

## The complaint

Mr C complains that in 1993, Evelyn Partners Financial Planning Limited ('EP') gave him unsuitable advice to transfer his preserved benefits held in an occupational defined benefit ('DB') pension to a personal pension.

The advice was provided by a business ('Adviser A') which EP many years later became responsible for answering complaints about. So for ease, in this decision I'll mainly refer to EP except where I think it's helpful to differentiate.

Mr C has a professional representative. But again, for ease I'll refer only to Mr C.

## What happened

Mr C was a member of an occupational DB scheme. A DB benefits statement dated August 1993 said it would provide Mr C with, amongst other things, an annual income of £4,723.

Mr C says Adviser A advised him to transfer his DB pension benefits to a personal pension with 'Provider R'. This transfer took place in September 1993. Provider R set up two personal pensions for Mr C under account numbers ending '932' and '049', and his DB pension benefits of about £27,496 were transferred into pension 049.

Provider R sent Mr C annual statements over the years. The copies Provider R has been able to share with me show that between 1999 and 2022 pension 049's value overall rose steadily from £45,371 to £210,663, barring slight falls in around 2008 and 2016.

In July 2022, Mr C complained to EP that the 1993 transfer advice hadn't been suitable for him, saying it hadn't been in his best interest and left him worse off. He said the advice had not been reviewed as part of the industry-wide Pensions Review that had taken place many years earlier, as he'd not received any letters about that and there was no evidence to suggest the advice had been reviewed. So EP should now review the advice and compensate him. In this complaint, Mr C quoted pension account number 932 but said this was only so EP could identify him and it shouldn't limit its investigation to this pension.

EP's final response of September 2022 rejected the complaint, saying no transfer was made into pension 932 and there was no evidence that EP provided the advice complained of.

In January 2023, Mr C closed pension 049 and transferred its balance of £237,584 to a different pension with Provider R.

In August 2023, Mr C pointed out to EP that its September 2022 final response hadn't addressed pension 049. EP's further final response of November 2023 rejected this complaint, saying there was no evidence pension 049 had been arranged on EP's advice.

Mr C brought his complaint about the suitability of the 1993 advice to the Financial Ombudsman Service in February 2024. His complaint form referenced pension 932, so EP said he'd come to us too late because he'd done so more than six months since EP's final response of September 2022 had addressed pension 932. But one of our Ombudsmen

decided Mr C's complaint about pension 049 had been referred to us in time, as he concluded Mr C simply made an administrative error by referring to pension 932 instead of 049 in his complaint form, so his complaint about pension 049 was referred to us within six months of EP's final response of November 2023 which had addressed pension 049.

One of our Investigators considered Mr C's complaint about the 1993 transfer advice in relation to pension 049. They acknowledged little evidence was now available, including about what body Adviser A was regulated by at the time. But the available evidence showed the advice was given by Adviser A, a firm EP was now responsible for. And that at the time, it would've been thought that transferring Mr C's DB pension to pension 049 would likely provide higher benefits in future. And that his age meant he had time to make investment returns and recover any losses, so his attitude to risk ('ATR') was likely to have been at least 'medium'. She said EP likely provided Mr C with an illustration showing potential growth rates, so he was likely advised, and proceeded, on the basis he was unlikely to be worse off in retirement by transferring. She concluded that the recommendation to transfer to 049 wasn't unsuitable for Mr C, so EP didn't need to do anything more.

Mr C disagreed. In summary, he said EP should've reviewed this transfer as part of the Pensions Review, which required firms to keep evidence indefinitely - so any lack of evidence should go in his favour. And that EP should be able to demonstrate who Adviser A had been regulated by. His ATR had been 'low', and it wasn't fair to say his age at that time allowed him to recover investment losses caused by the unsuitable advice; the driver here should be that unsuitable advice had been given followed by a failure to include that advice in the Pensions Review and retain evidence. Had EP kept evidence, our Investigator wouldn't need to speculate about what had likely happened.

As agreement couldn't be reached, this complaint was passed to me. I asked EP for more information. It said pension 049 was arranged by Adviser A and EP only became liable for this advice via a series of acquisitions that started in 2015. It appeared that Adviser A hadn't kept Pensions Review records, or at least none EP was aware of or had been provided with, so EP couldn't confirm if pension 049 was included in the Pensions Review.

I also asked Mr C for further information. He said the 1993 advice came about after an 'ex-union member' approached him at home about his pension and a redundancy payment he'd received. The arranged meeting discussed his pension and possible retirement age, and his objectives had been to stay financially secure in retirement as he wasn't looking to lose money from his pension. Mr C provided information about his circumstances at that time, saying he'd not been a risk taker and the risks were never discussed with him. Instead, he said that at that time, *"the transfer seemed favourable, a good return"* and *"the projections seemed very stable. I believed it was the best option and that I would be more secure."*, and he wouldn't have transferred if not for the advice. He said he complained to EP after seeing his professional representative's online advert and then engaging them in 2021. And he'd transferred pension 049 in January 2023 as he retired and wanted it in drawdown.

In addition, I asked Provider R for information about pension 049. It said the original transfer amount of £27,496 was the only lump sum payment it received and that its records had Adviser A listed as the *"servicing adviser"* on pension 049 from 16 September 1993 until July 2015 when it was then recorded as EP until 2022.

I issued a provisional decision in which I explained why I thought Mr C's complaint had been brought in time and that EP no longer disputed it was now responsible for the 1993 advice. The provisional decision went on to explain why I thought Mr C's complaint should be upheld and what EP should do to put things right.

Mr C accepted the provisional decision. In addition, he said that when they'd approached him at home in 1993, the ex-union member had brought along an adviser. But Mr C now couldn't be certain of the name of that adviser, recall what paperwork he was given at the time or find any documentary evidence from then. EP should have retained Pensions Review records. And Provider R had said Adviser A were the advisers named on the plan when it was transferred in 1993 and the same financial adviser when a further plan was set up a month later.

EP disagreed with the provisional decision. Broadly, it said:

- EP had previously asked Mr C if he held any documentary evidence relevant to his complaint, and he'd said he didn't. Yet he later provided the August 1993 DB benefits statement to our Service, so he may have other documentation he's not shared.
- Mr C's complaint had been brought too late for our Service to be able to consider its merits. Because the DB benefit statement made Mr C aware of what annual income his DB pension would provide, and Provider R's annual statements would have made him aware what annual income his personal pension could then provide. As his complaint was that the transfer left him worse off, these documents meant he ought to have been aware of his cause for complaint many years ago.
- EP took on Adviser A's liabilities when it acquired its business. But there was no evidence to prove Adviser A had advised Mr C in 1993 to transfer his DB scheme benefits into pension 049. Because the commission payments our Investigator had relied on weren't relevant, as they related to pension 932 not pension 049, were made almost twenty years after the alleged advice, and were for contributions made to the pension rather than advice. Further, EP hadn't received any ongoing trail commission, which it would have if Adviser A had provided the advice. And the 'commission' section in the 1993 application forms for pensions 049 and 932 were left blank. EP accepted that Provider R's records showed Adviser A listed as the "*servicing adviser*" on pension 049 from 16 September 1993, but thought this only showed a link between Mr C and Adviser A - EP didn't think it showed the Adviser A had advised him but suggested Adviser A only acted in an administrative capacity for Mr C.
- EP pointed to a separate but in its view similar complaint, in which one of our Investigators said there was no evidence for him to be certain that a firm EP was now responsible for had provided the 2009 advice the consumer had complained about. EP said Mr C hadn't provided any evidence of the advice he was complaining about and there was no record of Adviser A undertaking a Pensions Review. So it was more likely than not that Adviser A hadn't provided the advice in question and therefore hadn't needed to review it.

I'm now in a position to make my decision.

### **What I've decided – and why**

#### Jurisdiction

The Financial Ombudsman Service isn't free to consider every complaint brought to us. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the FCA's Handbook of Rules and Guidance. DISP 2.8.2R sets out the relevant time limit rules; it says that, unless the business consents:

*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or*

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*unless the complainant referred the complaint to the respondent or the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*

*unless:*

*(3) in the view of the Ombudsman, the failure to comply with the time limits...was as a result of exceptional circumstances;*

I have independently considered whether Mr C's complaint about the 1993 transfer advice in relation to pension 049 has been brought within the six-month time limit. Having done so, I agree with my fellow Ombudsman's decision that it has been and I note this is no longer in dispute.

But as set out above, the six-month time limit is only one of the relevant time limits; the six-year and three-year time limits rules also need to be considered. So I've thought about whether Mr C's complaint about the suitability of advice in relation to pension 049 has been brought in time under these rules also.

It's likely this advice was given in 1993, since pension 049 opened in September 1993. This means the event complained of took place more than six years before Mr C first complained to EP about it in July 2022. So, this complaint's been brought outside the six-year part of the rule.

Therefore, I must consider whether this complaint has been brought within the three-year part of the rule. Under this, I need to consider not only when Mr C did become aware he had cause for complaint about the suitability of the 1993 advice in relation to pension 049, but also when he ought reasonably to have become aware he had cause for complaint about it.

In its response to the provisional decision, EP clarified that it had taken on Adviser A's liabilities when it acquired its business. But that it still disputed that Adviser A gave the advice in question here. It says there is no proof of this and that the link between Mr C and Adviser A demonstrated by Provider R's records was likely to be that Adviser A was only acting for Mr C in an administrative capacity, especially since there is no evidence of commissions being paid based on advice being provided – only contributions. I've thought about this matter carefully. I accept the evidence available to me is limited, but there is *some* evidence here, unlike in the separate complaint EP has pointed to. And where the evidence is incomplete, inconclusive, or contradictory, I must reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

EP points to an absence of evidence that commission on advice was ever paid. But I've seen that Provider R's records do list Adviser A as the "*servicing adviser*" for pension 049 around the time of the transfer. Further, I've seen nothing to make me think Mr C was experienced or knowledgeable about pensions, so I don't think it's likely that he himself simply decided to transfer this pension and took action to arrange that, without an adviser being involved and recommending that he do so. And it doesn't seem likely to me that if Mr C had himself simply decided to transfer or even been advised to do so by another firm, that he would have so soon after then simply have engaged Adviser A purely in an administrative capacity. Taking all this into account, on the balance of probability I think the most plausible explanation for the evidence available to me is that Adviser A provided Mr C with advice to transfer his DB pension to a personal pension.

As the advice was likely given in 1993 and Mr C has provided evidence that the ceding scheme was indeed a DB scheme, I think Adviser A's 1993 advice to Mr C took place during the period covered by the industry-wide Pensions Review.

But I've not been provided with any evidence at all to suggest that any Pensions Review letters were sent to Mr C; EP says it doesn't hold any such information, Mr C says he didn't receive anything, and Provider R's response to my questions doesn't suggest that any Pensions Review redress was paid into pension 049. Based on all this, I don't think any Pensions Review communications ought reasonably to have made Mr C aware he had cause for complaint about the 1993 advice.

I've thought about whether there was anything else that ought to have made Mr C aware he had cause for complaint about it, but I don't think there is. I know EP argues the annual statements ought reasonably to have made him aware of his cause for complaint, so I've thought about this. The August 1993 DB benefits statement says it would provide Mr C with an annual income of £4,723. And the value then transferred out of the DB scheme was about £27,496. The pension 049 statements Provider R has shared don't project an annual income, but they do set out the pension's overall value at the statement dates. And I've seen that this grew steadily with only minor falls in value during two periods of wider economic turmoil – but the value remained significantly more than both the amount of annual income the DB scheme would provide and the amount transferred out of the DB scheme. So Mr C's pension grew significantly, in line with what Mr C has said about his objectives and expectations at the time of the advice.

Further, I've not been provided with any evidence to suggest Mr C had any information that ought reasonably to have made him aware he had cause for complaint about the 1993 transfer advice more than three years before he did complain to EP.

Instead, it seems Mr C first became aware he had cause for complaint about this advice in around late 2020 or early 2021, because he says he saw his representative's online advert about transfers out of the DB scheme he'd been a member of, and I've seen that he first contacted his representative about this in January 2021.

Mr C first complained to EP about the suitability of the 1993 transfer advice in July 2022, and then again in August 2023 because its first final response hadn't addressed pension 049. Either way, I'm satisfied Mr C complained to EP within three years of becoming aware he had cause for complaint about the suitability of the 1993 transfer advice, and I don't think he ought reasonably to have been aware any earlier that he had cause for complaint about it.

Therefore, I still think Mr C's complaint about the suitability of the 1993 transfer advice in relation to pension 049 has been brought in time under the three-year part of the rules and so is a complaint our Service can consider the merits of.

So I've moved on to consider the merits of that complaint, which I'll now turn to.

### Merits

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. And as I say, 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*

The regulations about pensions, including those specifically about transferring a DB scheme to a personal pension arrangement, weren't the same in 1993 as they are today. To be clear, I'm not considering the advice with the benefit of hindsight. Instead, I am considering the advice against the background of the prevailing rules, regulations and requirements at that time, including what was considered good industry practice.

At the time of the advice, Adviser A was a member of the Financial Intermediaries, Managers and Brokers Regulatory Association ('FIMBRA'). The FIMBRA rulebook set out the expectations on members when giving advice in 1988. There were some additions and amendments in the subsequent years up to the transfer date in this case. For example:

Rule 4.2.1 required an adviser to take reasonable steps to obtain relevant information concerning a client's personal and financial circumstances in order to provide investment services.

Rule 4.3.1 required FIMBRA members to take all reasonable steps to satisfy themselves that the client understood the risks involved in a transaction.

Rule 4.4.1 required members to establish, based on their knowledge of the client and 'any other relevant information which ought reasonably to be known' to them, which types of investment that were the most suitable for them.

Further amendments to the guidelines specified that advisers should ensure their recommendations were made based on the best interest of the client, rather than any income the adviser may generate. And it should also have been clearly demonstrated that the beneficiaries' rights in the scheme were fully considered. So, EP should only have considered a transfer if it could demonstrate that the transfer away from Mr C's DB scheme was in his overall best interests. Having looked at all the evidence available, I'm not satisfied it was.

#### *Financial viability and suitability of advice*

The time passed means the documentary evidence is now unfortunately limited. Mr C argues that a lack of evidence, particularly Pensions Review evidence, should be interpreted in his favour to uphold his complaint. But what I'm considering here is the suitability of the advice he was given in 1993 regarding transferring his DB scheme benefits to pension 049. And EP not holding information about what Adviser A did under the Pensions Review doesn't mean I should simply uphold his complaint. As I've said, where the evidence is incomplete, I must reach my conclusions on the balance of probabilities.

I do have some contemporaneous documentary evidence, including a 1993 letter from Mr C's DB scheme setting out the scheme benefits and the 1993 application completed for Mr C regarding pension 049. In addition, I also have Mr C's recent testimony about what his circumstances and objectives were at the time of the 1993 advice, although I'm mindful that recollections can fade. From these, my understanding is that at the time of the advice:

- Mr C was age 31, married with one young dependent child, and in good health.
- He was employed with an annual income of about £14,000.
- He had a mortgage. Though he had no other debt, his mortgage and other household bills meant he had no savings or money to spare.
- His DB pension was his only pension provision. His only other asset was a redundancy payment he'd received.
- The monies transferred to pension 049 were to be invested in a 'With Profits' fund.
- His selected retirement age was 60.

The advice was given during the period covered by the industry-wide Pensions Review, so the rates the regulator published for Financial Viability Tests ('FVT') associated with that review are directly relevant here. The upper limit the regulator gave for a FVT was 10.9% a year for 28 full years to retirement.

For further comparison, the regulator's upper projection rate at the time was 13%, the middle projection rate 10.75% and the lower projection rate 8.5%.

I've noted that the FVT figure is broadly comparable with the regulator's middle projection growth rate at the time. And Mr C still had 28 full years until his selected retirement age. So EP might have felt that gave a personal pension fund sufficient time to grow and exceed the benefits from Mr C's DB pension. It follows that EP might have thought it was possible that Mr C could be better off by transferring his DB monies to a personal pension. So I think it's more likely than not that EP recommended that Mr C transfer his DB pension benefits into pension 049, and this is supported by Mr C's recent testimony that at the time of the advice, *"the transfer seemed favourable, a good return"* and *"the projections seemed very stable"*.

As I say, there is little documentary evidence available here and our Service has not been provided with any documentation that shows on what basis EP may have made its recommendation for Mr C to transfer. So I don't have copies of any fact-finding information EP gathered to determine Mr C's circumstances and objectives, or of any suitability report or other documentation setting out an analysis of the consequences and disadvantages of investing in the personal pension against remaining in the DB scheme. And I've seen nothing by way of a comparison of how the projected growth rates from personal pension 049 would compare against Mr C's entitlement from his DB scheme.

So it's not clear why or on what basis EP likely concluded that Mr C would benefit from transferring out of his DB scheme and into pension 049. And I've not seen any evidence to demonstrate whether that level of growth would have been enough to exceed the income Mr C's DB scheme would have provided him with at retirement.

Further, I also need to consider Mr C's capacity for loss. Based on Mr C's recent testimony, the DB scheme was his only pension provision, apart from his state pension. And while I accept that Mr C was at that time employed and with many years before retirement, his testimony is that at that time he had a mortgage on his home, little if any disposable income and no other assets apart from a redundancy payment he'd received. Though I don't know the value of this redundancy payment, or what Mr C did with it, I think it's nonetheless

reasonable to conclude that at the time of the advice, Mr C had little capacity to absorb loss if his pension investments suffered losses.

In addition, I've not seen anything to make me think that EP made clear to Mr C what the advantages or disadvantages were of him transferring. And there's little evidence that it made clear that by transferring out of his DB scheme he would be giving up a guaranteed and index linked income in retirement and instead would be investing in a product that was subject to investment risk and the volatility of the financial markets. This is supported by Mr C's testimony that he wasn't told about any risks at the time of the advice.

#### *Flexibility and income needs*

I've not been provided with any evidence to suggest that Mr C required flexibility in retirement. There's also no evidence that Mr C had a strong need for a variable income throughout his retirement. And while under the DB scheme, Mr C was entitled to an annual income of £4,723 from age 60, I've not seen that there was any steps taken to understand or discuss what his retirement income needs might be.

But in any case, Mr C was only 31 at the time of the advice and I've seen nothing to suggest he had concrete retirement plans then. He had decades before he needed to think about accessing his pension, so I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr C to give up his guaranteed benefits at that time when he didn't know what his needs in retirement would be. If Mr C later had reason to transfer out of his DB scheme, then he could have done so closer to his retirement.

#### *Death benefits*

I've not been provided with any information to make me think death benefits were discussed at the time of the advice. But in my view, the death benefits on offer through the DB scheme were good. The 1993 letter from Mr C's DB scheme says, for instance, that upon his death prior to retirement – and Mr C was only 31 at the time - his widow would receive an annual pension of £3,149 for life increasing in line with cost of living, and a lump sum of at least £16,948 (notionally increased each year) would be paid to his estate or his nominated beneficiary. That upon death after his retirement, his widow would still receive such a pension but it would be adjusted if Mr C had chosen to take a tax free cash lump sum. And that on death, each eligible child would receive an allowance of at least £859 per year, increasing annually.

These were, in my view, important benefits because Mr C was married with one young child at the time. These types of benefits were not generally present outside the scheme, and there's nothing to suggest that these benefits were highlighted to Mr C during the advice.

#### *Suitability of investments*

Based on the pension 049 application, it appears EP recommended that Mr C invest in a With Profits fund. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr C should have been advised to remain in the DB scheme and so the investment in a With Profits fund wouldn't have arisen if suitable advice had been given.

I note Provider R's records of Mr C's "*servicing advisers*" for pension 049 show that in December 2022 he switched from EP to a different financial adviser. And I'm mindful that Mr C transferred his pension again in 2023, albeit to a drawdown plan still with Provider R. So

EP may argue it shouldn't be held responsible for any losses to Mr C's pension which happened after these events. Having considered this, I think it's fair and reasonable in the circumstances of this complaint to hold EP fully responsible for all of the losses Mr C might have incurred. I say this because DISP App 4.4.2 R (and I'll come back to DISP App 4) uses the current value of the defined contribution ('DC') pension arrangement as the comparator (adjusted only for benefits already paid to the consumer and SERPS adjustments where applicable).

So the rule does not limit the losses to the point where the pension is moved elsewhere. However, I've thought about whether it's fair to limit the loss up to the point Mr C changed advisers in 2022 and/or transferred his pension again in 2023. But I don't think it is. In this decision, I've thought about whether Adviser A's (so, EP's) 1993 DB transfer advice was suitable for Mr C, and I don't think it was. If it had provided him with suitable advice, I think Mr C would more likely than not have remained in his DB scheme and his benefits would not have been exposed to any investment risk at all.

By moving to a personal pension arrangement, it was reasonably foreseeable that Mr C might change advisers, pension providers and/or investments in future – Adviser A couldn't reasonably expect that he would remain with the same adviser and in the same pension and investments until retirement. As a result of Adviser A providing him with unsuitable advice to transfer his DB pension benefits, Mr C's pension became subject to investment risk and/or losses. So, in the circumstances of this complaint I think it's fair and reasonable to hold Adviser A (that is, EP) fully responsible for all of the losses Mr C might have incurred.

### *Summary*

Taking all this into account, on the balance of probabilities I'm not persuaded that EP's advice was suitable for Mr C, or that it gave him all the information he needed in order to make an informed choice about whether or not he wanted to transfer. I think EP should've advised Mr C to remain in the DB scheme. I've considered whether Mr C would've gone ahead anyway but I don't see that he'd have insisted on transferring out of the DB pension, against advice to retain those benefits. Because I've not seen that he was an experienced investor, and this was a specialist area and so Mr C would've been dependent on advice. I can't see any reason why, if EP had advised him against transferring out of the DB pension and explained why it wasn't in his best interests, Mr C wouldn't have accepted that advice. And I think it's fair and reasonable to hold Adviser A (that is, EP) fully responsible for all of the losses Mr C might have incurred.

Therefore, EP should compensate Mr C for the unsuitable advice, using the regulator's DB pension transfer redress methodology.

### **Putting things right**

A fair and reasonable outcome would be for EP to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice to transfer out of the occupational DB scheme and into pension 049. I consider he would have likely remained in the occupational DB scheme.

EP should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

For clarity, Mr C retired in January 2023 at age 61. So, compensation should be based on Mr C taking these benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, EP should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
  - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mr C receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr C accepts EP's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid directly to Mr C as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), EP may make a notional deduction to allow for income tax that would otherwise have been paid. Mr C's likely income tax rate in retirement is presumed to be 20%, and neither party has disputed this. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

### **My final decision**

For the reasons set out above, Mr C's complaint about the suitability of advice to transfer his DB scheme benefits to pension 049 has been brought in time. And my decision is that this complaint should be upheld and that Evelyn Partners Financial Planning Limited should put things right for him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 January 2026.

Ailsa Wiltshire  
**Ombudsman**