DRN-3316081

The complaint

Mr S complains New Leaf Distribution Limited (New Leaf) gave him poor service in relation to a pension transfer. And he is also unhappy that New Leaf withdrew from the pension transfer advice market during the process. He says a combination of these delays put his home at risk and caused him and his wife distress.

What happened

Mr S had two Occupational Pension Scheme plans (OPS) that he was interested in transferring. He was considering the best way to pay off his mortgage and began discussions with New Leaf in 2018 with this in mind. Mr S had been in discussions with his previous adviser about an enhanced annuity, however he was referred to New Leaf as they were in a more convenient location.

Mr S had already completed a '*Heart attack, angina and other heart conditions questionnaire'* in May 2018 with the previous adviser, before being passed onto New Leaf. On the form Mr S had written:

Have you ever been diagnosed with any of the following?

Diagnosis	Date of diagnosis	No. of occurrences	Ongoing?
Heart attack (Myocardial Infarction)			
Angina	? NEW DIAGNOSIS	FROM GP – AWAITING	CONSULTANT REVIEW
Heart failure	? NEW DIAGNOSIS	– STARTED	FUROSEMIDE DEC 17
Aortic aneurysm			
Cardiomyopathy			
Heart valve disorders			
Atrial fibrillation (AF)	2007/2008	MULTIPLE →	CONSTANT AF
Other irregular heart rhythm			
Other:			

Another health questionnaire was completed in November 2018 with New Leaf. This time Mr S noted that he had been prescribed Furosemide in the *'Heart Failure'* section. Mr S also added that he experienced blackouts and breathlessness. GP's letters from 2016 and 2017 noted that Mr S was suffering with atrial fibrillation, memory loss and balance issues.

Between November 2018 and April 2019 New Leaf say they were obtaining new cash equivalent transfers (CETVs) for Mr S's pensions and preparing the advice for the transfer. The annuity provider selected, said that in November 2018 they queried the Heart Failure and Angina diagnosis dates with New Leaf and asked that this information be confirmed before applications were submitted.

New Leaf produced illustrations in April 2019 for a regular income for a total of £10,479 per year with the provider in question and drafted a suitability report on this basis. The income illustrations were produced on the assumption that Mr S would receive an enhanced income on the basis that he was suffering from heart failure.

I understand further enquiries were made by the annuity provider after Mr S's application was submitted, with the eventual outcome being heart failure was taken off the quotation and this reduced the quote by around 12%.

Separately to this, in June 2019, New Leaf decided to withdraw from giving advice about transferring defined benefit pensions and Mr S had to appoint a new financial adviser.

Mr S complained about New Leaf's advice and service. He expressed disappointment and surprise that New Leaf had withdrawn from the defined pension market. This had left him in a difficult position, with his home under threat. New Leaf didn't uphold the complaint. They stated that Mr S had given inaccurate information on the health questionnaires which wasn't New Leaf's fault. New Leaf also stated that they had withdrawn from the advice market due to commercial reasons, which they were entitled to do.

Mr S has told us that he didn't go ahead with the enhanced annuity option after speaking to the new adviser and instead went into a flexible drawdown plan.

Our investigator looked into matters and concluded that the complaint should be upheld in part. He said as Mr S didn't have heart failure it wouldn't be fair and reasonable to award redress as if he did.

But he felt that New Leaf could've acted on the information it was given by the annuity provider sooner. The investigator said New Leaf ought to have known there was some doubt about the potential of receiving the annuity quoted due to the issue with the diagnosis. But he'd taken into account the fact that the uncertainty arose from Mr S. And even if New Leaf had acted quicker, Mr S would still have had to spend time getting this clarified with his doctors.

The investigator also said the main part of the delay was caused when New Leaf decided to leave the market. He didn't feel New Leaf could be held responsible here as it was entitled to do so and its reasons were understandable. In conclusion he said New Leaf should pay Mr S £250 for the trouble and upset caused by its delay in letting Mr S know of the issue with the enhanced annuity quote.

Mr S's representative disagreed with this. She said New Leaf's decision to withdraw from the advice process put Mr S's house at risk and caused him a lot of stress and worry. She understood that firms could decide what business they chose to take on – but withdrawing advice that far along in the process was unethical and unfair. And New Leaf knew that there was a time and financial pressure for Mr S with his home at risk.

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.

And having done so I agree with the conclusions reached by the investigator and for broadly similar reasons.

Mr S accepts that the enhanced annuity with a diagnosis of heart failure cannot fairly be awarded to him (or any loss paid on this basis), as he wasn't entitled to this. But I've considered whether any potential avoidable delays caused by New Leaf should be compensated.

I've listened to a call between the annuity provider and Mr S's representative and it's clear that the potential heart failure diagnosis caused a lot of confusion. The adviser could've contacted Mr S earlier to let him know that the diagnosis needed to be confirmed when it was raised by the provider. But Mr S still had to have further appointments with his cardiologist to get more details about his condition – and it's difficult to say how much of a delay the non-disclosure of the providers queries – actually caused. And it was Mr S that unwittingly caused this confusion. I have to take into account that the adviser isn't a medical professional and so was reliant on the information given by Mr S. Even at the time of the conversation between Mr S's representative and the annuity provider, it's still wasn't 100% certain whether Mr S had heart failure and/or the extent of his related conditions. Whilst the adviser potentially could've questioned the diagnosis immediately, as Mr S did put a question mark on the form, it also could've been read as the question mark related to the date of diagnosis. And if he thought the only question was the date of diagnosis, he wouldn't have known that this could cause such significant problems later on in the process.

In any event regardless of the delays involved, Mr S didn't qualify for the enhanced rate due to heart failure – so he didn't lose out financially due to this. The impact it had was a potential delay in Mr S receiving funds (and the stress this caused), and a loss of expectation. I'm not persuaded that New Leaf can be held responsible for the loss of expectation. The medical issues were complicated and whilst the adviser could've told Mr S the rate could go down if the diagnosis wasn't confirmed – I can't be sure the adviser would've thought the diagnosis was in question. Or whether he'd have known that there would be a large drop in the quote if it was.

Mr S eventually didn't go ahead with an enhanced annuity either. After meeting with a new adviser Mr S chose to take flexible drawdown, which he sees as a more suitable option for him.

It's possible that had the adviser communicated earlier with Mr S about the potential issues, Mr S would've transferred and taken his benefits before New Leaf withdrew from the market. But then Mr S would have an enhanced annuity that he subsequently didn't want. There are a lot of unknowns and it's difficult to say what would've happened, how much of a delay was actually caused, and to quantify the impact any delay had on Mr S.

I don't doubt this process caused Mr S considerable stress and worry. He required the money to pay off his mortgage and if this didn't happen his and his wife's home was at risk. This would've been a worrying time for him. But I can only award compensation that relates to an error attributable to the business. It definitely didn't help matters that towards the end of the process the adviser had to tell Mr S that he could no longer proceed as New Leaf were leaving the market. Whilst this was very poor timing for Mr S, New Leaf has explained that it took this decision due to concerns about its insurance. Transferring Defined Benefit schemes such as Mr S's, carries risk with potential exposure to costly claims and even regulator action if it is deemed to have done wrong. So whilst untimely, New Leaf was entitled to make this decision – and in doing so it meant that it wouldn't receive any payment from Mr S for its work. So I don't think it acted unfairly here.

As I've said it's difficult to say with any certainty, how much of a delay New Leaf are responsible for. And even then if this delay would've actually made any difference as New Leaf would've withdrawn from the market in any event. And Mr S chose a different path afterwards as well. Therefore, it's also hard to ascertain how much of the distress felt by Mr S was due to anything New Leaf did wrong.

All things considered, pension transfers can be complex matters that take time and can be stressful regardless of how good a job the adviser does. The additional stress factors here were due to the importance of this transfer to Mr S's finances and quality of life. But it's hard to attribute anything New Leaf did wrong to this. But New Leaf could've done more to keep Mr S informed of the progress and status of his enhanced annuity application and so I do think an award should be made. However, I think the impact of its failure to do so, is quite limited in the circumstances. So I think the £250 recommended by the investigator as compensation for its delay in relaying information to Mr S is fair and reasonable in the circumstances.

My final decision

I uphold this complaint against New Leaf Distribution Limited in part and award £250 to Mr S for the reasons explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 March 2022.

Simon Hollingshead
Ombudsman