DRN-4273707

The complaint

Mr and Mrs D complain that the investment advice they received from Sesame Limited in 2000 was unsuitable for them. Mr and Mrs D's representative has brought the complaint on their behalf.

What happened

Mr and Mrs D's complaint is about the investments recommended to them by a financial adviser ("K") in July 2000. As K was an appointed representative acting within Sesame's network at the time of the advice, Sesame have accepted responsibility for Mr and Mrs D's complaint.

In making their complaint, Mr and Mrs D's representative provided the following information:

- Mr D had received a redundancy payment of £43,000 in 1998. In February 1999, Mr and Mrs D were advised by a third party ("B") to invest £32,000 of that money into B's managed growth and income fund.

- In July 2000, K advised Mr and Mrs D to transfer £12,000 of the money they had invested the precious year into two different investments - an income and growth fund and portfolio trust investment with different providers. They were also advised to add a small top up of extra funds to their new investments.

- They believe the advice Mr and Mrs D were given in July 2000 was unsuitable. Just a year after investing in B's fund they were advised to relinquish £12,000 of that holding and switch it to other investments. Given that the investments were mixed asset growth and income funds they do not accept that there was any tactical basis for advising Mr and Mrs D to move their funds. The churn from these funds meant they were duplicating the set up and adviser commission soon after their earlier investments had been made.

- The investments were surrendered in 2004 and 2005. Given the nature of the investments and the performance of the stock market, it is clear that they would have suffered a capital loss.

Sesame didn't uphold Mr and Mrs D's complaint. They said that the regulator specifies that records relating to investment advice should be retained for six years. With the advice being given in 2000, they were well beyond that requirement and did not have a copy of the advice file relating to Mr and Mrs D's investments. They said they couldn't find any evidence that the investments recommended were unsuitable for Mr and Mrs D's circumstances at the time.

When Mr and Mrs D brought their complaint to our service in April 2022, Sesame argued that it had been made out of time. One of our ombudsmen considered Sesame's objections and decided in March 2023 that the complaint was one our service could investigate.

Our investigator decided not to uphold Mr and Mrs D's complaint. She noted that due to the length of time that had passed, Sesame had been unable to supply a copy of the advice provided to Mr and Mrs D. She said that in the absence of any documents from the time providing information about Mr and Mrs D's circumstances and investment objectives, and the recommendations the adviser made, she could not safely conclude that the advice was unsuitable.

Mr and Mrs D didn't accept our investigator's findings and asked for an ombudsman to make a final decision. They said there was paperwork available relating to the advice they were given by B in 1999. Mr and Mrs D's circumstances had not changed significantly by the time K gave them advice a year later so it can be inferred with a high degree of confidence what information was given to Sesame. It was clear given their circumstances that the advice was inappropriate and there was no reason whatsoever to switch their investments and incur additional costs in the process.

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.

It might be helpful to explain first the role of the Financial Ombudsman. We provide an independent, informal dispute resolution service, where decisions are made based upon the balance of probabilities. We have a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case.

There are no documents available from the time of K's advice to Mr and Mrs D.
That's unfortunate but not surprising given that more than 20 years have passed since the advice and that Mr and Mrs D surrendered their investments just a few years later.

I've considered the paperwork that Mr and Mrs D have provided in relation to the advice they were given by B in 1999. That included a review of Mr and Mrs D's circumstances and investment objectives conducted by B's adviser. Taking account of what Mr and Mrs D's representative has said, I think it is most likely that their circumstances would have been broadly the same at the time of K's advice in July 2000.

Mr and Mrs D's complaint is essentially that K's advice was not suitable because they were advised to switch some of their funds into very similar investments, incurring unnecessary fees. I have thought about what Mr and Mrs D's representative has said but I don't think I've got enough evidence to say, on the balance of probabilities, that K's advice was not suitable for their needs.

As there is no paperwork from the time, I can't be sure of the circumstances in which Mr and Mrs D came to receive advice from K. But for whatever reason, I think it is most likely that Mr and Mrs D decided that they wanted further advice on their investments and requested that advice from K.

At the time of the advice, I think it's most likely that Mr and Mrs D held the investments with B that they had taken out in 1999 and some cash reserves. The £32,000 they had invested with B the previous year had all been invested in B's managed growth and income fund.

I note that Mr and Mrs D's representative has said the investments that K recommended were also mixed asset growth and income funds. I've not seen detailed information on the composition of the funds at the time. But I don't think I can fairly say that it was unsuitable for K to recommend that Mr and Mrs D invest some of their assets in different funds that most likely met their objectives, rather than concentrating all their assets in one fund.

I think it's most likely that Mr and Mrs D would have incurred some charges or fees as a result of K's advice. But I've not seen any information on those costs, and in the absence of any more evidence I don't think I can fairly say that they would have made the advice unsuitable.

Mr and Mrs D's representative has said they would most likely have made a loss when they surrendered their investments in 2004 and 2005. But that assumption is based on the performance of the stock market in the period they held the investments. The subsequent performance of an investment does not mean it was unsuitable at the time it was recommended, and other similar investments would also have been affected by the performance of the markets.

I've considered everything that their representative has said but overall, I don't think I have enough evidence to say that the advice Mr and Mrs D were given in 2000 was unsuitable for their needs. I realise this will be a disappointing decision for Mr and Mrs D, but I won't be upholding this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold Mr and Mrs D's complaint against Sesame Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 23 April 2024.

Matthew Young
Ombudsman