DRN-3542678

The complaint

Mr W complains about pension advice he received from Robert Goodman Associates (RGA), an appointed representative of Sesame Limited, in 2006 when he switched his pension to a drawdown plan.

Sesame is responsible for RGA's actions and is the respondent to this complaint.

What happened

Mr W approached RGA for advice on his pension in 2006 after he had been diagnosed with cancer. He wanted to know his options for releasing cash from his pension without drawing immediate income. He was still working and didn't need any income until retirement.

RGA recommended Mr W to switch pension providers from his existing personal pension to a phased retirement plan with Scottish Widows (SW).

Mr W's existing plan didn't offer a drawdown option. The adviser wasn't authorised to give drawdown advice but recommended the SW plan which allowed Mr W to convert the pension to a drawdown plan at any time in future without further advice.

Shortly after the pension had been transferred, Mr W decided to take a tax-free cash lump sum. RGA asked SW to set up the drawdown plan in October 2006 and Mr W took his tax-free cash lump sum. Subsequently, Mr W made income withdrawals from his drawdown pension in March 2008, October 2008, March 2009 and November 2009. Each of these was for about £4,917. In 2010 a smaller withdrawal of £3,000 was made and in 2011 a sum of £2,012 was taken. Mr W stopped taking lump sums and moved to drawing a varying monthly income from October 2012.

In 2019, Mr W complained about the advice he was given. He was unhappy with the investments in the pension. He also thought RGA should have considered an enhanced annuity and he was unhappy with the charges on his pension.

An ombudsman at this service has issued a decision that the complaint about the investments has been brought too late, but that we could consider the annuity and fee issues.

An investigator then looked at the merits of Mr W's complaint and thought an enhanced annuity didn't meet Mr W's objectives at the time, so he didn't uphold this part of the complaint. He did however uphold the charges part of Mr W's complaint.

Sesame asked for an extension to respond to the investigator's assessment, which was granted but they did not further respond, so the parties were informed the complaint was referred for an ombudsman's decision. Again Sesame did not respond.

Like the investigator's assessment, my decision only deals with whether Mr W should have been advised to take out an enhanced annuity and with the fees of the pension.

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.

Enhanced annuity

Mr W queried why he wasn't informed about an enhanced annuity. An enhanced or impaired life annuity could give a higher annual income than a standard annuity if due to health concerns or lifestyle someone is deemed to have a shorter life expectancy.

I agree that due to Mr W's cancer diagnosis he likely would have qualified for an enhanced annuity. Mr W's representative says that if he had seen a higher quote he might have preferred to take an annuity income rather than move to an income drawdown arrangement. He could have chosen to work part-time.

However, looking at the suitability report at the time I can see that annuities in general were discussed and the option was excluded because a) Mr W didn't require any income at this point as he was continuing to work and b) given his worries about his health an annuity might not have turned out to be good value for his wife if he did pass away suddenly. It was recorded Mr W preferred to keep the pension fund as intact as possible for his wife to use if he didn't survive.

Mr W's concerns were justified and as he only had been recently diagnosed there was a risk he could pass away much earlier than expected. So I don't think an annuity would have met Mr W's objectives at the time he sought advice.

Even if RGA had provided him with a quote, on the balance of probabilities I'm not persuaded he would have decided to accept this option the time.

So I'm not upholding this part of Mr W's complaint.

charges

Mr W says he was charged commission payments since 2006 without his knowledge.

In August 2006, RGA said in their recommendation report that they would receive an initial commission from SW for arranging the transfer. They said they would be waiving any future ongoing commission so that the value of the plan could be preserved as much as possible. It said RGA had not arranged ongoing advice and it was agreed Mr W would call the adviser if he needed help and any further advice would not be charged.

SW provided Mr W with an overview of adviser commission being paid from his plan since he moved his plan to a drawdown plan in October 2006. The evidence shows that RGA received another £3,000 initial commission when the drawdown plan was set up and ongoing commission every month after that. From 2016 the ongoing commission was paid to RGA/Fairstone Financial Limited. RGA was acquired by Fairstone.

In response to the complaint the adviser said he had only received an initial commission of £2,206 for the initial transfer to SW and that he had received no further commission since.

However, based on the evidence provided I'm satisfied that Mr W did pay another initial commission of £3,000 in October 2006 when RGA arranged the drawdown plan for Mr W and monthly commission was deducted until 2019 when Mr W found about these charges and cancelled them. And I've seen no evidence that he agreed to this at any point.

I’ve also seen letters from SW to RGA in 2007, 2010, 2014 and 2015 copying them in on correspondence to their ‘mutual client’ Mr W which suggests they were registered as the ongoing adviser on Mr W’s plan.

Based on the evidence provided Mr W had another initial commission and ongoing commission deducted over the years without his knowledge and contrary to what he was told would happen in 2006 when RGA gave him the advice to transfer.

I acknowledge that it’s possible that RGA wasn’t intending to receive further commissions, however they should have flagged this to SW when they received correspondence and payments over the years.

So I don’t think it’s fair that Mr W paid these charges which reduced his pension fund over the years and I consider RGA could have prevented these losses. I appreciate Fairstone has received some of the ongoing commissions in later years. However, if RGA had acted correctly, these ongoing commissions wouldn’t have been taken at all in my view. So I consider it fair Sesame compensates Mr W for all his losses.

The investigator said Mr W should have been advised to go directly into drawdown rather than switch to SW and then do another internal switch to SW’s drawdown plan shortly after. However, the suitability report said Mr W may want to take tax free cash in future and the SW plan gave him to option to move into drawdown whenever he needed it. Mr W then obviously decided to take a lump sum very shortly after. However, at the time of the advice I don’t think it had been clear when this would happen.

I think the issue here is mainly about the additional charges this additional switch created. The investments were the same. If no additional commission had been charged (as RGA told Mr W) I don’t think the fact that he switched from a phased retirement plan to a drawdown plan rather than go straight into a drawdown plan had any real impact on his pension.

Putting things right

My aim is to put Mr W back into the position he would have been if no additional commissions had been charged from the point he moved into drawdown.

Sesame should:

- Request a notional value from SW to show what Mr W’s pension would be worth now if the second initial commission of £3,000 in October 2006 and the ongoing commissions from 2006 until 2019 had not been deducted.

- This should be compared to Mr W’s current pension value.

- The difference between these values is Mr W’s financial loss.

- Pay into Mr W's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Sesame is unable to pay the total amount into Mr W's pension plan, it should pay that amount directly to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age, assumed to be 20%.

- Pay Mr W £300 for the worry and upset he experienced since finding out his pension had decreased in value by charges he didn't know about.

Income tax may be payable on any interest paid. If Sesame deducts income tax from the interest it should tell Mr W how much has been taken off. Sesame should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Sesame should provide details of its calculation to Mr W in a clear, simple format.

My final decision

I uphold this complaint in part and require Sesame Limited to pay Mr W the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 August 2022.

Nina Walter
Ombudsman