DRN-5826514

The complaint

Mrs D says that Scottish Equitable Plc (SE) treated her unfairly when it accepted her application for her defined benefit (DB) pension to be transferred to an SE pension. She says SE should compensate her for losses arising from that transfer

What happened

Mrs D received advice from Firm M to transfer her DB pension to SE in 2000. The DB scheme had a cash equivalent transfer value of about £44,000 when the transfer was made.

In 2006, Firm M ceased to be authorised by the then regulator – the Financial Services Authority (FSA) - and stopped trading. I'll explain more about this below.

In 2007, a new adviser advised Mrs D to switch her SE pension to another provider.

In 2018, the unsuccessful judicial review challenge in *Berkeley Burke SIPP Administration Ltd v Financial Ombudsman Service [2018], EWHC 2878* (BBSAL) was published. In that case, an ombudsman decided a Self-Invested Personal Pension (SIPP) operator was responsible for the losses a consumer suffered in some circumstances because it failed to undertake appropriate due diligence when facilitating the investment. The court rejected the SIPP operator's challenge to that decision.

In 2021, Mrs D met another adviser, who said the original recommendation to transfer out of the DB pension in 2000 may have been unsuitable. The adviser suggested that Mrs D make a claim to the Financial Services Compensation Scheme (FSCS) as Firm M wasn't trading any more. Mrs D made a claim to the FSCS in respect of Firm M in 2022.

In 2023, the FSCS upheld Mrs D's claim. It said her financial loss from the unsuitable transfer was about £157,000. But its cap on payments was £48,000 so it paid her this. Later in 2023, the FSCS informally suggested looking into whoever accepted the transfer to see if they might be liable to make up the shortfall in her losses.

Mrs D complained to SE in 2024. She said that SE failed in its duty of care and regulatory obligations by not doing more to warn her about going ahead with the transfer of the DB pension in 2000. She said that she wouldn't have gone ahead with the transfer if SE had treated her fairly. So she said that SE is partly responsible for her losses.

SE said the complaint should be dismissed and had been made too late under the regulatory rules. SE also said it wasn't responsible for Mrs D's losses in any event.

When Mrs D referred her complaint to our service, one of our investigators concluded that the complaint hadn't been made too late and shouldn't be dismissed. But the investigator didn't think there were grounds to uphold the complaint.

Mrs D didn't agree and asked for an ombudsman to issue a final decision. She's provided a detailed document of submissions (which I've read in full) but also helpfully a summary of her arguments which I set out below:

- Although the current regulator, the Financial Conduct Authority (FCA), didn't exist in 2000, predecessor schemes existed. The Principles for Businesses (notably Principle 2: requiring firms to act with due skill, care and diligence, and Principle 6 requiring a firm to pay due regard to the interests of its customers and treat them fairly) were in force in 2000 and applied to SE. Those Principles have always formed the foundation of fair treatment in pension transfers.

- SE ignored a clear warning sign in the form of the critical yield in Firm M's suitability letter. At the time of transfer, the critical yield required for the SE pension to match the DB pension was 7.83%. In 2000, long-term equity return assumptions were lower.

- The court decisions in BBSAL and other cases involving SIPP operators and indeed other decisions of the ombudsman service highlighted that pension providers can and should be held responsible when they facilitate unsuitable transfers – even if they were not involved in giving financial advice.

- Mrs D had suffered a significant shortfall in her pension. SE is uniquely placed to at least make a meaningful contribution to alleviate hardship. SE profited from Mrs D's pension transfer for a number of years and was fully aware of the high risks inherent in DB transfers. A contribution would demonstrate SE's commitment to fair treatment and to correcting historic harm, in line with the spirit of treating customers fairly.

For clarity, it's not clear to me whether the transfer in 2000 was made to a SE personal pension or to an executive personal pension that Mrs D also had with SE. But either way, it has no bearing on my findings below.

What I've decided - jurisdiction

It doesn't appear that SE materially disputes the investigator's findings. So I shall deal very briefly with the point about whether the complaint has been made in time and whether it should be dismissed.

The rules about time limits and whether our Service can look into the merits of a complaint are set out in the DISP section of the regulator's Handbook. DISP 2.8.2R says:

> *"The ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
> *…*
> *(2) more than:*
> *(a) six years after the event complained of; or (if later)*
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint*
>
> *unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;"*

The activity being complained about here – the DB transfer – clearly took place more than six years before Mrs D's complaint to SE in 2024. But I've seen no compelling evidence that

Mrs D ought reasonably to have known that she had cause to complain to SE more than three years before 2024. So I think Mrs D has complained within our time limits.

DISP 3.3.4A sets out that our service may dismiss a complaint without considering its merits in certain circumstances. SE asked our investigator to dismiss the complaint on the basis that it is frivolous and vexatious. I don't agree. In any event, our power to dismiss a complaint is a discretionary one. We don't have to exercise it and can (provided we have jurisdiction to do so) consider a complaint brought to us even if it's possible to dismiss it.

Overall, we have jurisdiction to consider this complaint and I see no reason to exercise my discretion under DISP to dismiss the 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 want to make clear that I've considered Mrs D's submissions in their entirety. I thank her for them as they are helpful. But the purpose of this decision isn't to comment on every individual point or question the parties have made, rather it's to set out my findings and reasons for reaching them.

When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. Ultimately, I'm required to make a decision that I consider to be fair and reasonable in all the circumstances of the case.

In 2000, the regulatory framework applicable for pension firms was contained in the Rule Book of the Personal Investments Authority (PIA). SE was a member of the PIA and subject to its regulation and its Rule Book.

Our investigator said the current FCA rules were not applicable in 2000. That is of course true. But I agree with Mrs D that certain principles for businesses that appear in the current FCA Handbook were essentially carried on from the PIA era and are relevant to this complaint. Most notably, the PIA Rule Book said: *A firm should act with due skill, care and diligence.*

Mrs D's arguments centre mainly on the application of these principles in the context of complaints against SIPP operators where, after 2007, many investors were advised or introduced to high risk, unregulated investments that were made using SIPPs. Our service has upheld many complaints where there were failures by operators to treat their customers fairly and Mrs D is right to highlight that the courts have endorsed our approach. And I also agree with Mrs D that this approach isn't just confined to SIPP operators – all pension providers have always been required to deal with their customers fairly and exercise care.

So, in determining this complaint, I need to consider whether, in accepting Mrs D's DB transfer application, SE acted fairly and complied with its regulatory obligations to act with due skill, care and diligence.

But in doing this, I think it's reasonable to take into account the overall circumstances. The DB transfer involving Mrs D was to a pension that would only have permitted mainstream listed investments. I think it's right to assess what SE did with this context in mind.

Mrs D was also receiving advice from Firm M. I've made enquiries with the FCA about Firm M's status in 2000. The FCA doesn't hold records going back to 2000. But it has confirmed that Firm M had pension transfer permissions in 2001 when the FSA was set up and would have had those permissions before then under the PIA. I think it's more than likely it had the permissions at the time of the events in this complaint. Firm M also had pension transfer specialists at the firm. Whilst the specific adviser involved with Mrs D was likely not one of those pension transfer specialists, there was no requirement at the time (or now) for all individual advisers to have the pension transfer specialist qualifications. It was (and remains) enough for advisers to give advice that can be checked by one of the firm's specialists.

So SE could take comfort from the fact that Mrs D was dealing with a regulated advice firm capable of undertaking pension transfer work. There's no evidence that SE should have been aware of any other anomalous features relating to Mrs D's DB transfer. I've seen nothing about the proposed transaction that I think ought to have prompted an enhanced level of scrutiny. So although Mrs D says the critical yield in Firm M's suitability letter should have been a red flag, I'm not persuaded that SE acted unfairly or unreasonably in accepting Mrs D's transfer on the basis that it did. Or, that it should have further scrutinised this business under the circumstances.

I'm aware from the regulator's register that Firm M's regulatory permissions were revoked in 2006. The register shows that this was because Firm M failed to satisfy the regulator that its resources were adequate in relation to the regulated activity that it carried on. But this was more than six years after Mrs D's pension transfer – and the reason for the regulator's actions don't suggest anything that ought to have given SE cause for concern about Firm M in 2000.

So, I am satisfied it was fair and reasonable for SE to accept the application via Firm M and I don't think there's any other reason why it shouldn't have facilitated the pension transfer in 2000.

Clearly, Mrs D has my natural sympathy. It appears she's suffered a loss to her pension that she can't now recover from Firm M. But based on what I've seen, I can't hold SE responsible for what's happened and so I can't fairly ask it to compensate Mrs D.

My final decision

I don't uphold Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 4 December 2025.

Abdul Hafez
Ombudsman