

The complaint

Mr B complains that First Service Financial Limited ('FSF') gave him unsuitable advice about how he could use a pension sharing order after his separation from his ex-wife.

What happened

On 4 January 2021 Mr B made contact with FSF because he had separated from his then wife and was in the process of getting divorced. He wanted information about the options that were available. Mr B explains that he wished to keep their joint house, but his wife wanted 50% of the equity in the house, and was prepared to agree to a 50% share of her occupational pension scheme ('OPS').

After his call with FSF, Mr B contacted his ex-wife to explain that, having spoken with a financial adviser, he was prepared to accept a 50/50 split of both the house and her occupational pension plan.

In February 2022 a court made an order that, following the equal split of other assets prior to the court's involvement, Mr B would receive a 50% share of his ex-wife's public sector OPS. A pension sharing order ('PSO') was drawn up that would compel the OPS to provide 50% of his ex-wife's pension to Mr B.

After receiving confirmation from the OPS administrators that it was in receipt of and processing the PSO, Mr B made further contact with FSF. On 2 March 2023 he signed a client agreement with FSF.

On 6 April 2023 FSF prepared a suitability report for Mr B regarding his pension. FSF says he was sent this on 11 April 2023. And that was followed up with a meeting on 25 April 2023 to discuss the recommendation. The report referred to his PSO as having a cash equivalent transfer value ('CETV') around £58,000. It recommended that he transfer that CETV to a self-invested personal pension ('SIPP') so that he could access benefits flexibly. Mr B was 61 years of age so able to access benefits from this pension immediately.

Mr B accepted FSF's recommendation and, on 3 May 2023, he opened a SIPP. FSF instructed the SIPP provider to request the transfer from the OPS.

In June, the SIPP provider was informed by the OPS that its scheme rules did not allow for the transfer of Pension Credit benefits in any circumstances. The SIPP provider explained this response to FSF. FSF then asked the SIPP provider to try again and ask why the OPS administrators would not comply with the PSO.

The SIPP provider explained to FSF that the OPS had said that Mr B did not yet have Pension Credit benefits, only a transfer authority. So Mr B would not have been able to have requested a CETV from them.

The OPS administrators wrote to Mr B on 27 August 2023 to confirm that it had implemented the PSO. It explained that his benefits in the OPS were available in two parts. One part of the scheme had a retirement age of 60. So Mr B had immediate access to a pension of

£1,609 and a lump sum of £4,828. The second part of the scheme had benefits that would be payable from his state pension age. That amounted to an annual pension around £1,700.

Mr B complained to FSF about the advice he had been given. He considered that the information he'd been given on 4 January 2021 caused him to agree to the 50/50 split of assets with his wife. He says that FSF understood that he had need of instant access to a lump sum from the PSO and that, at no time, had FSF told him that would not be possible. Mr B considered his losses were around £36,000. He attributed this to the cost of having to purchase a chalet as a residence, the loss of his motor home (which he was compelled to sell) and the costs for the sale of the matrimonial home.

FSF acknowledged that it had been contacted by Mr B on 4 January 2021 and that one of its advisers had spoken with him. It set out an understanding that his ex-wife had OPS pensions with CETVs of £32,000 and £59,500. It understood Mr B's preference was to keep the house but that his ex-wife wanted 50% of the property value. It said it explained equity release as an option to retain the property, which Mr B didn't want. It said that it then left it with Mr B as it could not give pension advice until any PSO was in place. It said that, at no point, had it given Mr B any advice over what type of divorce settlement he should seek. It explained that neither the OPS nor SIPP administrators ever said that a transfer would not be possible. It did not consider that it was responsible for the choices Mr B made or for any of his claimed losses.

Mr B disagreed with FSF's answer and brought his complaint to our service. Our investigator was unable to resolve this complaint so it has been referred for an Ombudsman's decision.

I issued a provisional decision in order to let both sides consider what I thought a fair and reasonable outcome would be. I summarise my provisional decision as follows:

- I explained that, based on the evidence I had seen, I didn't think that FSF had advised Mr B to accept a 50/50 pension sharing order.
- I then explained that I was persuaded that FSF had, more likely than not, informed Mr B that he would be able to do something with his share of his wife's pension that was factually incorrect.
- I wasn't persuaded that Mr B would have been in a different position regarding his divorce settlement, even if he'd accurately been informed what the PSO would likely have meant for him. That was because I didn't agree that he would more likely have had a different settlement from the court if he'd instead contested the settlement.
- I then considered the personal recommendation that FSF provided Mr B when it was clear that he had been awarded the PSO by the court. And I explained why I thought that FSF got that wrong. It recommended that he do something with his pension that was not possible.
- I thought that FSF advised Mr B without ever establishing what his PSO offered him, because it had never asked.
- I didn't think this mistake put Mr B into a different position because he was never able to transfer the defined benefits that he was being granted by the PSO.
- But I did consider that FSF's mistakes unfairly raised Mr B's expectation and explained that I thought it should pay Mr B £500 compensation for the distress and inconvenience its actions contributed to.

FSF responded to my provisional decision with a further comment regarding my expectation that it ought to have contacted the OPS administrator for scheme details prior to providing financial advice. It said that, in practice, that was not likely to have been possible because the OPS was in Mr B's ex-wife's name and it didn't have a letter of authority for her.

Mr B disagreed with my provisional decision. He reiterated the same arguments that he had

previously given to our service. He disagreed that £500 was high enough compensation when considering the fact that he had to sell his motor home to purchase a chalet.

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 have considered this case a final time and taken into account the responses to my provisional decision. No new evidence has been provided and the responses have not changed my mind. My final decision is as I set out in my provisional decision which I will go through again below.

In reaching a fair and reasonable outcome in this case, I have considered the relevant rules and industry best practice that apply to the service that FSF provided Mr B. This includes, but is not limited to: the Conduct of Business Sourcebook ('COBS') rules set out in the Financial Conduct Authority ('FCA') Handbook, and the Principles for Businesses ('PRIN'). In determining the facts, where evidence is incomplete, I make my finding on what I think most likely happened based on a balance of probability.

I have considered the issues that Mr B has raised, and I think that the crux of his complaint is that the information that FSF gave him in its call in January 2021 misled him. He considers that it was FSF's recommendation that he accept the 50/50 split of the house and pension assets that were in question.

I've considered whether I think that FSF made this recommendation to Mr B at that stage. And, for the reasons I'll explain, I don't think it did. I do not have a record of the exact conversation, and what I have is conflicting testimony from Mr B and FSF about what was discussed at that time. So I am basing my finding on what I think most likely took place, based on a balance of probability.

Mr B explains that he called up and explained the position he was in. Both he and FSF agree that involved an explanation that, in his divorce settlement, Mr B wanted to keep the matrimonial home and leave his wife with her pension but his wife wanted a 50/50 split of those assets.

I think that there would most likely have been a discussion, at least in general terms, about the options that would be available to Mr B if he were to be awarded a share of his ex-wife's pension. I have seen a copy of the email that Mr B sent to his ex-wife on 6 January 2021, following his call with FSF. In it he explained that he had spoken to a financial adviser and had been advised to accept a 50/50 split explaining how he could manage a transfer. So I can see that Mr B interpreted his call with FSF as being advised to accept that.

But FSF has said that it would not have advised Mr B on an appropriate divorce settlement. And given the remit of a financial adviser, I am persuaded that it is more likely that it would not have done. Providing guidance over a fair divorce settlement is not an activity that is regulated by the FCA so is not something that FSF were regulated to help with. In the circumstances as they were, Mr B had no pension, so the conversation would have been purely hypothetical. So can only have been limited to general terms about what options may be open to Mr B should he end up with a PSO for his ex-wife's pension. And the reason I say 'general terms' is because FSF had not, at that stage, carried out a detailed fact find. Nor had it carried out any enquiries about the specific pension scheme details. Which at that stage was not unreasonable.

I think that FSF would have been aware that the potential PSO that Mr B referred to would

have been in a public sector defined benefit scheme, given the employer concerned. So I think that it ought to have been cautious in setting out the options that may become available to Mr B if he agreed to, or was awarded, a PSO. But I am not persuaded that it was. I think that it is more likely that it gave Mr B information that would have caused him to think that, if he did end up with a share of the pension, he would be able to access the fund in a flexible way. The reason I say this is because, when FSF eventually gave Mr B a formal recommendation, it gave him this same information. Which was incorrect in the suitability report. So I think FSF were, most likely, similarly incorrect in the information it gave Mr B in January 2021.

So, even though I am not persuaded that FSF gave Mr B a recommendation over what type of divorce settlement to accept, I am persuaded that it most likely gave him cause to believe he would be able to do something with a PSO for that defined benefit pension scheme that he would not be able to do. But, at that time, I am not persuaded that, on balance, FSF would have been in a position to give Mr B anything more than general information about PSO's.

I understand that Mr B chose to agree a settlement with his ex-wife for 50% of the equity in the matrimonial home, in exchange for a 50% PSO. I can see that Mr B considered the information that he got from FSF to be key in his reaching that decision. I understand his frustration that one of the uses for the PSO that he was likely given cause to think was open to him was wrong. But I do not think it's fair or reasonable to say that he would, more likely than not, have been in a different position if he'd understood from the outset that he could never have accessed flexible benefits from such a PSO.

Mr B was quite clear that his ex-wife would not accept such an arrangement. Although Mr B was of an age that he could immediately access and make use of a pension asset, his ex-wife was not yet 55 years old. It meant that, from her perspective, the 50% share of the equity in the matrimonial home would have been of use in starting over in new accommodation, in a way that retaining her future pension would not. So, even if Mr B had contested the settlement through court, I am not convinced that it is more likely than not that he would have been awarded the property in full and been able to keep the house. So I don't think that what happened was an avoidable consequence, even if he had not spoken to FSF about the potential options.

I understand that Mr B is frustrated that he will never know whether a court would have ruled differently. But he made the decision to sell the house and accept the 50/50 division of assets himself, without seeking legal advice, and not involving a court. For the above reason, I don't think it is fair or reasonable to hold FSF responsible for the decision that he went on to make after speaking to its adviser on the phone.

I have then gone on to consider what happened after Mr B had been to court and the PSO was finally awarded. By that stage, it was clearer that Mr B would have some form of pension award and that he wished to get financial advice about that. At that point, he was clearly seeking advice which was a regulated activity that FSF were qualified and regulated to give advice on. So I will now go on to consider that advice.

Quite simply, FSF gave Mr B a recommendation to do something with his PSO that he was never able to actually do. Its advice was obviously flawed because it recommended that he do something that the OPS scheme would not allow. So I have considered how this likely came about.

FSF have shown us its recommendation and the information that it received from Mr B. But what he had was an out of date CETV from his ex-wife that had been used to agree the PSO. This was not a PSO for a defined contribution pension as I have already said. So it

wasn't necessarily as straightforward as him being awarded 50% of the CETV to move into a fund of his choice.

The starting point for FSF in giving this recommendation for a transfer of one pension provider to another would be to understand what pension Mr B would have already had as a result of the PSO. FSF have said in response to the complaint that it never professed to be experts in the particular public sector OPS in question. Which I accept. But that would have made it all the more important for it to have made contact with that OPS to find out.

FSF have said that it doesn't think that it would have been able to find out the necessary information from the OPS. But I disagree. It hasn't shown that it made any enquiries of the OPS administrators to check. And it should have. The PSO had been served to the OPS administrators and was in Mr B's name. I think it therefore only required Mr B's authority. In reaching this conclusion I am taking into consideration the fact that the SIPP provider found out from the OPS quite easily that a transfer would not be allowed. I don't see why FSF wouldn't similarly have been told that a transfer was not permitted under the scheme rules if it had asked.

Whilst I am surprised at the lack of care given to Mr B in its recommendation, I don't think FSF was to blame for the fact that Mr B was then unable to access any cash lump sums from the PSO. That's because the OPS would never have allowed a transfer of Pension Credit benefits from a PSO. It was not allowed in its scheme rules. Whilst FSF may not have known this at the outset, it would likely have found it out from the OPS had it made contact with it prior to giving its recommendation, in the same way that the SIPP provider did.

I have considered the consequences of FSF's mistakes and Mr B's alleged losses. Including the arguments he made in response to my provisional decision. But I am not persuaded that what Mr B has argued is fair. As I've said, I don't think that FSF are responsible for the divorce settlement that Mr B ended up with. That, ultimately, was not something it was qualified to advise on or could have influenced directly. So I don't think it was responsible for Mr B's decision to sell his house when he did. I am not persuaded by his arguments that his loss of the mobile home that he purchased was a consequence of the flawed financial advice that FSF subsequently gave either. And it was evident that Mr B had made decisions about the purchase of a new residence before the OPS had completely processed his PSO. Which was not the fault of FSF's flawed financial advice either as it hadn't had the opportunity to give a personal recommendation. For these reasons, I don't think that the consequences that Mr B has claimed were reasonably caused by FSF's mistakes.

I do, however, think that FSF's mistakes caused Mr B an unreasonable expectation that he would be able to do something with his PSO that he could not do. Although I think that happened in January 2021, that was before it was reasonable to say that it had been able to consider his circumstances fully. But by April 2023 FSF gave Mr B a clear recommendation to do something that it purported to be in his best interest. Its lack of any enquiries of the OPS concerned meant that it completely failed to establish whether what it recommended was even possible. And it simply was not. It meant that, for months, Mr B was waiting on a form of access to that pension that he would never have been able to do. It meant he applied for and set up a SIPP that would then need to be cancelled. To my mind, this caused Mr B a level of distress and inconvenience that FSF should compensate Mr B for. I think that it should pay Mr B £500 in compensation for this.

My final decision

I uphold Mr B's complaint for the above reasons and direct First Service Financial Limited to pay Mr B £500 for the distress and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 August 2025.

Gary Lane
Ombudsman