

## The complaint

Mr M has complained about the advice to transfer his CIS Section 32 ('s32') policy to a personal pension and a s32 policy with Scottish Equitable (now Aegon).

Mr M has stated that because of the advice to transfer, valuable guarantees were given up and financial loss has occurred.

Mr M is being represented in this complaint however for ease of reference I have only referred to Mr M throughout the decision below.

The advice was originally provided by Regal Financial Planning Ltd ('Regal'), a part of The Kestrel Network. This has subsequently become part (and the responsibility) of Sesame Limited ('Sesame').

## What happened

Prior to advice being given Mr M's circumstances were recorded in a Financial Planning Questionnaire. These noted that Mr M was:

- Aged 49, married with no dependents.
- Self-employed with a monthly income of £800. Expenditure was noted as £720 a month.
- Mr M selected an attitude to risk ('ATR') of balanced which was defined as *"You are prepared to invest in equity-based assets, where the risk is spread across a variety of investments and the fund is managed on your behalf with the aim of potentially higher returns"*.
- Retirement planning was noted as Mr M's first priority, with raising immediate finance recorded as his second priority.
- In recording why Mr M wished to transfer his pension benefits it was noted he *"would like availability to withdraw some monies when my fiftieth birthday"*.

Regal documented their advice in their 4 April 2000 reasons why letter. This recommended the transfer on the basis that this would allow Mr M to access his tax-free cash.

Around £22,000 was transferred into an Aegon s32 policy with the funds left in cash. This policy was vested as soon as Mr M reached age 50 later in September 2000. Tax-free cash of around £9,800 was taken with the remainder of the fund used to purchase an annuity which provided income of £662 a year. This annuity was transferred to Rothesay Life in 2017.

Around £18,600 of protected rights were transferred into an Aegon personal pension policy with the monies invested into the with-profits 2 fund. Sesame have confirmed that benefits from this policy were taken or transferred away in 2011.

Having concluded that the advice he received was unsuitable, Mr M registered a complaint with Sesame in November 2022. No response to the complaint was received and as such, after the allowable eight-week timescale, Mr M requested this service commence an investigation.

Whilst the complaint was being investigated by this service Sesame stated that they considered the advice suitable. This was based on Mr M's recorded need to access the tax-free cash, which was to be used for home improvements, with the transfer necessary for Mr M to meet this objective.

Our investigator looked into things and upheld the complaint.

The investigator concluded that the advice to transfer was likely to lead to Mr M being worse off in retirement and that the objective of accessing tax-free cash was not strong enough to justify losing the benefits given up by transferring.

Mr M accepted the findings issued. Sesame did not confirm whether they agreed with the findings or not. As no agreement could be reached the case has been passed to me for a 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 note that in response to the findings issued by our investigator Mr M did not provide any further evidence or commentary he wanted to be considered.

Sesame did respond, stating that they were trying to complete redress calculations to better inform a decision on whether they would accept the findings or not. These calculations are yet to be completed and given the significant time since findings were issued, I see no reason to delay this decision any further.

All parties have been asked to provide evidence and commentary numerous times throughout the investigation, both before and after our investigator issued their findings with nothing further provided. As such, this decision has been based on the evidence already on file, and the rules and regulations in force at the time of advice.

In 2000 the rules and regulations around pension advice were not as detailed or strict as they are today and it is these rules, in place at the time of advice, which I must consider when assessing the suitability of the advice.

The client agreement between Regal and Mr M confirms that Regal was regulated by the Personal Investment Authority ('PIA').

In 1994 the PIA assumed responsibility for businesses that had previously been regulated by Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA), with FIMBRA's rules being adopted by the PIA.

Some of the key considerations Regal needed to make were covered in FIMBRA's 1992 supplementary rulebook which included:

- Rule 28.12 said an independent adviser must not recommend a transaction for a client unless they could show they had good grounds for believing the client would benefit from it.

- Rule 29.5 said that a recommendation could only be made to a client if the adviser had *“good grounds for believing it to be suitable for him in the light of the information he has given you and of any relevant facts about him of which you are, or ought to be, aware”*. It added that the nature of the risks involved had to be explained in terms the client was likely to understand.

As noted by our investigator, the existing s32 policy was forecast to provide income in retirement of around £4,500 a year from age 65, this income would increase by 3% a year over time and would also provide a 50% spouses pension in the event of Mr M's death. A lump sum of around £8,000 tax-free cash would also be payable at retirement.

In contrast the transfer provided tax free cash of around £9,800, immediate income of £662 a year with £18,600 invested to provide further income in retirement.

For the transferred funds to provide a similar level of income in retirement the illustrations produced in 2010 show that the monies would need to grow at around 9% a year, every year until Mr M reached age 65. Given Mr M's ATR, and the fact the transferred funds were to be invested into a with-profits fund, I have reached the same outcome as our investigator and concluded that this was unlikely.

Given the transfer was likely to lead to Mr M being worse off in retirement I have considered the other reasons noted in the advice file in support of the advice. These all centre around the noted desire for access to tax-free cash for home improvements.

The desire to access tax-free cash is understandable however this needs to be placed in context, with the price of this access being the loss of valuable lifelong pension guarantees.

The fact find indicates that the existing CIS s32 policy was Mr M's only pension provision, and given he was responsible for most of the household income it is possible this was the main household pension provision as well. It should also be noted that Mr M was recorded as being self-employed with the expenditure information not detailing any current pension contributions. As such, it is reasonable to conclude that the pension under consideration was, and would continue to be, the key part of both Mr and Mrs M's retirement provision.

The fact find is also clear that Mr M's number one priority was retirement planning, with this coming ahead of a desire to access capital in the short term. Whilst I accept the file shows Mr M did have a desire to explore the options around funding home improvements (a new kitchen) there are no discussions on file regarding any other options Mr M may have had. I would expect these to be fully discussed and discounted before Mr M was advised to give up the guarantees on his CIS s32 policy.

Without evidence of such discussions, I cannot say that Mr M was put into a fully informed position regarding his pension before deciding to transfer it.

Had it been explained to Mr M that by transferring his pension he was likely to be worse off throughout the entirety of his retirement and given this other options for providing short term monies to fund home improvements should be considered, I see no reason to suggest he would have ignored his adviser and insisted on a transfer. Had he been advised to retain the CIS s32 policy I believe Mr M would have followed this advice.

Overall, I have reached the same conclusion as our investigator and have concluded the advice was unsuitable. I have gone on to provide redress instructions for Sesame.

## Putting things right

My aim in awarding fair compensation is to put Mr M into the position he would most likely now be in, were it not for Regal's advice.

I think had Mr M been given suitable advice he would have retained the CIS s32 policy.

Sesame should contact the original provider and obtain a notional value of the fund when Mr M reached 65. They should also establish whether this fund would have provided any benefits over the GMP.

If the policy would only have provided the GMP Sesame should calculate the following to establish any past loss.

- Total of all the notional payments which Mr M should have received from his pension, net of his marginal rate of tax, from the date of his 65th birthday up to the date of settlement. (A)
- Total of all the actual payments which Mr M has received from their pension, net of their marginal rate of tax, from the date of the advice up to the date of settlement. (B)
- Past Loss = A – B.

If the answer is negative, there's a past gain and no redress is payable.

In working out the net payments, Sesame should assume that Mr M was a 20% rate taxpayer.

This sum should be paid as a lump sum and 8% simple interest per year should be applied from the date it would have been paid to settlement.

Sesame should also do the following to address the future losses Mr M will have.

- The notional gross pension per year which Mr M should have been receiving from the date of settlement onwards. (D)
- The actual gross pension per year Mr M currently will receive from the date of settlement onwards. (E)
- Future Gross Loss (F) per year = D – E.

If the answer is negative, there's a future gain and no redress is payable.

Sesame must then work out what it would cost to replace any lost income in (F) by buying an annuity on the open market with these features. It will need to refer to published annuity rate tables and get a quote from a competitive provider. This should include a spouse's pension and increases in-line with what would have been applicable to the S32 policy.

The purchase price of the annuity found in above is Mr M's gross future loss. This should be paid directly to him as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at their likely rate on the income in (F) – presumed to be 20%

**My final decision**

In line with the rationale above I am upholding this complaint. Sesame Limited must now take steps to complete the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 April 2024.

John Rogowski  
**Ombudsman**