DRN-5028377

The complaint

Mr W complains, with the help of a professional representative, about the advice given by Sesame Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a lifetime annuity. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In January 2008, Mr W says he was approached by Sesame offering him a free pension review. It is not entirely clear if this was how the advice process was initiated – in the circumstances which I will explain below, it seems more plausible that it was Mr W who initiated things.

But in any event, on 31 January 2008, Mr W completed a fact-find for Sesame to gather information about his circumstances and objectives. Mr W returned the completed form to Sesame along with a handwritten letter, which provided more information and context to his situation and what he was seeking to achieve. The key information recorded was as follows:

- Mr W was aged 52 and single with no dependants.
- He was unemployed and in receipt of job seekers allowance. His other source of income was from the drawdown of a personal pension of around £2,100 a year.
- His income met his expenditure.
- He had no assets and no emergency cash fund.
- He had outstanding credit card debts of £6,000.
- He was in good health but had two medical conditions.
- Mr W's objective was to access a cash lump sum of £3,500 – £2,000 to immediately pay towards his credit card debt and £1,500 for relocation expenses. Mr W said he lived in a small town and it was almost impossible to find worthwhile work, so he wanted to move to improve his prospects of finding a job.
- Mr W indicated he was prepared to take a significant amount of risk with his pension because the fund value was small.

On 18 March 2008, Sesame advised Mr W to transfer his DB benefits into a personal pension arrangement, take a 25% cash lump sum and purchase a single life level lifetime annuity. In summary the reasons for the recommendation were:

- Mr W needed a lump sum of £3,500 immediately and he had no other means of raising the capital. He could not borrow the money.

- Taking immediate benefits from his scheme would only give a lump sum of just under £1,500.

- Mr W was single with no financial dependants.

- A level annuity was better value for money than one which increased with inflation because at an assumed 2% inflation rate, it would take 50 years to catch up with the level one, dropping to 28 years at a rate of 5%.

- A five-year guarantee period would provide protection for the beneficiaries of his estate.

- As Mr W didn't need the income from the annuity, he should consider recycling it into a pension plan or an alternative investment such as an Individual Savings Account (ISA).

Mr W accepted the recommendation and around £14,144 was transferred in April 2008 – Mr W took the tax-free cash lump sum and the remainder was used to purchase the recommended annuity providing Mr W with an income of around £650 a year.

In March 2024, Mr W though his representative complained to Sesame about the suitability of the transfer advice. In summary he said Sesame failed to demonstrate that the transfer of his final salary pension scheme was in his best interests and had been negligent. He asked to be restored to the position he would have been in but for the negligent advice.

Sesame didn't uphold the complaint. They said the advice was suitable based on Mr W's circumstances at the time.

Mr W then referred his complaint to us. One of our investigators considered the matter and they didn't uphold the complaint – they thought the advice Mr W received was suitable given his circumstances at the time.

Because the matter couldn't be resolved informally, it was passed to me to decide.

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 taken into account relevant law and regulations, regulator's 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 Businesses (PRIN) and the Conduct of Business Sourcebook ('COBS'). And 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.

<u>The applicable rules, regulations and requirements</u>

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Sesame's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Sesame should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr W's best interests.

Having considered all of this and the evidence in this case, I've decided not to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

Mr W's representative has made a number of points in response to the investigator's assessment that the complaint should not be upheld. Where I deem it necessary to do so, I will specifically refer to and address these points below. But I won't address ever point raised – instead, I'll focus on what I believe are the key issues at the heart of this complaint.

Financial viability

As required by the regulator, Sesame produced analysis showing the growth rate or critical yield required to match Mr W's DB scheme benefits at age 60 – the scheme's normal retirement age. But Sesame's advice and recommendation in this case was not based on Mr W retiring at 60 and investing his pension monies in the meantime in the belief that he'd be better off by transferring. The advice was based on addressing what it considered was Mr W's immediate need for a cash lump sum and accessing his pension benefits early to achieve things.

So, while I'm satisfied this analysis was carried out as Sesame was required to do and it was set out and referred to in the suitability report, I don't think it's necessary in this case for me to consider the financial viability of the transfer. What I need to consider in this case are the other reasons Sesame believed at the time meant the transfer was suitable and in Mr H's best interests.

Access to a cash lump sum

The primary reason Sesame recommended Mr W take immediate benefits from his scheme by transferring his pension to a personal arrangement was to enable him to access a cash lump sum to put towards a credit card debt. When Mr W returned his completed fact-find to Sesame, he included a handwritten letter explaining the background to what he was seeking, and he described his need or objective for a cash lump sum as 'needing to solve some immediate financial problems.'
The adviser's handwritten file notes from the time record that Mr W had spoken to the Citizen's Advice Bureau (CAB) and it seems with their help, they'd negotiated with his creditors requiring him to make immediate payments of £500 to each of four credit cards he held. Mr W therefore needed an immediate cash lump sum of £2,000 for debt repayment.

In addition to this, it is also documented that Mr W required an additional £1,500 for relocation expenses – he intended to move (by the end of March 2008) from the small town he lived in to be closer to a family member where the prospect for work and the job opportunities were greater as were the transport links.

So, it seems clear that Mr W's objective or need was for an immediate cash lump sum of £3,500 to achieve these things.

Accessing pension benefits early to achieve these things would in my view, typically not be in a consumer's best interests. But, given Mr W's particular circumstances, I think his need for a cash lump sum was necessary. And in this case, I think it was a suitable recommendation to transfer Mr W's pension to a personal arrangement to give early access to his tax-free cash entitlement to provide the necessary funds. I'll explain why.

Mr W himself said at the time he had a lot of financial problems to sort out. And it seems Mr W had already taken the important step of seeking help from the CAB and using them to negotiate with his creditors on his behalf. This is clearly documented at the time. So, I see no reason why Sesame should not have taken this at face value and deemed Mr W's objective or need as real and somewhat pressing.

I can see Mr W's representative says that Sesame should have asked enough questions and carried out sufficient due diligence to ensure Mr W's objective was accurate. But based on what is documented, it would appear they did so. Mr W had already sought debt advice, so it wasn't the case that Sesame ought to have directed Mr W to a debt counselling service before doing anything more. The result of the advice or guidance Mr W had received was that he needed to pay his creditors a lump sum immediately, so it was Sesame's role to advise him how best to achieve things in his circumstances.

Mr W did not have an emergency cash fund and he had no assets other than an existing pension already in payment. He wasn't working at the time and he had no surplus income after expenditure. Because Mr W wasn't working and given the sources of his income, it seems unlikely to me that he could have borrowed the money he needed. And the suitability report says that Mr W confirmed he was not able to do so, suggesting he had enquired about the possibility.

I can see that Sesame considered the option of Mr W taking benefits from his existing scheme by obtaining an early retirement quote, which I would expect it to have done. But in this case, Mr W's scheme would not have provided him with what he was looking for – it would only have given him just under £1,500 as a lump sum falling someway short.

It therefore seems to me that none of the reasonable alternatives I would expect Sesame to have explored with Mr W before considering using his pension were available to Mr W or met his needs.

So, in these circumstances, it appears the only way Mr W could achieve things was to gain early access to his pension by transferring to a personal arrangement. I think Mr W's need for a cash lump sum was pressing. By giving him access to his tax-free cash, Mr W was able to make an immediate debt repayment putting him on the path to improving his immediate financial position.

And by having a lump sum to allow him to relocate, it provided him with better work prospects. So, it also provided an opportunity for Mr W to improve his medium / longer term financial position through potential employment and earned income.

While Mr W didn't need an income at this stage, he couldn't combine his funds with his existing unsecured pension contract and his fund size was too small for this type of plan anyway. An annuity was free of investment risk, which I think was appropriate despite Mr W indicating that he was prepared to accept investment risk. It was guaranteed for life. And while the payments were level and the purchasing power would reduce with future inflation, which the suitability report made clear, the index linked alternative offered a lower starting income and would take many years before it caught up with the total income paid from the level policy. And if Mr W followed Sesame's recommendation to recycle his income into a pension or an ISA, he could put that money to work in a tax-free environment and make some extra provision for his future. So, the recommended arrangement wasn't a complete sacrifice of Mr W's long-term pension provision to meet a short-term need. In my view, it provided an opportunity to strike some kind of balance in the circumstances.

Mr W's DB scheme provided guaranteed death benefits in the form of a spouse's pension. But given Mr W was single with no financial dependants, I don't think losing these benefits disadvantaged Mr W. The adviser did recommend an annuity with a five-year guaranteed period, so if Mr W died within this period, his beneficiaries (Mr W indicated he wanted his nephews to benefit) would continue to receiving payments for the remainder of the period.

So, taking all of the above into account, I think the recommendation was suitable for Mr W given his particular circumstances at the time, and I think Sesame did act in his best interests.

I'll now address some of the other key points Mr W's representative has made in response to the investigator's findings.

Mr W's representative says he's still paying £2 a month to each of his six creditors, so this shows there was room for manoeuvre with his creditors and that an arrangement was possible, which ought to have been considered rather than sacrificing his DB pension.

The negotiated settlement referred to in the advice paperwork was for four of Mr W's creditors. And I don't think it was suggested that the immediate lump sum payment he was required to make was the end of the matter – it was just part of the settlement. As I've already said, Mr W had already approached the CAB for help with his debts, so I think it was reasonable for Sesame to have assumed that the settlement had been carefully and properly considered. So, I don't think there was any need for them to recommend Mr W seek further debt counselling advice or question the settlement arrived at.

Mr W says he didn't understand what he was giving up when he agreed to transfer. But the evidence indicates otherwise – his preserved pension benefits were set out in the suitability report and in the transfer value analysis Sesame carried out. The adviser also included a FCA factsheet about pension unlocking, which made it clear more generally about what Mr W was contemplating and the consequences of doing so.

Mr W's representative says he hasn't in fact moved away. They say he was considering moving closer to his remaining family, but this was a mere thought at the time given his mother had passed away around the same time. They say, like most people during the time of any bereavement, these kinds of thoughts are considered but this does not mean they become an objective or a necessity.

Mr W's mother died a couple of years or so before the advice, so I'm not persuaded Mr W hadn't considered or not thought his plans through.

The paperwork clearly records Mr W intended to move to seek work, which is what Mr W told Sesame. Sesame's advice could only be based on the information he provided. I think Mr W's objective of wanting to move to seek better job prospects was plausible and I don't think Sesame had any reason to question or doubt this at the time. And just because, for whatever reason, Mr W hasn't done what he said he would do, this does not make the recommendation unsuitable.

Finally, Mr W's representative has referred to his ill health in 2007 and they suggest Sesame didn't assess his purposes and mindset sufficiently in light of this. But I said above that Mr W's handwritten letter accompanying his completed fact-find provided the background and events leading up to the situation he found himself in, which in my view was clearly and lucidly articulated. Mr W referred to his ill heath here and said he was largely better, but his problems now were financial ones. I've seen nothing to suggest Mr W wasn't capable of making a considered decision here or that Sesame did not act fairly and reasonably in its dealings with him.

So, while I understand Mr W will be disappointed with my decision, for the reasons I've set out above, I think Sesame's advice was suitable in the circumstances, so there's nothing they need to do to put things right.

My final decision

For the reasons above, I've decided to not uphold this complaint and so I make no award in Mr W's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 April 2025.
Paul Featherstone
Ombudsman