DRN-3474133

The complaint

Mr and Mrs B complain an appointed representative of Sesame Limited gave them unsuitable advice to surrender money from two bonds they held and use the funds to invest in a high risk unregulated collective investment scheme (UCIS).

What happened

Mr and Mrs B's financial adviser was Mr W who worked for Munroe James Ltd – an appointed representative of Sesame between 29 September 2008 and 25 November 2010.

Mr and Mrs B say Mr W suggested they invest in a UCIS with Eurocape Estates Ltd in 2009 (the Brazilian UCIS). At that point they didn't have any cash to invest so they say he advised they surrender money from two bonds they held – one with Prudential and one with Clerical Medical – to make the investment. Both bonds were in joint names and the payment forms were signed on 21 February 2009 and 4 March 2009 respectively to surrender £5,000 from each.

The Brazilian UCIS involved purchasing sub-leases of plots of land with a view to the master lease being bought back later and each of the sub-lease holders making a profit. Two sub-leases were taken out in Mrs B's name for £5,000 each. These were signed on 3 April 2009 with a lease end date seven years later.

Mr W wrote to Mr and Mrs B on 22 November 2018 saying:

> *As also discussed, it is unfortunate, but I believe that despite previous reassurances to the contrary that the investment in the Brazilian Land Scheme via Eurocape Estate Limited will provide no return and effectively has become valueless. This is based on lack of any meaningful update from the operator/manager of the scheme [Mr M] for several months and some information provided by a third party who had been investigating the investment.*
>
> *So it would appear that the investment is similar to the Eurocape Property Finance Fund you were invested in which also became valueless.*

Mr and Mrs B complained to Sesame about the advice they said Mr W had given them.

Sesame replied to say it isn't responsible. In particular, it said:

- Mr and Mrs B had made their complaint too late. The events complained about were more than six years before they complained. And they should have been aware the Brazilian UCIS had failed and they'd lost the money more than three years before they complained.

  It pointed to the fact the leases had been due to be bought back on 3 April 2016 but weren't and that Eurocape had been dissolved on 24 September 2013. It also pointed to comments it says Mr and Mrs B made about why they didn't complain

earlier, quoting them as having said "*we believed that at some point down the line we would receive our money back, but this has never happened*".

- Mr W had been representing it when he gave advice to surrender money from the bonds in question. But there's no evidence that he gave advice on the Brazilian UCIS whilst acting as a representative of it. If advice had been given by him representing Munroe James it would have expected to see a fact find and suitability letter and to have received commission.

  Munroe James didn't have permission to advise on UCIS at all. It's far more likely advice was given as Munroe James Specialist Investments Ltd – a separate legal entity which it had no connection to.

Mr and Mrs B brought their complaint to us. An investigator was satisfied we could consider Mr and Mrs B's complaint against Sesame and that the complaint should be upheld. In summary, he said:

- Mr and Mrs B didn't know they had cause to complain more than three years before they did. And there's nothing to say they ought reasonably to have.

  Mr W himself has said he only found out the Brazilian UCIS was worthless towards the end of 2018. And it's clear from the letter he sent Mr and Mrs B that he'd been reassuring them in relation to it before that date. This is also Mr and Mrs B's recollection.

  There's nothing that suggests Mr and Mrs B were aware that Eurocape had been dissolved on 24 September 2013. And finding this out would have involved some quite in-depth digging which it isn't reasonable to expect them to have done. Even if they were aware of this, it doesn't seem as though they understood the implications.

- Sesame is responsible for the acts complained of:

  - There were regulated activities – advising on, and making arrangements in relation to, bonds and a UCIS.

  - This was one piece of advice – to surrender money from bonds to invest in a UCIS – that was made by Mr W as Munroe James.

  - Munroe James wasn't allowed to advise on UCIS under the appointed representative agreement it had with Sesame. But there's nothing to suggest it wasn't allowed to advise on bonds. It's therefore likely that Mr W had permission and actual authority to advise on surrendering money from the bonds. Caselaw means that where one act is allowed, we may be able to look at other acts that are linked to that because advice can't be confined to one part of an overall transaction where acts are "*intrinsically linked*". That's the case here.

- The advice to surrender money from two bonds to invest in the Brazilian UCIS wasn't suitable.

- If everything had happened as it should have, Mr and Mrs B would have remained in the bonds they had.

Sesame didn't agree. I've read and considered its response in full. In summary, it said:

- Jurisdiction hasn't been resolved so the Ombudsman's decision should only consider jurisdiction in the first instance.

- It doesn't agree with the investigator's findings on the time bar objection. Mr and Mrs B weren't unsophisticated investors – they had a significant portfolio of investments and weren't financially naïve.

- Two significant dates need to be considered – 24 September 2013 when Eurocape was dissolved; and 3 April 2016 when the leases were due to be bought back.

- Mr and Mrs B had been looking for a good return on their investments.

The issue has therefore been passed to me for a decision.

My findings – jurisdiction

I've considered all the evidence that's been provided. Having done so, I'm satisfied this complaint is in the Financial Ombudsman Service's jurisdiction.

Was the complaint made too late?

This service can't look at all complaints. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the Financial Conduct Authority's (FCA's) Handbook of Rules and Guidance.

DISP 2.8.2R says:

> *The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service…*
>
> > *(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.*

It's not clear exactly when the advice complained about was given. But as set out above, money from the bonds was surrendered in February and March 2009. So, the advice must have happened in or before February 2009.

Mr and Mrs B initially complained to Sesame on 27 March 2019. Sesame says it didn't receive that complaint because it was sent to an incorrect address. The complaint was

therefore resent to a different address on 13 August 2019 and Sesame did receive that complaint.

Irrespective of which of these dates stopped the clock for the purpose of the time limit, the complaint is outside the first part of the time limit – i.e. it was made more than six years after the events complained about.

The issue for me to decide is therefore whether the complaint was also made outside the second part of the time limit – i.e. whether it was made more than three years after Mr and Mrs B knew, or ought reasonably to have known, they had cause to complain.

Mr and Mrs B's representative says the Brazilian UCIS was too high-risk and unsuitable for them. It says Mr and Mrs B only discovered this at a meeting with Mr W in November 2018. Mr W wrote to them on 22 November 2018 following that meeting. As set out above, that letter said:

> *As also discussed, it is unfortunate, but I believe that despite previous reassurances to the contrary that the investment in the Brazilian Land Scheme via Eurocape Estate Limited will provide no return and effectively has become valueless.*

Mr and Mrs B's representative says until that point, Mr W had always reassured them that the Brazilian UCIS would return their capital and they "*just had to wait*". Mr W gave the following background to his concerns in a letter to Mr and Mrs B's representative dated 17 December 2021:

> *What I can say is that as the years progressed, former colleagues found it harder to get any meaningful response from [the fund manager] to their requests for updates and by the middle of 2018 none of them had received any information for several months.*
>
> *I had been sceptical about the information provided to former colleagues by [the fund manager] for some time prior to 2018, however, when it appeared that [the fund manager] had stopped responding to information requests, I believed the investments as worthless.*
>
> *I took this view in late 2018 as by that time evidence had emerged about another investment that [the fund manager] had managed in South Africa had not been operated in accordance with the terms of the investment and it was my belief that the Brazil Leases would be no different.*

Sesame says there are two events earlier than this that ought reasonably to have given Mr and Mrs B cause to complain:

- The fact that Eurocape was dissolved on 24 September 2013.
- The fact the sub-leases were due to be bought back on 3 April 2016 and weren't.

Mr and Mrs B say they didn't know Eurocape had been dissolved on 24 September 2013. I find this plausible. They say the only paperwork they received in relation to the Brazilian UCIS was the original brochure and lease documents and all updates were provided verbally by Mr W. I haven't been provided with any letters that were sent to investors. And Sesame hasn't made the argument that letters would have been sent. Unless Mr and Mrs B had decided to do some investigation or Mr W had found out and told them, it doesn't seem like the kind of information they'd have found out. Like the investigator, I don't think it's

reasonable to expect Mr and Mrs B to have carried out that level of investigation in the circumstances.

In terms of the fact the sub-leases were due to be bought back, it does seem as though this was something Mr and Mrs B were aware of. But it also seems they were reliant on Mr W for updates and he was reassuring them there wasn't an issue. Mr and Mrs B's representative said that when they made a claim to the Financial Services Compensation Scheme (FSCS) in February 2016 about a different UCIS, they asked Mr W about the potential returns they could expect from the Brazilian UCIS and he "*informed them that the terms of the Brazil UCIS had not yet been breached as the lease did not expire until 3rd April 2016 at the earliest and the terms of the lease allowed it to be "rolled over" for a further 7 years so they would have to wait and see as to when it would mature and [Mr M] the ultimate manager of the Brazil UCIS had been providing updates, albeit on an infrequent basis, that there were still numerous exit strategies being pursued regarding the sale of the land in Brazil which would in turn be distributed to leaseholders*".

I've looked at the terms of the sub-leases and note that they say if the land isn't sold and the master lease isn't ended within seven years, then the sub-leases automatically renew for a further seven years – effectively making their final expiry 2 April 2023:

> *LR8.1…unless the land is not disposed of within the 7 year period of the lease it will automatically be renewed.*

Mr and Mrs B's representative says they accepted in 2016 that the lease would carry over until 2023. And taking everything into account, I'm satisfied this was reasonable – as was the fact they weren't concerned about this.

I also note that Mrs B had made a previous investment in a different Eurocape UCIS that she went to the FSCS about in February 2016. However, their representative has explained the differences between that UCIS and this one and it's also explained the reassurances Mr W gave them in relation to the Brazilian UCIS. I'm satisfied there were significant differences and I don't think that knowledge of issues with the first UCIS would have given knowledge of issues with this one.

Taking everything into account, I'm not persuaded Mr and Mrs B ought reasonably to have been aware of cause to complain before November 2018. I accept they had a significant portfolio of investments and had some financial experience. But it's clear to me that they were reliant on information provided by Mr W. They weren't receiving documentation about the Brazilian UCIS – and hadn't been expecting to – and in those circumstances Mr W was the obvious source of information for it. In Mr W's words, he'd been providing them with "*reassurances*". And given the relationship they had with Mr W, I think it was reasonable for them to rely on these.

I note Sesame's concerns about Mr and Mrs B's responses to why they didn't complain sooner. In particular, in a letter to Sesame dated 26 September 2019, they said:

> *In answer to why we have not complained sooner, we believed that at some point down the line we would receive our money back, but this has never happened. It is only recently we have regarded this as a scam and felt certain we have now lost our money. When looking on the internet this was only confirmed to us when we saw that Munroe James Ltd and Eurocape Estates are both no longer operating.*

And on a Sesame form that asked, "*What date did you become aware of any potential problems with the fund/Investment and what action did you take, if any?*" they answered:

> *When Munroe James went out of business and we couldn't contact anyone. We were told the Brazilian land investment was going to be a short term investment but realised after a few years that taking money out of our Clerical Medical and Prudential Bonds was wrong advice and we shouldn't of invested in Brazilian land.*

But I'm satisfied nothing Mr and Mrs B have said here means they ought reasonably to have complained before November 2018. Not being able to contact anyone seems to have been the trigger for their complaint. And the evidence suggests the first they knew that the relevant people couldn't be contacted was November 2018. Up until that point it seems they'd been in communication with Mr W and he'd been reassuring them sufficiently that they believed they were going to get their money back and so didn't have cause to complain.

I'm therefore satisfied that whether Mr and Mrs B's complaint was made on 27 March 2019 or 13 August 2019, it was made within three years of when they knew, or ought reasonably to have known, they had cause to complain. And so their complaint was made in time.

Responsibility

To carry out regulated activities a business needs to be authorised (Section 19 of the Financial Services and Markets Act 2000 (FSMA)). Munroe James wasn't directly authorised. Instead it was an appointed representative of Sesame. Sesame is an authorised firm. It's authorised by the FCA to carry out a range of regulated activities including advising on investments and arranging deals in investments. We can therefore consider complaints about Sesame. And this includes some complaints about its appointed representatives.

But this service can't look at all complaints. Before we can consider a complaint, we need to check, by reference to the DISP rules and the legislation from which those rules are derived, whether it's one we have the power to look at.

DISP 2.3.1R says we can:

> "*consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on…regulated activities…or any ancillary activities, including advice, carried on by the firm in connection with them*".

Guidance for this rule at DISP 2.3.3G says that:

> "*complaints about acts or omissions include those in respect of activities for which the firm…is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility*".

And Section 39(3) FSMA says:

> "*The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility*".

The responsibility of a principal was considered by the judge in the case of *Anderson v Sense Network* [2018] EWHC 2834 (this case was the subject of an appeal, but the Court of Appeal issued a decision agreeing with the earlier decision). In the High Court, Mr Justice Jacobs said, at paragraph 33:

> "*There is no indication in the wording of section 39, or in the case-law, that indicates that the business for which responsibility is accepted is to be determined not by*

reference to the contract, but by reference to the authorisations granted to the principal which are to be found in the Financial Services register".

So, a principal isn't automatically responsible for the actions of its appointed representatives and it's necessary to go beyond looking at the activities Sesame was authorised to do. Whether Sesame is responsible for the actions of Mr W is determined by considering the terms of the contract between Sesame and Munroe James – the appointed representative agreement.

To decide whether Sesame is responsible here, there are three issues I need to consider:

- What are the specific acts Mr and Mrs B have complained about?
- Are those acts regulated activities or ancillary to regulated activities?
- Did Sesame accept responsibility for those acts?

What are the specific acts Mr and Mrs B have complained about?

Mr and Mrs B complain they were given unsuitable advice to surrender money from two bonds they held and to use the funds to invest in a high risk UCIS.

Are those acts regulated activities or ancillary to regulated activities?

Section 22 FSMA defines "*regulated activities*" as follows:

> *(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and –*
>
> > *(a) relates to an investment of a specified kind;…*
>
> *(4) "Investment" includes any asset, right or interest.*
>
> *(5) "Specified" means specified in an order made by the Treasury*.

The relevant Order is the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). Bonds and UCIS are specified as investments in the RAO and I'm satisfied the investment in question here was a UCIS. Advising on investments is a specified activity under Article 53 RAO. And arranging deals in investments is a specified activity under Article 25 RAO.

It's clear that Mr W was involved in making arrangements for the surrender of money from the bonds and the Brazilian UCIS. Sesame seems to accept that advice was given. Although it's said there's no evidence of a fact find or suitability report in relation to the Brazilian UCIS, this seems to be a factor in why it believes advice wasn't given as Munroe James – not a factor for thinking no advice was given.

But for the sake of completeness and for the avoidance of doubt, I'm satisfied it's most likely Mr W advised Mr and Mrs B to surrender money from their bonds to invest in the Brazilian UCIS.

Although suitability reports are one of the indicators that advice was given, the absence of one doesn't mean advice wasn't given. I think it's highly unlikely Mr and Mrs B would have taken the decision themselves to surrender money from their bonds without receiving advice. They've plausibly and consistently said Mr W advised them and that they'd been happy with

the bonds and it seems the rest of the money remained in the bonds. Given the proximity in time of money being taken from the bonds to the Brazilian UCIS investment being made I'm persuaded by Mr and Mrs B's recollection of events.

Did Sesame accept responsibility for those acts?

In order to answer this, the first question I need to satisfy myself of is whether Mr W was holding himself out as representing Sesame at the time of the advice complained about.

Sesame seems to accept Mr W was holding himself out as Munroe James when advice was given to cash in part of the bonds. But it says he wasn't when any advice was given to invest in the Brazilian UCIS. It says Munroe James had asked it about selling a Eurocape UCIS in 2008 and had been told no. It says to arrange UCIS, Munroe James had therefore established a separate arm of its business called Munroe James Specialist Investments Ltd which wasn't linked to Sesame at all. It says the advice in relation to the Brazilian UCIS must have been given as Munroe James Specialist Investments Ltd because otherwise it'd expect to see a fact find and suitability letter and it would have received commission.

I've thought about this carefully but taking everything into account, I'm satisfied Mr W was most likely holding himself out as acting as a representative of Sesame at the time of the events complained about.

Mr W sent a letter to Mr and Mrs B on Munroe James paper dated 16 February 2009 which read:

> ***RE: Prudential Surrender Form…***
>
> *Further to our recent meeting and our discussions regarding the Eurocape Estates Investment, please find attached a surrender letter to sign.*
>
> *Please sign the form where indicated and return back to me in the pre-paid provided.*
>
> *Please contact me when monies are received into your account so I can arrange to complete the paperwork for your new Eurocape Estates Investment*

And the footer of the paper read:

> *Munroe James Ltd is an appointed representative of Sesame Ltd, which is authorised and regulated by the Financial Services Authority*
> *their company registration number is 06685731*

An identical letter was sent for the Clerical Medical bond on 27 February 2009.

It seems clear to me from these letters that Mr W was holding himself out as representing Munroe James when he advised Mr and Mrs B in relation to surrendering money from the bonds and the UCIS investment and made arrangements for these. I've seen no mention of Munroe James Specialist Investments Ltd and there's nothing that satisfies me that distinction was ever made.

I also note that when Mr W wrote to Mr and Mrs B on 22 November 2018, he said:

> *In the case of the Brazilian Land Investment should you choose to complain than [sic] the complaint should be directed to Sesame Limited.*

And in a letter to Mr and Mrs B's representative dated 17 December 2021, he said:

the whole Brazilian Lease situation is both a frustration and an embarrassment to me, however, I was employed by Munroe James Ltd and was targeted by my employer to advise on the Leases.

This suggests that Mr W felt he was acting as an appointed representative of Sesame at the time the advice was given.

I've therefore gone on to consider the appointed representative agreement that was in place at the time. The agreement incorporated the compliance manual which included the below:

5.4 How are activities restricted?

The Network's scope of permission does not allow members or advisers to carry out certain areas of business. Below we detail the areas where restrictions apply…

5.4.4 Activities not permitted*…*

- *Unregulated collective investment schemes (UCIS) – these are outside the scope of permission and should not be used…*

8.1 Sesame's Scope of Permission

8.1.1 Introduction

Your membership of Sesame means that you can only provide advice within the product areas covered by Sesame's Scope of Permission…

Giving advice in some areas is simply not permitted (for example Unregulated Collective Investment Schemes)…

You cannot advise on, or sell…Unregulated Collective Investment Schemes (UCIS)…under any circumstances.

8.2 Further details of our requirements in each specialist area*…*

Unregulated Collective Investment Schemes (UCIS)

These are excluded from the network scope of permission. You are therefore not permitted to undertake work in this area…

Unauthorised Products

Sesame members are unable to arrange and/or advise on any of the products listed below

…
Unregulated Collective Investment Schemes…

Please note that you are also unable to advise on and/or arrange any of these products via permitted investment vehicles/tax wrappers such as Investment bonds or SIPPs

In contrast, the "*Scope of permissions*" document lists a variety of bond types in the "*Authorised Product Categories*" list.

On the basis of the documentation I've been provided with, although the appointed representative agreement clearly didn't allow Munroe James to advise on and arrange UCIS, it seems it gave Munroe James authority to advise on and arrange surrenders of bonds. And Sesame didn't disagree when the investigator made this observation.

So, advising on the surrender of money from bonds and arranging that is business for which Sesame accepted responsibility. In my view, advising on and arranging the Brazilian UCIS (even if carried out here in breach of the appointed representative agreement) was closely associated or intrinsically linked to the advice on, and arranging of, the bonds. They were part of the same transaction. The advice to surrender money from the bonds wasn't given on a stand-alone basis but was part of a single piece of advice to surrender money from the bonds and invest in the Brazilian UCIS. I'm satisfied that's consistent with the approach taken by the courts (Martin & Anor. v Britannia Life Ltd [1999] and Tenetconnect Services Ltd, R (on the application of) v Financial Services Lts & Anor [2018]).

So, I think Sesame did accept responsibility for the acts conducted by Munroe James.

My decision – jurisdiction

For the reasons discussed above, my decision is that the Financial Ombudsman Service can consider this complaint.

My findings – merits

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

I note Sesame's comments that this decision should only consider jurisdiction. But in looking at the issue of jurisdiction, I've also been able to consider all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I'm satisfied Sesame has had the opportunity to comment on this. I've therefore considered and addressed that in this decision. Taking everything into account, I'm satisfied the complaint should be upheld.

Mr and Mrs B say Mr W didn't ask them about their attitude to risk at the time but they say they were cautious investors who were only prepared to accept a moderate level of risk and a UCIS involved more risk than they were prepared to take. As previously mentioned, a fact find from the time unfortunately isn't available. I have however been provided with an attitude to risk questionnaire that was filled in for separate advice given later. In that, risk profiles had been selected for both Mr and Mrs B that were under the heading "*You understand you may lose a moderate to significant amount of your money below this line*". Mrs B's risk profile was selected as being higher than Mr B's.

In terms of the bond surrenders themselves, I haven't seen any justification for the surrender of money from two regulated bonds that it seems Mr and Mrs B were happy with. It seems Mr W's only reason for recommending surrendering money was so that Mr and Mrs B would have the money to make the Brazilian UCIS investment. And I haven't seen any documentary record of why Mr W recommended Mr and Mrs B surrender money from their bonds to invest in the Brazilian UCIS.

UCIS investments carry significant risks and a lack of protections. An asset sheet filled in on 1 July 2009 (shortly after the advice here) recorded Mr and Mrs B's assets as:

- Their main residence.

- £20,000 of land.

- Just over £50,000 of savings/current account balances and a small amount in cash ISAs.

- Just over £220,000 in investment bonds.

- £20,000 in unit/investment trusts.

They also had personal pensions totalling approximately £50,000. Mrs B wasn't working, and Mr B was 55. Although I note Mrs B had previously invested in a UCIS and they had a large investment portfolio, everything I've seen suggests they were ordinary retail investors who had a large portfolio as a result of the sale of a family business. I note Sesame's comments that they were looking for good returns. But there's nothing that suggests to me they were the sophisticated type of investors for which unregulated high-risk investments would be suitable. And there's nothing that suggests they could afford to take significant risks with their investments. Mr W would have known all of this.

In these circumstances I'm satisfied advice to surrender money from their bonds to invest in the Brazilian UCIS wasn't suitable and should never have been made as a recommendation to them.

I'm persuaded by Mr and Mrs B's evidence that they weren't looking to surrender their bonds. So, I'm satisfied that if Mr W hadn't given unsuitable advice, they would have left their bonds as they were.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs B as close to the position they would probably now be in if they had not been given unsuitable advice.

Mr and Mrs B say they would have left the money in the bonds they were happy with. And I'm satisfied that's most likely. I take the view that Mr and Mrs B wouldn't have surrendered money from their bonds if everything had happened as it should have. Mr and Mrs B say they still have the Clerical Medical bond. But they surrendered the Prudential bond in 2013 and reinvested it into a St James's Place bond. I'm satisfied what I've set out below is fair and reasonable.

What must Sesame do?

To compensate Mr and Mrs B fairly, Sesame must:

- Compare the performance of Mrs B's Brazilian UCIS with the value if the money had been left in the bonds it'd been in previously (making allowance for the fact the Prudential bond was moved to a St James's Place bond in 2013) and pay the difference between the *notional value* and the *actual value* of the investments. If the *actual value* is greater than the *notional value*, no compensation is payable.

- Sesame should also pay interest as set out below.

- Pay Mr and Mrs B £250 for the trouble and upset caused. I'm satisfied Mr and Mrs B have been caused upset by the events this complaint relates to, and the loss of a

portion of their liquid assets. I think that a payment of £250 is fair to compensate for that upset.

Income tax may be payable on any interest paid.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Brazilian UCIS	No longer exists	Notional bond values from previous providers	Date of bond surrender	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainants' acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It seems the Brazilian UCIS isn't worth anything and no longer exists. If Sesame feels the leases Mrs B has do have a commercial value, then it should take ownership of these by paying that commercial value. The amount Sesame pays should then be included in the *actual value* before compensation is calculated.

If Sesame is unable to purchase the leases, the *actual value* should be assumed to be nil for the purpose of calculation. Sesame may require that Mrs B provides an undertaking to pay it any amount she may receive from the leases in the future. Sesame will need to meet any cost in drawing up the undertaking.

Notional value

This is the value of the investment made had it remained in the Prudential and Clerical Medical bonds (making allowance for the Prudential bond having been moved to a St James's Place bond in 2013) until the end date. Sesame should request that the bond providers calculate these values.

If the bond providers are unable to calculate a *notional value*, Sesame will need to determine a *fair value* for Mrs B's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Sesame should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr and Mrs B wanted capital growth with a small risk to their capital.

- If the bond providers are unable to calculate a *notional value*, then I consider the measure below is appropriate.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr and Mrs B's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put them into that position. It does not mean that Mrs B would have invested 50% of the money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs B could have obtained from investments suited to their objective and risk attitude.

My final decision

My decision is that Mr and Mrs B's complaint should be upheld. I require Sesame Limited to pay Mr and Mrs B fair compensation as set out above. Sesame should provide details of its calculation to Mr and Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 27 June 2022.

Laura Parker
Ombudsman