DRN-5739266

The complaint

Mr C complains that he was unsuitably advised by Braemar Financial Planning Limited (BFPL) to transfer deferred benefits from his defined benefit (DB) pension to a Section 32 buy-out plan with Legal and General in 1995. BFPL is a member of Sesame Limited who have taken responsibility for this complaint.

What happened

Mr C had been serving in the Armed Forces for around 15 years and had built up DB pension benefits in this time. He says he was contacted by BFPL and was told by the adviser that he would be better off if he transferred his benefits out of the DB scheme.

On 30 November 1994 BFPL sent a letter to the Armed Forces on behalf of Mr C to request a transfer value from his DB scheme. The letter said they enclosed a questionnaire for the scheme to complete which would provide all the necessary information to give a detailed analysis to Mr C of the various alternatives as required by FIMBRA guidance note 7.

FIMBRA stands for Financial Intermediaries, Managers and Brokers Regulatory Association which was the regulatory organisation for BFPL at the time. Guidance note 7 gave advisers guidance what they needed to consider when advising on final salary pension schemes that they needed to keep appropriate records to demonstrate why a particular option (leave benefits in the DB scheme, transfer to a new employer's scheme, transfer to a personal pension or transfer to a Section 32 plan) was selected for the client.

BFPL also attached a copy of a letter of authority from Mr C in which he authorised his pension scheme to release any of his information to BFPL as he had appointed them as his financial advisers.

The DB scheme sent BFPL details about Mr C's pension and a transfer value quotation in May 1995. Mr C completed a Section 32 application form the same month.

Administrative correspondence followed between Legal and General as the receiving scheme and the DB scheme. BFPL was copied into this correspondence. Mr C's transfer value of around £22,736 was transferred to Legal and General in August 1995. It looks like two policies were set up for Mr C (holding protected and non-protected rights respectively).

In 2009, the value of both his policies (protected and non-protected rights worth in total around £40,834) was transferred to Legal and General's annuity department and Mr C took his pension in form of a tax-free cash lump sum of around £10,200 and an annuity of around £1,786 per year.

In January 2024 Mr C, through representatives, complained to Sesame Limited about the advice he had received from BFPL. He said he should have been advised to retain his DB benefits and he has lost out financially as a result.

Sesame Limited sent a letter to Mr C asking for more information later the same month and chased this up a couple of times. In February 2024 they told Mr C as they hadn't received

anything from him, they had closed the investigation. They gave referral rights to our service. In November 2024, they were contacted by Mr C's representatives about the complaint. Sesame Limited declined to reopen the complaint again. They said they had given six months referral rights to our service with their February letter and it was now too late to reopen the complaint.

Mr C referred his complaint to us in February 2025. One of our investigators said it was referred to us outside the six-months' time limit set out by the regulator in DISP 2.8.2 (1)R and so we couldn't consider it.

Mr C's representatives didn't agree and so it was passed to me for an ombudsman's decision. I concluded that Sesame Limited's letter in February 2024 didn't fulfil the requirements of a valid final response letter and so it didn't trigger the six-month time limit. I also considered the time limits in DISP 2.8.2 (2) R (six and three year limits). I decided that Mr C had also complained within these time limits. I sent my provisional findings to both parties that our service could consider Mr C's complaint.

Sesame Limited accepted these findings on time limits and so considered Mr C's complaint.

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 previously issued a provisional decision in which I said the following:

The information available in this case unfortunately is limited. Sesame Limited doesn't hold any information from the time of the advice in 1995. Mr C has provided the Armed Forces pension file which includes the letters from and to BFPL and some correspondence to and from Legal and General in 1995. It also includes details about Mr C's DB pension. Mr C has also provided evidence about when he took his annuity in 2009. All of this information has been shared with Sesame Limited.

Sesame Limited says there isn't enough evidence to say BFPL advised Mr C on his DB scheme. However, given the letter to the DB scheme from BFPL in November 1994 as well as the letter of authority referring to BFPL as Mr C's advisers I think on the balance of probabilities it was BFPL who advised Mr C in 1995.

BFPL was a FIMBRA member. FIMBRA issued a Guidance note 14 in July 1994 which dealt with DB transfers. This note superseded Guidance note 7 and also reflected the new standards set out by the Securities and Investments Board on Pension Transfers and Opt-out in March 1994. So BFPL was already quoting slightly outdated guidance documents in their letter to the DB scheme in November 1994.

The guidance said a fact find designed with a pension transfer in mind should be completed and a reason why letter should be issued explaining their recommendation. Records were to be kept indefinitely to be able to demonstrate compliance with relevant rules.

The adviser should have considered a client's personal circumstances including their attitude to risk and security, not only in relation to investment risk but also and more fundamentally to the choice between an occupational pension or individual contract. The adviser also needed to compare the DB scheme and its benefits with any intended new pension and carry out a transfer analysis. The adviser needed to ensure the advice was suitable and that the client had all the information to make an informed decision.

As we have no recorded evidence about Mr C's circumstances at the time of the advice, we asked him a few questions. Mr C was 39 at the time and working as a milkman earning around £300 per week. He was married with two dependent children. He had no other pensions or investments. With regards to his attitude to risk, he said he was unaware of any financial risks with his pension. He was simply assured that transferring was the right thing to do.

We don't have any transfer analysis or even illustrations from the new plan at the time so it's impossible to say what critical yield needed to be achieved to match Mr C's DB benefits. Mr C transferred into a Section 32 plan with a guaranteed minimum pension which provided some guarantees and as he had at least 20 years until retirement, there was also the chance for some decent returns over such a long period. The projection rates at the time were also higher than they are today. I considered that there is a possibility that a transfer analysis (if it was undertaken) might have shown that matching or even exceeding his benefits was a possibility.

I appreciate the advice happened a really long time ago, however BFPL was required to keep records indefinitely and it hasn't been demonstrated why a transfer was suitable in Mr C's case.

Even if the transfer analysis showed the reasonable possibility of being able to outperform his DB scheme benefits-and I can't say that it did-Mr C had no other pension provisions and was working in a manual role on a relatively low income. I think it was unlikely that he would build up any substantial additional pension provisions and his capacity for loss therefore was low in my view. Given his inexperience with investments, I also don't think his attitude to risk would have likely been especially high. He was giving up DB benefits for a significant number of years of armed forces service and so on balance I'm currently not satisfied the advice was suitable.

I recommended that Sesame Limited should calculate compensation in line with the regulator's rules on DB transfer redress. I set out that for the calculation it should be assumed that Mr C would have taken his DB benefits at age 53. The reason for this was that Mr C had accessed his pension benefits from his new pension in 2009 at age 53 as he had become a single father and needed an injection of money. I considered he likely would have done the same if he had kept his DB benefits.

Mr C's representative had no further comments to my provisional decision. Sesame Limited said that they had consulted external actuaries who had advised early retirement from Mr C's Armed Forces pension before 60 was only possible for ill health.

Sesame suggested to assume any loss calculation would need to model the DB benefits as having been taken at age 60 (earliest date to draw unreduced DB benefits) and the calculation would consider all the actual benefits received by the customer from age 53.

Having again reviewed the information Mr C provided from the Armed Forces pension as well as online resources I agree that early retirement only seemed to be possible for ill health. I also hold no information that Mr C would have qualified for an ill health pension (eligibility criteria tend to be very high). So I agree that using an assumed retirement age from the DB scheme of 60 is reasonable in the circumstances. And considering the benefits Mr C actually received from his new scheme from age 53 is also fair. I've informed Mr C's representatives of these proposed changes to the redress and they had no further comments. So I've changed the redress accordingly which is set out below.

Putting things right

My aim is to put Mr C back into the position he likely would be in now if he had received suitable advice. I think BFPL should have advised him to retain his DB benefits and I see no reason why he wouldn't have followed this advice.

Sesame Limited must 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. https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter

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, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of the decision. Mr C's assumed retirement age from the DB scheme should be 60. All benefits Mr C has taken from his new policy at any age can be considered in the calculation.

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

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:

- his 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 their redress prudently is to use it to augment their DC pension (if they have one).

-offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,

-if Mr C accepts Sesame Limited's s offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of their redress augmented, and

-take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Sesame Limited may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

My final decision

I uphold the complaint and require Sesame Limited to calculate any loss as per the instructions above and pay it to Mr C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 September 2025.

Nina Walter
Ombudsman