

The complaint

Mr K, through his representative, complains about the advice he received from The Independent Life & Pensions Group Ltd, now part of Sesame Limited (Sesame).

All references to 'Sesame' will include all actions of The Independent Life & Pensions Group Ltd. All references to Mr K will include submissions by his representative.

What happened

There is very limited information about what happened when Mr K's pension plan was transferred to in 1998.

What we do know is that Mr K was a member of his employer's Executive Pension administered by a provider I will refer to here as D. Sometime in early 1998 a document titled *EXECUTIVE PENSION & AVC PLANS* was provided to Mr K and his coworkers. This explained a decision had been made to "stop and wind-up the Executive Pension And AVC Scheme" with D in favour of a Group Personal Pension (GPP) with another provider, referred to here as B.

This notice provided Mr K with four options for what to do with his funds with D. In brief, these were:

1. For the Trustees to secure the purchase of a bulk Buy-out providing a Non-Profit Deferred Annuity or a Section 32 Buy-Out Plan (with individual benefits in the employee's name).
2. To individually transfer the benefits into a Personal Pension
3. To individually transfer the benefits into a Section 32 Buy-out policy
4. To take advantage of the no loss transfer into a GPP with B on specially enhanced terms.

The first option was explained as the default option if no selection was made. Under the second and third options it was noted that transferring to either one "may mean that you will be paying a policy fee and separate charges." And it explained that under the last option:

*special terms had been negotiated that would allow your fund with [D] to be moved to [B]'s Group Personal Pension, on Day One on a **no loss** basis. Therefore, whatever your fund value is, it will be added to your new plan, with no loss. Once this **no loss** transfer has been completed, a revised statement will be produced by [B] to confirm the full value has been received. [emphasis in the original]*

The notice also said, "If you would like advice on these options please contact your independent financial advisor or [what is now Sesame]."

It seems that Mr K did meet with a Sesame adviser who recommended that he transfer to a GPP with B. Mr K subsequently returned his selection form on 22 April 1998 and a GPP was set up and his funds transferred. Mr K and his employer made regular contributions to this plan. Mr K left his then employer in 2002.

Sometime later, following discussions with his friends and colleagues, Mr K believed he made have received bad advice in 1998. This prompted him to reach out to a professional representative, who raised a complaint on his behalf.

Sesame issued their final response to Mr K's complaint in March 2024. They didn't uphold the complaint, saying the advice provided at the time was in Mr K's best interest and not an unsuitable recommendation for his circumstances.

Dissatisfied with this response, Mr K's complaint was referred to this service for an independent assessment. Following Sesame's consent to us investigating this complaint one of our investigators looked into things and concluded that the advice was suitable, so he didn't uphold the complaint.

Mr K's representatives didn't agree so the complaint has come to me for a 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.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

As an initial matter, there is some disagreement about the nature of Mr K's pension held with D.

Sesame have stated unequivocally that the scheme with D, named Executive Pension, was not a final salary scheme. And the documents I've seen from the time do support this position. The notice refers to the fund value, language used when discussing money purchase pensions, not a cash equivalent transfer value (CETV) which is terminology commonly associated with a final salary (also referred to as defined benefit (DB)) scheme. Nevertheless, Mr K's representatives have stated that only a defined benefit pension scheme can be transferred to a Section 32 plan. They reason then that Mr K's plan must have been DB pension. I don't think this is correct. Section 32 plans are designed to receive benefits transferred from occupational pension schemes (OPS) and an OPS can be a defined benefit scheme or a money purchase (also called a defined contribution (DC) scheme). I've not seen anything which leads me to conclude that only DB occupational pension schemes are eligible to be transferred to a Section 32 plan. So having carefully reviewed everything provided and the arguments both parties have made, I'm not persuaded that Mr K's plan with D was a DB pension.

With that in mind, I have considered whether the advice provided to Mr K in 1998 was suitable. Having done so, I have reached the same conclusions as the investigator and for broadly the same reasons.

Mr K's representative argues that the advice wasn't suitable because the transfer caused him to lose out on guaranteed benefits; that Sesame failed to adequately ascertain his attitude to risk and capacity for loss; and that Sesame did not account for the additional fees that Mr K was subject to as a result of transferring his pension to the GPP with B.

But as I've explained, above, I'm not persuaded that the OPS here was a defined benefit scheme, so there wouldn't automatically be guarantees associated with this pension. Furthermore, the plan with D was winding up. This meant that Mr K could not have stayed a member of that plan. So if there were any guarantees available, which I'm not persuaded there were, it would never have been possible to achieve these guarantees by staying in that plan.

The evidence I've seen show the recommendation to transfer to a GPP followed an assessment of Mr K's attitude to risk. Mr K's representative argues that he was a low-risk investor with a low capacity for loss. The documents from the time of advice, though limited, show that Mr K agreed with the middle statement of five options which said, "I am fairly conservative, but I will accept a reasonable level of risk." Given this wording and presentation, I am satisfied that Mr K agreed he had a medium attitude to risk.

Additionally, Mr K was 54 years old at the time of advice and didn't intend to retire until age 65, more than 10 years later. He was also employed, earning around £24,000 per annum. So on balance, I think he was prepared to and had the capacity to take some risk with his pension investment. And I've not seen sufficient evidence to suggest that the advice wasn't right for his attitude to risk. Mr K went on to invest his pension monies and future contributions into a with-profits fund. This is in line with a medium low/medium attitude risk.

I've also seen nothing to suggest the fees for the GPP exceeded those Mr K was paying previously. The notice made specific reference to the fact that under the second and third options, fees and charges might be owed. No such reference was made regarding the GPP. And I've been provided with no evidence regarding the charges Mr K paid as part of the pension with D. So I'm unable to conclude based on the evidence I've seen that the fees for the GPP would have made the advice unsuitable in the circumstances.

The only other option available then, was the bulk transfer to a Section 32 buy-out plan. I understand at this time Mr K's pension was valued at around £1,500. It is unknown what terms the buy-out plan was offered on, but at that time I think, on balance, Mr K was likely to have reasonably expected larger returns from the GPP than a Section 32 plan, negotiated by the trustees as part of a bulk buy-out. Furthermore, additional contributions would not have been possible with a Section 32 plan. And I can see that Mr K and his employer both contributed to his GPP.

And while a Section 32 plan could be argued to be a more cautious option, it still carried risk which might not be appropriate for someone with a low attitude to risk. So even if I were to agree with Mr K's representative that he had a low capacity and attitude to risk, this would not mean the Section 32 buy-out plan would have been in Mr K's best interest.

Given all of this, the advice to transfer to the GPP does not appear unreasonable to me. The advising firm had negotiated enhanced terms, and the transfer to the GPP was done on a no loss basis. I've also not seen sufficient evidence to persuade me that Mr K's attitude to and capacity for risk and the charges associated with the GPP made the advice inappropriate.

So, for all these reasons, whilst I know Mr K will be disappointed with this outcome, I have not been persuaded on the available evidence that Mr K's complaint should succeed.

My final decision

Accordingly, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 February 2025.

Jennifer Wood
Ombudsman