed. Regardless of either, however, I think both of the above statements can be said to be advisory in nature.

The reality of Mr H's circumstances was such however, that I think both the investments were unsuitable for him. I've thought about whether, at the point it prepared the report, F2 should have reasonably been on notice that not all appeared to be what it seemed with Mr H's financial circumstances. By that I mean that, on the one hand, Mr H had held himself out as a high net worth individual and a sophisticated investor but on the other, there were signs he was neither.

Specifically, I can see that Mr H completed F2's client information form on 15 March 2018, which was a week or so before the suitability report was issued. Whilst much of that form was left blank by Mr H, he did tick a box to say his net worth was between £250-£500k which is somewhat at odds with the information F2 had to hand that he was a high net worth individual. Mr H also ticked a box which said he was an inexperienced investor and that his ATR was 12 on a scale of one to twenty. Both were somewhat at odds with the statement he'd signed to say he was a sophisticated investor.

I would expect someone with a high medium/twelve out of twenty ATR rating to be able to demonstrate some previous investment experience but there was no evidence (save for the self-certification forms he had completed) that Mr H had any. There was nothing provided by Mr H on F2's client information form to support the conclusion that he was an individual with a 'progressive' ATR and who was willing to take the investment risks associated with the unregulated investments he was planning to take. Given the conflicting nature of the information it had to hand, I think that before it advised Mr H that the unregulated investments he had chosen to invest a significant portion of his SIPP into were suitable for him, F2 should have questioned Mr H further about his ATR.

So, I think that Mr H's ATR, given his actual personal circumstances at the time – circumstances F2 failed to obtain – should more reasonably have been assessed as no more than low-medium.

F2 was required by the regulator to have due regard to Mr H's information needs and to communicate with him in a way that was clear, fair and not misleading whilst at all times having his best interests to the fore. F2 needed to fully understand Mr H's financial circumstances, his ATR and his objectives if it was going to advise about the suitability of the investments he wanted to make, however, I can't see that it made any real attempt to do so. Instead, F2 advised Mr H that the investments he wanted to make were suitable for him without first seeking to understand what his circumstances actually were, why he had provided conflicting information and what he needed.

I think the suitability report was carelessly and poorly drafted. Much of its content was irrelevant because it was out of date by the time it was sent. In reality it should have been redrafted by F2 before it was sent to Mr H if it sent it at all. As I've said already, Mr H had decided several months previously where he wanted to invest his SIPP (as set out by Mr M

in his letter to F2 of 16 February 2018) so I don't think that F2 needed to provide Mr H with the suitability report at all. It certainly doesn't seem to have been required by any of the other parties involved or by Mr H himself. It seems to me that F2 had either gone beyond its brief or provided a report to Mr H that it may have intended to send to him prior the transfer proceeding. Either way, I fail to understand why it concerned itself with doing so.

But, given that it did, and in so doing strayed into advising Mr H, then it needed to have due regard to Mr H's information needs and to act in his best interests. For the reasons I have given here, I don't think F2 did that. I think it had enough information to hand to question why someone who had provided information to indicate he may indeed not actually be a high net worth individual, and who said they had no investment experience, wanted to invest a sizable portion of their pension fund in unregulated investments.

It follows that I don't think F2 acted in Mr H's best interests in respect of the advice it gave him about the investments he wanted to make. Regardless of any preconceived ideas Mr H may have had about how he wanted to invest his fund, F2 was the regulated party here and it should have had due regard to Mr H's information needs and treated him fairly. I don't think it did so and its abdication of duty in respect of knowing its client before advising him meant it provided Mr H with unsuitable advice regarding his investments. Mr H was neither a high net worth individual or a sophisticated investor and there were warning signs at the time that were available to F2 that his circumstances were not all they seemed. Yet F2 ignored them and proceeded to advise Mr H that the investments he intended to make were suitable.

F2 wasn't there to just transact what Mr H might have thought he wanted. The adviser's role is to really understand what a client needs and recommend what is in their best interests. Ultimately, I don't think the advice given to Mr H by F2 was suitable.

Of course, I have to consider whether – had F2 suitably advised Mr H that the investments he wanted to make weren't suitable – he would've gone ahead anyway and proceeded against that advice; I have gone on to look at that below.

Would Mr H have gone ahead anyway?

I have no information about the working relationship between Mr H and Mr R and Mr M. I don't know what they told him or what they advised him. Nor do I know at what point it became apparent to Mr H that he wasn't being advised by regulated financial advisers. But from the information I have set out above, it seems that they advised him it was in his best interests to transfer his DB scheme benefits to a SIPP from which he was to make two investments, each of £100,000, into two unregulated overseas property investments which I understand were in the form of loan notes. And they advised Mr H prior to any involvement by F2.

I have thought carefully about the timeline of events here along with the evidence that speaks to Mr H's intent. I can see that as early as 7 December 2017, when Mr M emailed B to attach the transfer pack, he told B that once the transfer was "through, the client wishes to invest in [two property funds] and a London stockbroker". This says to me that Mr H had already decided – or had already been advised – to make the two unregulated investments he went on to make. As I said, I don't know what he was told by Mr M and Mr S but it is reasonable to assume from the contents of this email that the investment strategy had been settled upon.

Then, prior to the transfer taking place, I can see that Mr H signed C's Statement for Self-Certified Sophisticated Investors and its Statement for Certified High Net Worth Individuals. Both were signed on 31 January 2018 and were required as a result of the nature of the investments Mr H wished to make. Both forms contained a declaration that stated Mr H

understood he could receive promotions that weren't approved by the Financial Conduct Authority ('FCA') and that he may lose significant rights, including the right to complain to either this Service or the FCA or to seek compensation from the FSCS.

The Self-Certified Sophisticated Investor declaration required Mr H to sign to say he agreed at least one of the following applied to him: -

- 1. That he was a member of a network or syndicate of business angels and had been for the last six months;*
- 2. That he had made more than one investment in an unlisted company in the previous two years;*
- 3. That he had worked in the two years prior to signing the form in the private equity sector or in the finance sector for small and medium enterprises.*
- 4. That in the previous two years he had been the director a company with an annual turnover of at least £3m.*

From the evidence I have seen, none of these scenarios applied to Mr H's circumstances. The Statement for Certified High Net Worth Individuals declaration required Mr H to sign to say he agreed at least one of the following applied to him: -

- 1. He had during the previous financial year an annual income of £100,000 or more.*
- 2. He held throughout the preceding financial year net assets to the value of £250,000 or more excluding his primary residence or any rights under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or any benefits such as a pension.*

From the evidence I have seen, neither of these scenarios applied to Mr H's circumstances.

Given Mr H's actual circumstances as they were known to him at the time, it is unclear to me why he signed either of these declarations.

I can then see that in Mr M's email to F2 on 16 February 2018 that he stated that Mr H "had already decided to transfer his pension and chosen investments well before your firm became involved". This further indicates to me that Mr H's investment decision had already been made.

Finally, as I set out above, C queried the high level of non-standard investments for Mr H and asked F2 to obtain evidence from Mr H that if the investment did not go according to plan he would be able to absorb any potential losses. And, as I set out above, Mr H responded to that request by stating that he'd completed and signed a high-net worth statement which he believed demonstrated that he was able to receive financial promotions that were non-standard. He went on to say he was comfortable to invest in such investments and that the investments he was making did not form part of the major assets he held. He finished by saying "Please accept this as my instruction to invest and that you will carry out my wishes as initially instructed."

All of this evidence says to me that Mr H had decided, prior to any involvement by F2 that he was going to proceed with making two unregulated investments. And when he was challenged about the potential losses he could face, he doubled down on his decision to proceed, instructing C to carry out his wishes. Given that he did so, I think it is reasonable to assume that even had F2 advised Mr H that the investments he wanted to make weren't suitable for someone with his actual circumstances he would have gone ahead anyway. It seems to me that Mr H's mind had been made up for a number of months and that he was not going to be dissuaded from proceeding.

Furthermore, I think the fact Mr H signed the two declarations, warranting on each of them that at least one of the circumstances applied to him such that he was both a sophisticated investor and a high net worth individual, is also significant. I say that because it appears to me, at least from the evidence I've seen, that none of the circumstances I've set out above reflected his own. That Mr H signed the forms regardless speaks to me of his determination to proceed with the investments he made.

So, having considered the circumstances from the time of the advice, I think it is reasonable to say that Mr H had already made his mind up about how he wanted to invest his SIPP before F2 was engaged. I think he was intending to proceed regardless of the recommendation F2 made in its suitability report. So, whilst F2's suitability report and its advice could have been much better I don't think it would have changed the outcome in Mr H's particular case. I say this principally because even when Mr H's investment choice was challenged by C (after the suitability report was issued) he made it clear he wanted to proceed regardless.

Taking all the circumstances of Mr H's complaint into account, and for the reasons I have given here, I don't think this is a complaint that I can fairly or reasonably uphold."

F2 provided no substantive response to my provisional decision.

Mr H replied and said that he was disappointed with the outcome but couldn't see how anything he said could change it. Mr H said that regardless of the advice F2 gave him, I felt that he would not have taken any notice and would have carried on with what had been arranged for him. Mr H said he truly disagreed with that and that he didn't know if he would have done anything differently given all the advice he received at the time. Mr H said the fact remained that F2 didn't give him any advice and failed in its requirement to do so thus he was denied the opportunity to decide whether or not to proceed. Mr H said that my (provisional) decision carried severe consequences for him and that it was very disappointing that it was based upon an assumption.

The complaint was returned to me to make 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.

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

The applicable rules, regulations and requirements

What follows below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of F2's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must 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.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

Having considered all of this and the evidence in this case, and with regret for the disappointment I appreciate my decision will bring to Mr H, I remain of the view that I am unable to uphold this complaint. I'll explain why.

I do of course understand Mr H's disappointment with the outcome of his complaint and he is correct in his summation of my view that regardless of the advice he received from F2 about the suitability of the investments in his SIPP I think that he still would have proceeded with them. I won't repeat here my reasons for that view as I set them out, at length, in my provisional decision but I've seen nothing by way of evidence from either party since making my provisional decision that causes me to change my mind. But I understand that Mr H disagrees and I acknowledge that he says he doesn't know if he would have done anything differently given all the advice he received at the time. Unfortunately for Mr H, in the absence of any new evidence to the contrary I am unable to fairly depart from the reasons I gave provisionally as to why I think he would have proceeded to make the investments he did even if F2 carried out a flawless advice process for him.

I am not entirely sure what Mr H means when he says that F2 didn't give him any advice. If he means in relation to the actual transfer of his DB scheme then I agree with him about that and I explained provisionally why I thought that was the case. If Mr H is referring to the investments he went on to make, I again refer to what I said in my provisional decision which is that I think, in that respect, F2 did stray into advising Mr H. I explained there why I thought that was the case. I also agree that there were shortcomings in that advice and I, again, set out provisionally what they were.

I note that Mr H thinks that F2's failure to provide advice denied him the opportunity to decide whether he wanted to proceed or not. If Mr H means in relation to the DB transfer itself, as I said provisionally, F2 was not engaged to provide him with advice. He was advised to transfer his DB scheme by Mr M and Mr R. If F2 was not engaged to provide advice it cannot be said to have 'failed' to do so.

If Mr H actually means F2 failed to provide him with advice about his investment selection, then I remain unable to agree with him about that because, as I have said, F2 did provide him with advice about his investment selection. But, as I said provisionally, even if F2 had provided a flawless advice process to Mr H in respect of his investment selection, and even if it had told him that it didn't think they were suitable in his circumstances, the other contemporaneous evidence strongly suggests that Mr H would have proceeded regardless and that his mind had already been made up. It also follows that I don't think any shortcomings in F2's advice denied Mr H the opportunity to decide whether he wanted to proceed. By the time the suitability report was issued by F2 the transfer had already been made and, as I set out provisionally, the investment choice had been made too. And there were opportunities after that for Mr H to reflect on whether he wanted to proceed – specifically I am thinking about the email he sent to F2 and C on 3 April 2018.

I appreciate that this decision carries serious consequences for Mr H which is why I have taken great care to consider and set out all the facts and to explain in detail the reasons for it. I understand that Mr H is disappointed and feels that I have based it on an 'assumption' but I would like to assure him that I have not. I have looked at all the evidence I have to hand, given it due consideration and thought about what most likely happened based upon

what I have seen and all the circumstances of his complaint. I naturally understand Mr H's disappointment but I can't, for the reasons I have given here and in my provisional decision, fairly and reasonably uphold his complaint.

My final decision

My provisional findings now form part of this, my final decision. My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 August 2025.

Claire Woollerson
Ombudsman