

complaint

Mr R's complaint is about the suitability of the advice he received from Sesame Limited ('Sesame') to transfer his pension from a self-invested personal pension (SIPP) cash fund to a discretionary fund manager (DFM) service. He is unhappy with the fees incurred.

background

The facts of the complaint are set out in the adjudicator's assessment which has been seen by both parties, and have not been disputed. But in summary, Mr R was in the process of getting divorced and in February 2008 a recommendation was made which said, amongst other things that:

- Mr R did not want to take any income until his divorce had been finalised but wanted to invest to get better returns than that which could be achieved in a cash fund.
- He was recommended to invest through a discretionary fund manager.

The transfer was made shortly thereafter and the DFM was instructed by the advising firm to keep the investment in cash until Mr R's situation was more stable.

The advising firm contacted both Mr R and his legal representative on several occasions requesting an investment instruction; however this was not provided. The funds were returned by the DFM in May 2010 as it had not received an investment instruction.

Mr R complained in August 2011 about the fees deducted when the investment was with the DFM. He considered the fees were unreasonable as the investment had remained in a cash fund and had not been invested. Mr R confirmed that the DFM agreed to refund £6,336.40 in light of the fact that it did not review his investment until 2010. Had it reviewed it in 2009 then it is likely the funds would have been returned then.

Sesame considered that the fees were outlined in the point of sale documents; that holding the investment in cash was a temporary strategy, and that it was made clear to Mr R and his legal representative that an investment mandate was required and this was not provided. Sesame made an offer of £200 to account for the delays in responding to the complaint.

As he remained unhappy Mr R referred the matter to this service.

One of our adjudicators wrote to Sesame recommending that the complaint should be upheld. This was because she did not consider that the advice was appropriate in light of the fact that Mr R was in the middle of divorce proceedings and could not invest until this was finalised. Furthermore, the adjudicator did not consider that it was reasonable that Mr R incurred higher charges whilst remaining invested in what was effectively a cash fund through the DFM.

The redress recommended by the adjudicator was that Sesame should conduct a comparison between the charges Mr R would have incurred had he remained in the SIPP cash fund, with the charges he incurred following the transfer to the DFM. The charges already refunded to Mr R by the fund managers should be deducted and interest added at 8% simple per annum from the date of transfer until the date of settlement. The £200 offered by Sesame for distress and inconvenience was also recommended.

Despite being given several opportunities to do so, Sesame did not provide any further evidence or arguments in response to the adjudicator's assessment.

Mr R agreed with the adjudicator's assessment and made no further submissions.

The adjudicator sent a further letter to both parties in November 2013 to clarify the redress and how it should be paid. Mr R agreed with the proposed redress. Sesame did not provide a response.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator, and largely for the same reasons.

Given the uncertainty of the divorce and that Mr R wanted to stay in cash until matters had been settled, I am not persuaded that there was any real need to use the services of a DFM until the divorce had been finalised. Therefore I am not persuaded that the recommendation was appropriate given its timing. So whilst I appreciate that an investment mandate for the DFM had been requested from Mr R and his legal representative, my view is that, but for the inappropriate advice to switch, the situation would never have arisen. Mr R ultimately incurred higher charges for a service that was not appropriate for him to utilise at that time.

Overall, I do not consider that the advice was suitable given Mr R's particular circumstances at the time. And I am satisfied that the matter caused a degree of distress and inconvenience to Mr R.

my final decision

My final decision is that I uphold Mr R's complaint.

I order Sesame Limited to compare the charges Mr R would have paid had he remained in the SIPP cash fund with those he incurred during the period he was invested with the discretionary fund manager. The charges already refunded by the discretionary fund manager should be deducted from the amount calculated. The figure calculated represents the remaining loss in terms of additional charges incurred – A.

Sesame should obtain a valuation for A assuming that it had been invested in the same manner as Mr R's fund from the date it was switched out of the DFM arrangement to the date of calculation – B.

Sesame Limited should then pay an amount into Mr R's pension arrangement such that its value is enhanced by B.

If it is not possible to make such a payment Sesame should pay a lump sum directly to Mr R on the following basis: 25% of the value of B should be paid in full, with the remaining 75% paid net of Mr R's marginal rate of tax. This is to reflect that part of the pension fund would ultimately be used to provide an income that would be subject to income tax.

Interest at 8% simple per annum should be added to B from the date it is calculated to the date of settlement.

If the business considers that it is legally required to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mr R may be able to reclaim the tax from HM Revenue and Customs depending on his circumstances.

In addition, the £200 offered for distress and inconvenience should also be paid to Mr R.

David Ashley
ombudsman