

The complaint

Mr J is unhappy with the service provided to him by an appointed representative of Sense Network Limited trading as Sense (Sense). He feels Sense should have advised him to invest in his existing lower cost stakeholder pension instead of his more expensive pension fund withdrawal plan when it took over as his adviser in 2008/2009. He is also unhappy with the offer Sense have made to resolve the matter.

What happened

Mr J was previously receiving advice from an adviser who became an appointed representative of Sense in 2008. Prior to this, Mr J was advised to transfer his occupational pension scheme benefits to a pension fund withdrawal plan (Plan A) in 2006. He also had a self-invested personal pension (SIPP), Plan B, with the same provider and a stakeholder pension with a different provider (Plan C).

In February 2019 Mr J transferred the benefits of both Plan A and Plan B to a different provider.

In 2020, Mr J complained about the transfer advice he received in 2006 to his adviser's former company. This complaint was upheld, and this company was required to redress the losses sustained as a result of the transfer until April 2008, when Mr J followed his adviser to Sense and this company's liability ceased.

Mr J subsequently complained to Sense that he was not told to invest in the less expensive Plan C (his stakeholder plan) and so he maintained the more expensive Plan A, causing him a financial loss. Mr J has not complained about any services relating to Plan B, his SIPP.

Sense looked into Mr J's concerns and upheld his complaint. The final response letter said that Sense felt "that there was insufficient evidence available to justify the recommendation to invest into a higher priced self-invested personal pension Scheme". Sense offered redress on a charges-only basis, calculated as £5,554.31.

Unhappy with this offer Mr J brought his complaint to this Service for an independent review.

One of our investigators looked into things and clarified with Sense that M J wasn't complaining about his SIPP. Sense responded that it upheld the complaint on the basis that a lower cost option could have been arranged for Mr J as part of the ongoing services it provided. It did not agree that it gave unsuitable advice or that it was responsible for any investment loss. The redress calculation was based on the charges applicable to both Plan A and Plan B, even though Plan B was not part of the complaint.

The investigator concluded from the evidence she'd been provided that there was no service agreement in place for formal advice and that no positive advice had been provided to Mr J by Sense. She also didn't think that Plan A was unsuitable for Mr J simply because it was more expensive. So the investigator said the offer, based on the excess charges, was reasonable and more than we'd be recommending here in the circumstances, especially since it included the charges for the Plan B which wasn't part of Mr J's complaint.

Mr J didn't accept this view as he thought redress should include any losses resulting from his investments during this time. He thought a comparison should be made against a notional fund value or a suitable benchmark.

Sense responded that it was unclear how Mr J feels he should be compensated for investment loss instead of charges as he selected many of the funds himself. Sense also reiterated that it didn't believe the underlying investments were unsuitable, only that similar funds could have been selected in a lower charging structured product.

As agreement couldn't be reached, Mr J's complaint has been passed to me for a final 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.

Having done so, I agree with the investigator and for the reasons she's explained. I've not seen evidence that persuades me that advice was sought and provided at this time, so I'm not able to conclude that Sense are responsible for an investment loss suffered by Mr J.

Nevertheless, Sense have agreed that it should have advised Mr J of less expensive products to invest through, though it maintained the investments themselves were suitable. So to put things right, Sense offered to refund the excess charges Mr J paid on both his pension withdrawal plan and SIPP.

I've considered this offer and I conclude that it is fair to award compensation on a charges-only basis in this case. This is because I've seen insufficient evidence that Mr J would have invested differently if he had a less expensive arrangement. I'm also unable to conclude, based on the evidenced I've been provided, that Sense should have advised him to invest differently. I've seen no formal service agreement in place showing that Sense has agreed to provide this kind of service and I've seen no evidence that this advice was sought by Mr J or provided by his adviser after he became an appointed representative of Sense.

Had Mr J wanted this service, Sense could have provided it, but it is important to note that comprehensive financial advice like this would have been provided at an additional cost to Mr J. The ongoing service he received was included in fees Mr J was already paying. But again, I've seen nothing that persuades me Mr J sought such advice or that Sense agreed to provide it, so I don't need to decide if this advice was appropriate.

Given this, Sense's offer to refund the excess charges to Mr J is fair and reasonable in the circumstances. So on the basis that Sense pay Mr J the amount it has offered him, I am not asking it to do anything more to put right Mr J's complaint.

My final decision

Sense Network Limited trading as Sense has already made an offer to pay £5,554.31 to settle the complaint and I think this offer is fair and reasonable in all of the circumstances.

So my final decision is that Sense Network Limited trading as Sense should pay Mr J £5,554.31.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 January 2024.

Jennifer Wood
Ombudsman