

The complaint

Mrs O complains about the advice given to her by Lairgate Financial Ltd to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a small self-administered (pension) scheme ('SSAS'). She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

Mrs O has operated her own property business for a number of years. In April 2018 she attended a property networking event which was run by a business I shall refer to as 'P'. During the event, Mrs O approached P for advice on transferring her deferred DB scheme benefits. She said that she wanted advice about the suitability of transferring her DB benefits as she wanted to invest in commercial property.

P was a SSAS specialist, and it discussed with Mrs O the idea of setting one up, going on to do so with Mrs O's property business shortly after. The SSAS provider was a business I shall refer to as 'W'. As P was not regulated to provide advice on the transfer of a DB scheme, it referred Mrs O to Lairgate to advise her on whether transferring her DB scheme benefits into the SSAS in order to invest in commercial property was in her best interests.

Mrs O met with Lairgate in July 2018 during which it completed a fact-find where it recorded her financial and personal circumstances and objectives. Lairgate noted the following: -

- Mrs O was married with adult non-dependent children and in good health.
- She was employed as a director of her own limited company which she had been running for around 15 years.
- Her annual income was noted as £10,800 plus she enjoyed an annual rental income of £3,800.
- She jointly owned her own property valued at £850,000 upon which there was an outstanding £290,000 interest only mortgage which cost £1,178 per month in repayments.
- She had loaned her business £300,000 from her savings in order to fund a property project which was due for completion in four years' time at which point she intended to recoup her capital when the property was sold. Mrs O anticipated the finished properties would be worth a substantial amount of money once completed which would permit not only the repayment of her loan but also her outstanding mortgage balance.
- Her business owned property valued at £4.78m against which there were mortgages of £2.77m.
- She had never previously reviewed her DB scheme and felt it could be used to help fund further property purchases and developments to increase her family's overall wealth.
- The cash equivalent transfer value of Mrs O's DB scheme was £332,807. The scheme was forecast to provide her with an annual pension at age 65 of £11,010 or tax-free cash of £57,028 and a reduced annual pension of £8,554.
- Mrs O had no other pensions (aside from her full state pension entitlement) but

viewed her property portfolio as her future pension if/when she ever retired (she could not foresee ever wanting to retire).

- Having lived off of her business for so long whilst building it up and reinvesting, she knew that she would be able to continue to do so through her retirement.
- Mrs O's net current buy-to-let rental income was £60,000 which was substantially more than she currently needed if she retired given her outgoings were low at around £20,000 per year. She felt she had plenty of scope within her financial situation should interest rates rise and for any tenancy void periods. With over £2m of equity within her buy-to-let portfolio, Mrs O felt she had plenty of flexibility and options in terms of maintaining an income.
- The rental and equity figures Mrs O had provided excluded the effect of future loan repayments and development profits. Thus, she anticipated her financial position would be even more comfortable in future years.
- Mrs O was of the view that her DB scheme benefits were surplus to her retirement requirements.
- Mrs O intended to make her own investment decisions with the transferred funds using her own knowledge and experience in investing in property to self-select commercial property in which to invest. It was noted that Mrs O had good experience of this through her business and that she was already aware of some good commercial property opportunities in her local area and that she saw this as an opportunity to grow her portfolio.

Lairgate also considered Mrs O's attitude to risk ('ATR') concluding that she fully understood the concept of risk and reward and was prepared to take calculated risks in order to achieve her objectives.

Lairgate also provided Mrs O with a suitability report where it recommended that she transfer her DB scheme into the SSAS she had already set up with W where it would then be available to help fund her commercial property investments. Lairgate also provided Mrs O with a transfer value analysis report ('TVAS') as required by the regulator. There it stated that at age 65 her DB scheme would provide her with an annual pension of £14,764 or a tax-free lump sum of £76,475 and a reduced pension of £11,471 (these were different figures from those initially provided by the scheme administrators). Based on the figures in the suitability report, Lairgate also set out that Mrs O's transferred DB scheme benefits would need to achieve annual investment growth of 4.67% (also known as the 'critical yield') in order to match the tax-free lump sum and reduced income she was giving up. By further way of comparison, Lairgate stated that in order to purchase benefits of equal value those she was giving up, Mrs O would need a fund of £481,102 at the scheme's normal retirement date ('NRD').

Mrs O accepted Lairgate's advice and the transfer went ahead on 27 September 2018. Lairgate charged Mrs O a £4,000 fee for arranging the transfer.

In September 2020, Mrs O, through P, invested in several property/construction businesses via loans made from the SSAS. She made three investments: -

- £30,000 at 9% interest over a 48-month term
- £30,000 at 11% interest over a 48-month term
- £15,000 at 4% interest over a 48-month term

In February 2022, Mrs O enquired with P about the status of the first loan and also requested a recall of the second and third loans as her circumstances had changed.

Mrs O subsequently discovered that the first and second businesses to which she had made the loans had gone into administration.

The third loan was due to be repaid in September 2024.

In March 2023 Mrs O complained to Lairgate that it had given her unsuitable advice to transfer her DB scheme to her SSAS. Mrs O said she was not a sophisticated investor, that Lairgate had failed to take the underlying investments into account and that consequently, as her SSAS was now only worth £217,465, she had suffered a financial loss.

Lairgate responded to Mrs O's complaint in August 2023. It said that it had investigated the matter and, having done so, it was unable to uphold her complaint. Lairgate said it had acted in Mrs O's best interests and had given her suitable advice. It said it thought that, as far as property investment went, Mrs O was a sophisticated investor. Furthermore, Lairgate said it had explained the specific risks of the transfer to Mrs O at the time.

Unhappy with the outcome of her complaint to Lairgate, Mrs O then brought her complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint for Mrs O but didn't recommend it was upheld. She thought on balance that whilst there were shortcomings in Lairgate's advice and that the transfer was not in Mrs O's best interests, that she would have transferred regardless.

Mrs O responded through her representative to say she disagreed with our Investigator's findings. She said Lairgate's advice was not independent because it was connected to P and W and because it had coerced her into signing over the transfer of her DB scheme.

Our Investigator thought about what Mrs O had said but wasn't persuaded to change her mind. She said it wasn't unusual for a firm that lacked the necessary regulatory authority to advise on a DB transfer to refer a client on to a regulated adviser. Our Investigator also said she had seen no evidence of any inducements, or of Mrs O being forced or pressured into the transfer.

Mrs O remained unhappy with our Investigator's conclusions and said she had been denied the opportunity to obtain truly independent financial advice. Mrs O said she had no intention of setting up a SSAS before it was suggested by P, so she remained of the view that she had been coerced. Mrs O asked for her complaint to be referred for an ombudsman's decision.

The complaint was passed to me to make 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've set out above, in some detail, the full circumstances of this complaint. And whilst Mrs O has raised a number of points, I don't intend to address each and every issue that she has raised. Instead, I will focus on what I consider to be the key outstanding points following on from our Investigator's assessment of the complaint.

I've taken into account relevant law and regulations, regulators' rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business (PRIN) and the Conduct of Business Sourcebook (COBS). 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.

Having considered all of this and the evidence in this case, I've decided not to uphold Mrs O's complaint for largely the same reasons given by our Investigator.

I note that Mrs O has complained about taking a SSAS out and also that she had never heard about them before attending the property networking event. But to be clear at the outset here, I am not going to be looking at that aspect of her complaint. The SSAS was suggested to her by P and was arranged by Mrs O in conjunction with P in her capacity as a director of her property company. The setting up of the SSAS is an entirely separate matter to her complaint about Lairgate's advice, provided to her as an individual, that she transfer her DB scheme. Mrs O has raised several concerns about P's processes and recommendations as well as the fact it failed to tell her that her investments were not secure but, for the reasons I've already given here, this decision is solely concerned with the advice given to her by Lairgate.

I have to determine whether Lairgate acted in Mrs O's best interests and, if not, whether she would have gone ahead and transferred anyway.

Was the advice in Mrs O's best interests?

When considering whether or not to transfer a DB scheme, the regulator (the Financial Conduct Authority – 'FCA'), has made it clear that an adviser should, as a starting point, assume that transferring would be unsuitable unless it could clearly be demonstrated to be in a client's best interests in line with the FCA's rule COBS 19.1.6G.

It was a shortcoming in Lairgate's advice process that it did not ascertain a definitive ATR rating for Mrs O. Lairgate states that, given the absence of the need to advise her on her investment choice, it was un-necessary to fully complete risk profiling for her. Lairgate did acknowledge that Mrs O had taken risk in other aspects of her life as well as with her business. It said it was satisfied that Mrs O understood the concept of risk and reward. But I don't think these facts displaced the need for Lairgate to have completed a full risk profile analysis for Mrs O during the advice process.

Mrs O has said that at the time she was advised by Lairgate, she had no experience in investing in commercial property. But I have seen the signature block she was using at the time and I can see it states next to the name of her company: 'Investing in Commercial & Residential Properties and Land Acquisition'. And her website also states that she had been involved in ventures outside of commonplace residential letting including buying commercial buildings. This suggests to me that Mrs O did, at that point, have some experience in the commercial property arena and that she was therefore looking to broaden her property portfolio and which she went on to use her SSAS to do

Most people choose to take TFC from their pension at retirement as it makes financial sense to do so. So, it is not unreasonable to assume that, had Mrs O retained her DB scheme until her NRD she too would have elected to take this benefit. That being the case, it can be seen from the TVAS that her investment would need to attain an annual investment return (critical yield) of 4.67% in order to match the benefits she was giving up in her DB scheme. I should say here that I have of course noted that the figures for the annual pension and TFC the DB scheme was forecast to provide Mrs O at her NRD differed in the Lairgate's suitability report from those provided by the scheme administrators. It is unclear to me why this was the case but I can see that Lairgate has based its calculations on the higher set of figures set out in the suitability report.

At the time of the advice, the FCA's upper projection rate was 8%, the middle projection rate was 5% and the lower projection rate was 2%. So, whilst no definitive ATR rating was attained for Mrs O by Lairgate, it's not unreasonable to assume that someone with her experience in commercial property development would have been willing to take the financial risks required to be able to achieve the necessary critical yield of 4.67% to match or better the guaranteed benefits available to her under the DB scheme.

So, on the face of it, it is feasible that the transfer of Mrs O's DB scheme was a financially viable one. That said, in order to assess whether the advice was in Mrs O's best interests, Lairgate was required to advise on the suitability of the whole transaction – that is the advice and the subsequent investment. Lairgate says it didn't know where exactly Mrs O intended to invest her money. It said it knew that she likely intended to invest in various commercial property investments but that it could not recommend Mrs O invest in a particular building because to do so would be impractical.

I appreciate that it would have been difficult for Lairgate to advise on the investments in Mrs O's particular circumstances, however I think it should, at the very minimum, have garnered some kind of knowledge around the type of commercial property investment Mrs O was likely to invest in as well as what returns might be achievable.

In order to fulfil the regulator's requirements under COBS 9.2, Lairgate needed to give Mrs O advice on the overall suitability of the transaction envisaged, that is the transfer and the choice of pension and investment. Instead, it only gave Mrs O advice on the advice to transfer and failed to consider the suitability of her intended investment choice.

Without any knowledge about the investments Mrs O intended to make and what returns she might achieve, Lairgate could not measure them against the critical yield to ascertain whether she would be able to match or better her DB scheme benefits. Without advising on the suitability of the whole transaction, Lairgate could not advise Mrs O on whether the transfer was in her best interests and Mrs O was unable to make a fully informed decision.

Similarly, I have seen no evidence that Lairgate advised Mrs O about the risks of investing in a single-class asset or that it proposed any alternative investment strategies to her to consider. And I am not sure I agree with Lairgate that Mrs O did have an unlimited capacity for loss. Her assets belonged to her limited company which was co-owned with her husband. There was no record of any personal savings (in fact it seems all Mrs O's savings had been loaned to her company). So, however likely the possibility of her company failing appeared to Mrs O, if it should fail, or fail to meet its liabilities, then her future wealth would be at risk.

So, whilst it is possible that Mrs O's circumstances were such that achieving a critical yield of 4.57% was financially viable, whether it was cannot be known for sure because Lairgate failed to provide any advice on the investment itself. Without advising Mrs O on the investment aspect of her transfer, I don't think Lairgate has able to show that the transfer was a financially viable one that was suitable in Mrs O's circumstances and in best interests. Nor do I think that Lairgate properly assessed the risk of the transfer to Mrs O or advised her of any alternatives, however unlikely she may have been to have take them up.

Other objectives

The suitability report stated that Mrs O's objectives for wanting to transfer her DB scheme into her SSAS were: -

- To invest in commercial property as part of her planned investment strategy.
- To have control over the way her funds were invested.

- To have control over how and when income was drawn.
- To keep the benefits within a pension arrangement for inheritance tax purposes.
- To provide for her husband and children upon her death

I've considered the first and second of these has been above.

In terms of inheritance tax ('IHT') and inheritance, pension arrangements can sit outside of an estate for IHT purposes so retaining funds inside a pension wrapper such as a SSAS could mitigate IHT liability. Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. But whilst I appreciate death benefits are important to consumers, and that Mrs O might have thought it was a good idea to transfer her DB scheme to the SSAS because of this, a pension is primarily designed to provide an income in retirement. Given that Mrs O intended to invest and/or spend her SSAS meant there was no guarantee that there would be an inheritance in any event so I don't think that this was a good enough reason to transfer. I also think the existing death benefits attached to the DB scheme were underplayed. Mrs O was married and so the spouse's pension provided by the DB scheme would've been useful to her husband if she predeceased him. I don't think Lairgate made the value of this benefit clear enough to Mrs O.

From looking at the evidence, it seems to me that since the SSAS had already been set up by Mrs O, that Lairgate proceeded on the basis that the transfer was something it needed to facilitate and that it assumed that Mrs O would be investing in commercial property. But in so doing, I think it overlooked that it was required to demonstrate that the transfer was one that was in Mrs O's best interests. The adviser's role was to really understand what Mrs O needed, not simply transact what she thought she wanted. For the reasons I have set out here, I don't think the transfer of Mrs O's DB scheme into her SSAS was suitable or in her best interests and I think she is likely to be materially worse off in retirement as a consequence of doing so.

Of course, I have to consider – despite concluding that the transfer was not in Mrs O's best interests – whether she would've gone ahead anyway, had Lairgate advised her that transferring wasn't in her best interests. I've considered this below.

Would Mrs O have transferred anyway?

I think that by the time Mrs O met with Lairgate, she had already decided that transferring her DB scheme was a route to providing expansion for her business and that by taking this route she would be laying a better future for both herself, her husband, her business and her children. So, I think that in Mrs O's circumstances she would have gone ahead with the transfer regardless of whether Lairgate recommended it or not.

Mrs O has said that she didn't know what was possible in terms of transferring. However, as I've set out above, by the time she met with Lairgate, she had already attended the networking event and was in the process of setting up her SSAS. So, it's not unreasonable to think that this shows that Mrs O was already interested in ways to grow her business and how she could use her pension to do so, thereby boosting her funds for her retirement.

As I stated above, Mrs O had previously used her savings of £300,000 to invest in her property business. So, this says to me that she was familiar with using her own money to invest in her business and that she was comfortable doing so given the growth in assets she had seen since starting her business from nothing fifteen years prior to meeting with Lairgate. Furthermore, Mrs O actually went on to invest some of the funds held in her SSAS in exactly the way she had stated she would.

In addition, Lairgate recorded in the fact-find that Mrs O had no other savings or investments she could use to invest in her business and was keen to avoid borrowing any more. And it noted that Mrs O considered her DB pension to be surplus to her requirements given that her net buy-to-let income from her properties was £60,000 per year, that this would continue into her retirement years and was more than enough to cover her modest living expenses.

Mrs O has said she suffered losses on her SSAS investments (as set out above) as a consequence of W not making sure they were secure. She has also said that her intention had been to select half the property investments herself and leave the other half up to W. The fact that Mrs O had such an intention, again says to me that she was likely to transfer her DB scheme in order to fulfil it. Mrs O's pension was, after all, hers to do with as she wished. Around the time of the advice Mrs O's business was in the process of searching for investments in various property ventures and was looking for capital to raise to do so. So, I think that it was likely Mrs O saw the CETV of her DB scheme as a useful way to facilitate further investment, achieve higher returns and increase the value of her retirement funds.

And I can see that it was well documented on the fact-find that Mrs O's view was that her property portfolio provided her with substantially more by way of income than she needed either at that point in time or after retirement. I can see that Mrs O was adamant that she would always remain a landlord and that she considered any DB scheme pension or additional property income from the SSAS to be surplus to her requirements should she ever actually retire. From what Lairgate recorded on the fact-find I can see that Mrs O came to it with a preconceived idea about investing her DB scheme benefits in commercial property. I can see that in addition to the income she stated she drew from her business there was further £60,000 net income available each year from rentals and that, given she had no intention to retire or cease running her business, this would continue past her retirement age.

Through her business, Mrs O also enjoyed asset wealth which she stated would only improve as the lending against her property portfolio was repaid over the coming years.

Thus given her secure, open-ended, financial position coupled with her stated desire to grow her company by investing in commercial property (and that she had her eye on a number of prospects), I think that Mrs O saw her DB scheme in the form it existed as something she didn't need and which could serve her better by being transferred to her SSAS so she could invest it in the way she wanted. Given these parameters, I think that Mrs O would have transferred regardless of the advice she received from Lairgate. Her setting up of her SSAS was done with the purpose of facilitating the transfer of her DB scheme.

In making her complaint, Mrs O has stated that Lairgate should have declined to facilitate the transfer and should have proceeded to treat her as an insistent client. Not all financial firms deal with clients on an insistent basis and I have no knowledge about Lairgate's policy in this respect. Regardless of whether Lairgate would have agreed to proceed with Mrs O as an insistent client, that she herself was willing to proceed on such basis says to me that she wanted to proceed with the transfer regardless of how she was advised.

For all these reasons, I think that Mrs O would have proceed against Lairgate's advice even if it had not recommended she transfer. Much of Mrs O's complaint centres around the way her SSAS investments were set up and that she wasn't involved in the decision making about them. But, as I have said already, Lairgate was not involved in the actual investments arranged and recommended by P and W. This complaint is solely concerned with the actions of Lairgate. Whilst I sympathise with Mrs O that she didn't get the input in the investment decision making she desired, and that her investments caused her to suffer a loss, these matters were not the result of Lairgate's actions.

I know that Mrs O feels that but for the transfer then her losses would not have occurred and that she would not be in the position she now finds herself in. But, as I have explained here, regardless of Lairgate's actions, I do think that Mrs O would have proceeded with the transfer regardless. The investments that precipitated this complaint weren't made until two years after the transfer. I've seen no evidence that Lairgate was aware of the investments Mrs O intended to make nor that she sought its advice as to their suitability.

Finally, I've noted Mrs O's point that she considers Lairgate's advice lacked full independence and that she was coerced into transferring her DB scheme, however, I've seen no documentary evidence that she was. Nor have I've seen that Mrs O was forced or pressured into the transfer. She had time to consider the advice and to challenge anything she felt was inaccurate. Furthermore, it is commonplace for a firm that lacks the necessary regulatory permissions to advise to refer a client on to one that does.

Much of the dissatisfaction Mrs O has expressed relates to the actions of P and W however, their actions stand separate to her complaint about Lairgate. So, whilst I sympathise with Mrs O and the losses she has sustained, for the reasons I have given here, I can't reasonably conclude they are due to Lairgate's actions.

Summary

This complaint has been about the advice Mrs O received from Lairgate, advice that had to stand alone, regardless of whether she had already set up a SSAS. As I have said, I don't think that the transfer was in her Mrs O's best interests and I also think that there were shortcomings in the advice Lairgate gave her. But based on what I have seen, for the reasons I've given I think that Mrs O would have gone ahead with the transfer anyway.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 19 June 2025.

Claire Woollerson
Ombudsman