

The complaint

Mr P has complained about advice to transfer his occupational defined benefit ('DB') pension. Mr P says that the advice was unsuitable and has caused financial loss.

Mr P's advice was provided by Money Aspects Ltd ('MA') who were appointed representatives of Sesame Limited ('Sesame') at the time. As such it is Sesame who are responsible for the advice given to Mr P.

What happened

Mr P signed the authority for MA to access information on his DB scheme in October 2004.

The trustees of Mr P's DB scheme wrote to him on 28 February 2005 providing a quotation showing his scheme benefits. This letter explained that this had been done on the basis that Mr P was *"considering transferring your pension rights to Money Aspects."*

The trustees of Mr P's DB scheme wrote to Scottish Widows in June 2005 to confirm an amount of around £119,000 had been sent.

The transfer was split into two parts with the protected rights element being paid into a personal pension and the non-protected rights element being paid into a S32 plan.

Mr P received the welcome letter for his new Scottish Widows pension in August 2005, included within this was an illustration and cancellation form. The illustration showed the two investment funds as per the application form and detailed that *"For arranging the transfer payment Scottish Widows will pay commission of £2,240.47 to your independent financial adviser, Sesame LTD / Countrywide."*

Whilst there is no advice documentation from 2005 available, scheme information and a questionnaire completed by Mr P at the request of this service states that at the time of advice:

- Mr P was aged 46 and in good health, married and had no dependants.
- Mr P was employed as a support worker and was also a self-employed taxi driver.
- Mrs P was employed as a team manager.
- Mr P had income of £25,000 a year with Mrs P's income being £12,000 a year.
- Mr P held no other savings or investments.

In November 2008 the personal pension and s32 policies were combined into a Scottish Widows Retirement Account. Tax-free cash was taken at this time with income commencing in March 2009. Mr P used the services of a different adviser in making these changes.

Having become aware that the advice he received may not have been suitable, Mr P registered his complaint with Sesame in April 2023.

Sesame issued their complaint response in June 2023. This stated that:

“Sesame is unable to find any evidence that Money Aspects Limited recommended that you transfer your [DB scheme] into a Scottish Widows S32 and PPP in 2005. Sesame does, however, note that Money Aspects Limited recommended a Scottish Widows SIPP to you, in April 2005 which would not have been a suitable product to transfer an Occupational Pension into.”

Unhappy with Sesame’s complaint response Mr P referred his case to this service in November 2023.

As per the notes above and considering Sesame’s arguments about their role in providing Mr P with advice and the timeliness of his complaint, our investigator initially looked into our jurisdiction.

The investigator concluded that Sesame was responsible for the advice given to Mr P and that Mr P had registered his complaint in time. Sesame accepted these findings and consented to this service considered the merits of Mr P’s complaint.

In this regard our investigator concluded, based on the limited information available, that the advice was unsuitable. The investigator also provided redress instructions to both parties.

Despite have been contacted several times, Sesame have not provided any response to the findings issued and as such 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.

Sesame initially stated that there was no evidence they provided advice to Mr P regarding his DB scheme, as such they believed the complaint sat outside of our jurisdiction. Our investigator issued findings and provided evidence to show that it was in fact MA (and therefore Sesame) who advised Mr P, with these findings being accepted by Sesame.

Subsequently Sesame stated that given the date of advice, and the time that had passed since, the complaint should be considered too late and, again, outside of our jurisdiction. Our investigator issued further findings explaining why they considered the complaint to be in time, and within our jurisdiction. Sesame accepted these findings and provided their consent for this service to consider the merits of Mr P’s complaint – the suitability of the DB transfer advice.

Given Sesame have provided their consent regarding our jurisdiction I have not considered any jurisdictional arguments further, with this decision focussed solely on the transfer advice provided to Mr P.

I would note here that there is limited information upon which to base this decision. Mr P holds little / no paperwork from the time of advice with Sesame also confirming they hold no documentation from that time.

I have not asked Mr P / Sesame to provide any additional information or re-check their files to ascertain if any further documentation has been found, our investigator has already asked all parties several times to provide all documentation they have available.

Both parties have subsequently confirmed that no further documentation is available, given this, and in order to try and bring this issue to a resolution in as timely a manner as is possible, this decision is based on that evidence which is already on file, Mr P’s recollections

from the point of advice, and the regulatory rules and guidance in place at that time.

Overall, I have reached the same conclusions as our investigator and for broadly the same reasons.

There was significant regulator guidance available for businesses at the time this transfer took place.

This included:

COB 5.3.29A(4):

The regulator expected a "...prospective investor to receive sufficient, clear information to make an informed investment decision based on a firm understanding of the risks involved and a knowledge of what protection, rights, expectations and options they may be giving up."

COB 5.3.29G:

This specified the information a business should gather from the consumer and the DB scheme to assess suitability, in a similar way to the LAUTRO/FIMBRA guidance.

Importantly it also said for the first time that:

When advising a customer who is, or is eligible to be, an active member of a defined benefits occupational pension scheme whether he should opt out or transfer, a firm should:

- a. start by assuming it will not be suitable, and
- b. only then consider it to be suitable if it can clearly demonstrate on the evidence available at the time that it is in the customer's best interests.

COB 5.3.22R

1. A firm must ensure that a transfer value analysis is carried out in accordance with COB 6.6.87 R - COB 6.6.93 R (Projections) before it makes any recommendation to a customer to transfer out of a defined benefits pension scheme.
2. A copy of the analysis must be delivered with the key features document or otherwise provided to the customer before he gives consent to the application to transfer.
3. The firm must take reasonable steps to ensure the customer understands the analysis, drawing attention to factors which do and do not support the recommendation to transfer.

COB 5.3.23R

A firm must provide a projection of the possible future benefits of the proposed individual pension contract before it makes any personal recommendation to a customer to opt out of, or transfer from, an occupational pension scheme.

1. The format and nature of the benefits given in the projection must, so far as possible, be the same as those which apply under the occupational pension scheme of which the customer is, or is eligible to become, a member.
2. If it is not possible for the benefits shown in the projection to replicate those of the occupational pension scheme, an explanation must be given.
3. If the customer has expressed an interest in changing the structure of his eventual benefits, an additional projection may also be prepared on that basis.

COB 5.3.24R

A suitability letter relating to a personal recommendation to opt out of or transfer from an occupational pension scheme must include:

1. a summary of the disadvantages as well as the advantages of opting out or transferring; and
2. in the case of a pension opt out, a financial analysis explaining the decision to opt-out.

COB 5.3.25R

If, contrary to the advice of the firm, a private customer instructs the firm to arrange a pension opt-out or pension transfer, the firm must:

1. make and retain a clear record of the firm's advice that the private customer should not proceed with the pension opt-out or pension transfer and the private customer's instructions to proceed with the transaction; and
2. provide a further confirmation and explanation, in writing, to the private customer that the firm's advice is that the private customer should not proceed with the pension opt-out or pension transfer.

The limited documentation available means it is impossible to state whether the advice to transfer the DB scheme was in Mr P's best financial interests.

Whilst there is evidence a third party was asked by MA to complete a transfer value analysis, any analysis which may have been completed is not available, and as such there is no way to assess the financial impact of the transfer.

There may be instances where non-financial reasons are sufficient to justify the transfer of a DB scheme however this seems unlikely in this case.

Mr P was 46 at the time of advice and as such any desire to access the benefits provided by the DB scheme flexibly would be considered a weak reason for transfer as Mr P's age meant he was several years away from being able to access the pension, whether transferred or not.

Changing the way a pension provides benefits in the event of death can sometimes also be given as a reason in support of a transfer, however Mr P was relatively young at the time of transfer and has stated he was in good health at the time of advice, as such it does not seem reasonable to deem this as being a potentially strong justification for a transfer in this case.

There can also be instances where the underlying funding levels of the DB scheme can cause concern to scheme members, however Mr P has not referenced any concerns within the evidence he has provided, and the scheme documentation from 2005 notes the scheme was fully funded. As such I do not believe this could be considered a justification for transfer either.

Having concluded there is nothing to suggest Mr P's circumstances in 2005 would support advice to transfer his DB scheme I have additionally considered his actions post advice.

I appreciate that Mr P accessed tax-free cash in 2008 and then commenced income withdrawals in March 2009. However, there is no way I can know whether the need for this tax-free cash / income was known in 2005 or whether Mr P's circumstances had

unexpectedly changed. As such I do not consider Mr P's accessing of the transferred funds from 2008 onwards as sufficient justification for the transfer.

Overall, given the lack of documentation, I have reached the same conclusion as our investigator. There is simply not enough evidence to move away from the regulation in place at the time, and most specifically the starting assumption that a transfer of DB benefits will not be suitable for most scheme members.

Given this I have concluded that it is more likely than not that the advice given to Mr P to transfer his DB scheme was unsuitable and I have therefore upheld this complaint.

The redress instructions below are also in line with those already communicated by our investigator.

Putting things right

A fair and reasonable outcome would be for Sesame to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have likely remained in the occupational scheme.

Sesame should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

For clarity, Mr P has commenced taking his pension benefits. And on balance, I'm satisfied from the evidence available that Mr P would have accessed his DB scheme at this time had it been retained. The redress calculation should therefore be based on Mr P taking benefits from the DB scheme at the same time.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr P's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, Sesame should:

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P before starting the redress calculation that:
 - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mr P receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr P accepts Sesame's offer to calculate how much of the redress could be augmented, request the necessary information, and not charge Mr P for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr P's end of year tax position.

Redress paid directly to Mr P as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Sesame may make a notional deduction to allow for income tax that would otherwise have been paid. Mr P's likely income tax rate in retirement

is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Where I uphold a complaint, I can award fair compensation of up to £190,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £190,000, I may recommend that the business pays the balance.

Determination and money award: I require Sesame to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I also recommend that Sesame pays Mr P the balance.

If Mr P accepts my decision, the money award is binding on Sesame. My recommendation is not binding on Sesame. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

In line with the commentary above I am upholding this complaint and require Sesame Limited to calculate and pay redress in line with the methodology provided above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 December 2024.

John Rogowski
Ombudsman