

The complaint

Mr N has complained about how Macfarlane Wealth Management Ltd (“MWM”) handled things in respect of giving him advice on his pensions.

MWM is represented in this matter but for ease I will just refer to MWM in my decision.

What happened

Mr N was a member of a previous employer’s defined benefit (“DB”) pension scheme. He held other pensions but the DB pension is the only one relevant to this complaint.

2019 review

Mr N first contacted MWM in late 2018. At the time, MWM was an appointed representative of another business. MWM met with Mr N on 1 December 2018. Its notes from the meeting record that Mr N wanted to quantify his pension benefits/retirement income and the potential tax-free lump sum cash (“TFC”) he could take. MWM wrote to Mr N on 15 March 2019 outlining his potential retirement income at age 65 and the potential TFC available.

2020 review

Mr N emailed MWM on 14 January 2020 to ask about reviewing his pensions. MWM met with Mr N on 19 February 2020. Its notes from the meeting record that Mr N wanted to review his pension entitlements at age 65. There was also mention of death benefits for Mr N’s partner. MWM wrote to Mr N on 25 March 2020 recommending that he make an additional voluntary contribution (“AVC”) to one of his pensions. It wrote to him again on 5 May 2020 outlining his potential retirement income at age 65, the potential TFC available and the death benefits. It also suggested that Mr N consider making the AVC. Mr N emailed MWM on 14 May 2020 saying that he’d looked at the report and he and MWM could review things again towards the end of the year.

2021 review

Mr N emailed MWM on 15 January 2021 asking for an annual review of his pension. At this point MWM was no longer acting as an appointed representative of the other business. MWM wrote to Mr N on 18 February 2021 outlining the potential retirement income and TFC at age 65. It also suggested that Mr N consider a further AVC and made a recommendation on where Mr N’s pension funds should be invested. Mr N emailed MWM on 23 February 2021 confirming that he’d paid its fees for the advice.

2022 review

Mr N emailed MWM on 10 January 2022 asking for an annual review of his pension. The following day MWM emailed the DB scheme asking for the estimated retirement options (including the maximum TFC that would be available) at the normal retirement date. In separate later emails MWM told Mr N it could arrange a meeting once the DB pension details were received. On 7 March 2022 the DB scheme provided MWM with Mr N’s

estimated pension options at retirement. On 17 March 2022 it provided further details to MWM – including that the transfer value of the pension was £447,785.

MWM spoke with Mr N on 31 March 2022 and its note from the time (albeit dated 31 March 2021 – something I discuss further below) records that Mr N felt a meeting wasn't needed as the full pension figures weren't available. MWM emailed Mr N after the phone call setting out his estimate of the AVC he could make to negate higher tax.

Mr N emailed MWM on 20 July 2022 asking for a review of his pension and options. MWM met with Mr N on 26 July 2022. Its notes from the meeting record that Mr N wanted to discuss his forthcoming retirement. It also records that MWM gave Mr N the income and TFC figures, and the transfer value quote it had received from the DB scheme in March. MWM wrote to Mr N on 10 August 2022 outlining his potential retirement income. It also said Mr N should take specialist expert advice if he wished to transfer the DB pension and take the transfer value (as MWM wasn't authorised to provide this advice).

Mr N then appointed another financial advisor. But as he would have needed to pay the DB scheme for another transfer value he decided to wait until March 2023 when he could receive one for free. In May 2023 the DB scheme provided a new transfer value of £330,776.

Complaint

In June 2023 Mr N complained to MWM. The essence of his complaint was that MWM failed to carry out the regular annual review of his pensions in the first quarter of 2022 and failed to send him details of the DB pension's transfer value in March 2022. He says this denied him the opportunity of transferring the DB pension at the higher transfer value.

MWM didn't agree with Mr N's complaint. In summary, it said there was never an agreement in place whereby it would provide an annual review within the first quarter of each year on an ongoing basis – rather Mr N engaged it on an ad hoc basis. It also said it had held onto the information the DB scheme had sent in March 2022 pending an imminent meeting but Mr N then said a meeting wasn't worthwhile. So it retained the information until Mr N contacted it in July asking for a review.

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.

Both parties have provided extensive comments in support of their position – which I've read and considered. My role isn't to address every argument and/or explore every avenue presented. Accordingly, I've concentrated on the issues (whether raised by the parties or not) that I think are important in determining whether MWM treated Mr N fairly.

Agreement between Mr N and MWM

Both parties have commented on whether the arrangement in place was:

- a formal agreement where MWM would provide Mr N with an annual review of his pensions and that MWM would consider all Mr N's possible pension options as part of that review; or
- more ad hoc where Mr N would ask MWM for a review and MWM would provide Mr N with the information or advice he'd asked for.

The nub of Mr N's argument is that an agreement was in place whereby MWM would provide him with an annual review of his pensions and that MWM would consider all his possible pension options as part of that review. I don't think this argument is supported by the documentary evidence from the time:

- the meeting note dated 1 December 2018 doesn't say anything about an ongoing annual advisory arrangement; it simply described the purpose of that specific meeting and what Mr N wanted to know at that time
- a Client Agreement that Mr N signed on 19 December 2018 said that MWM offered an ongoing service where it did a review every 12 months and provided new recommendations or changes; the cost for this service was 0.5% of the funds being managed – I haven't seen anything which shows that Mr N took up this service; and as the amount charged by MWM was agreed separately each year rather than being a flat 0.5% of his total funds I'm not persuaded that he did
- the meeting note dated 19 January 2020 again doesn't say anything about an ongoing annual advisory arrangement; it simply described the purpose of the meeting and what Mr N wanted to know at that time
- a Client Terms of Agreement (which came into force when MWM was no longer an appointed representative of the other business) referred to 'Ongoing Services' and said *"It is important to review every investment you hold and at regular intervals. At the time of, or prior to, our recommendation to you we will discuss our on-going service proposition. This is confirmed in our 'service proposition and engagement' document which will be sent to you separately from this agreement"* – I haven't seen anything which shows that Mr N took up the ongoing services option.

I also note that Mr N specifically contacted MWM to ask it to review his pensions rather than waiting for MWM to contact him as part of an automatic ongoing annual review process. This suggests to me that he knew he had to instigate the contact.

So for the above reasons, I conclude that the arrangement was an ad hoc one ie MWM only needed to provide Mr N with a review when he specifically asked for one.

In any event, I'm not persuaded that the outcome of the complaint turns on the nature of the agreement. As Mr N has suggested in his complaint, the main issue is whether MWM breached the terms of the Client Terms of Agreement by not sending him the DB scheme documents in March 2022.

The 2022 advice

The two issues here, and what Mr N's complaint is essentially about, are:

- MWM not giving Mr N any pension advice in the first quarter of 2022 (as had happened in the previous years) and
- MWM not giving Mr N the pension transfer information until July 2022.

I've already concluded above that there was no agreement in place requiring MWM to give Mr N ongoing annual pension advice. Similarly, there's nothing in the documentation referring to an agreement whereby MWM had to give Mr N advice by a certain date eg during the first quarter. I've therefore looked at Mr N's request on 10 January 2022 for MWM to review of his pensions and whether MWM treated him fairly following that request.

As outlined above, the basic chronology in 2022 is that Mr N asked MWM on 10 January to review his pension and MWM received information from the DB scheme on 7 and 17 March.

Mr N then told MWM on 31 March that he didn't feel a meeting was needed. MWM didn't therefore do anything further until Mr N contacted it again in July.

There's been debate about the telephone call on 31 March in terms of whether it took place and what was discussed. Mr N says the telephone call didn't take place and he didn't cancel, delay or postpone the meeting. MWM on the other hand says the opposite. The matter hasn't been helped by MWM dating its file note 31 March 2021.

In my view, it's most likely that the telephone conversation took place in 2022 rather than 2021. I say this for several reasons. First, in 2021 MWM wrote to Mr N outlining its review of his pension on 18 February. MWM's fee for the work was issued on 19 February and Mr N confirmed on 23 February that he'd paid it. That suggests to me that all the work Mr N asked MWM to do was carried out. So I think it's most unlikely that a further meeting was needed or arranged – there's no record of any subsequent meeting that was due to take place. And as there was no meeting, there was no need for Mr N to tell MWM in March 2021 to cancel or postpone it.

Second, the telephone note says the full pension figures weren't available. But, if the conversation was in 2021, MWM had written to Mr N detailing its review of his pension by this point. It's therefore likely that it had all the pension figures available in February 2021.

Third, the telephone note referred to the "AVC deadline of the tax year end" and that MWM would calculate the AVC figures and email them to Mr N. On 31 March 2022 MWM emailed Mr N with its calculated estimate of the AVC Mr N could make. The email also started "Further to our telephone conversation today". If the telephone conversation was in 2021 I would have expected the follow up email to be dated 2021, not 2022.

Mr N pointed out that the telephone note referred to the meeting being cancelled due to the full pension figures not being available and said that MWM had received everything because he sent details of his other pensions in January 2022 and it had received the information from the DB pension. MWM has told us that this is incorrect as, for example, details of Mr N's final guaranteed benefits from his civil service pension weren't available.

Mr N also pointed to some 'mixed messaging' because MWM's advisor ended the email dated 31 March 2022 by saying he was going on holiday and he looked forward to meeting with Mr N on his return. Mr N questioned why the advisor would say this if the meeting had been cancelled/postponed hours earlier.

I note Mr N's points but I think the points I've outlined in the above paragraphs support a conclusion that it's more likely than not the call took place in 2022.

I also think it's likely the content of the call was accurately recorded in the note. I say this because even though MWM made a clear error with the date (which might have been due to something akin to a "slip of the pen") I think it's far less likely that such an error would be made when describing the nature of what was discussed. I think this is evidenced by MWM's follow up email detailing the AVC matching the content of the note.

Accordingly, I conclude that MWM didn't treat Mr N unfairly by not giving him any pension advice in the first quarter of 2022. After the phone call I think it was reasonable for MWM to stop its work until Mr N contacted it again to reinstate the advice process.

I turn now to MWM not giving Mr N the pension documentation until July. Mr N feels there was a contractual requirement for MWM to pass on the documentation in or soon after March 2022 based on what he sees as MWM's obligations under the Client Terms of Agreement. I disagree.

Of relevance, in my opinion, the Client Terms of Agreement said that MWM will:

- communicate with Mr N promptly
- forward all policy documents to Mr N immediately after it receives them, and

There was communication with Mr N soon after MWM received the documents from the DB scheme – the telephone conversation on 31 March 2022 that I've discussed above – albeit I appreciate the documentation, and the transfer value in particular, wasn't discussed. But as Mr N didn't want to proceed with the meeting I don't think MWM acted unreasonably in that respect.

There was nevertheless a requirement for MWM to pass on all policy documents immediately. The term was under the 'Documentation' heading and said:

"We will endeavour to make arrangements for all your Investments to be registered in your name unless you first instruct us otherwise in writing. All policy documents will be forwarded to you immediately after we have received them. If there are a number of documents relating to a series of transactions, we will normally hold each document until the series is complete and then forward them to you. We will issue all communications In English, unless agreed otherwise".

I agree with Mr N that a period of four months isn't immediate. But where I think his argument falls down is that I'm not persuaded the documents in question can reasonably be described as policy documents. I think the reference to arranging investments is important because it follows, in my opinion, that the *policy documents* follow on from the setting up of a new investment or policy ie they're the founding contractual documents between the provider and the client. It's good practice for these to be issued to the client as soon as possible. I don't think the documents as the centre of this complaint are policy documents.

There is an argument that irrespective of the client agreement MWM should have forwarded the information to Mr N regardless. Mr N, for example, has said that prior to July 2022 MWM never at any point made him aware that he had the option to transfer his DB pension. Given the conversation on 31 March 2022 I don't think MWM acted unreasonably by holding on to the documentation until it and Mr N next met. It was reasonable for it to assume that Mr N didn't wish to proceed further at that stage.

I also don't think MWM acted unreasonably in not telling Mr N about the option to transfer the DB pension. There was never a request from Mr N to receive information about or advice on this – so there were no recorded needs that transferring might have been able to meet. Mr N says there was never a request because he didn't realise it was an option. I accept that may have been the case. But I don't think it was for MWM to point this out. It's unreasonable in my view for an advisor to give a consumer unsolicited advice or information about transferring a DB pension because the regulator has issued guidance to the effect that transferring will be unsuitable for most consumers. And giving a consumer unsolicited advice or information in this respect could be construed as the advisor starting the consumer on the path to transferring.

Even if I'd found that MWM treated Mr N unfairly I'd have to consider whether that led to him suffering a financial loss. Mr N has referred to him suffering a loss of just over £117,000 because of the difference in transfer values between 2022 and 2023. But I don't think it's accurate to say that he suffered a loss by not transferring the DB pension in March/April 2022. I accept he lost the *opportunity* to transfer it at that time but the argument that he suffered a financial loss assumes that he would have actually proceeded with the transfer when the transfer value was higher. And it's possible that Mr N wouldn't have transferred

even if he'd had the opportunity to do so – because even with the higher transfer value the advice might have been to not transfer as it wasn't in his best interests; and Mr N may have followed that advice. In this scenario he would have been in the same position come July 2022.

Further, Mr N told us on 5 February 2024 that he didn't transfer the DB pension as his new advisor couldn't recommend it. Technically this means that Mr N hasn't actually suffered a financial loss – because the retirement income he will get from the DB pension is the same now as it always has been. He's only suffered a *potential* loss as any loss won't actually crystallise until Mr N transfers the DB pension – which he might never do. And even if he decides to transfer in the future the transfer value might be higher than it was in March 2022.

So, with all the above in mind, I'm not persuaded that MWM breached the terms of the Client Terms of Agreement by not giving them to Mr N until July. I also conclude that MWM didn't treat Mr N unfairly by not giving him the transfer value information until July 2022.

My final decision

For the reasons outlined above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 June 2024.

Paul Daniel
Ombudsman