DRN-4989357

The complaint

X has complained that National Westminster Bank Plc gave him unsuitable advice to switch out of his St James's Place retirement account into an Embark Self Invested Personal Pension (SIPP).

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

X and his wife (who has raised her own complaint) were Premier Banking clients of NatWest and were offered a review of their pension arrangements in March 2023. The adviser completed a joint fact find. Some of the key information it recorded about X included the following:

- He was 64 and married with no financial dependants. He was employed as a director and was a higher-rate taxpayer with a net income of £4,687 pm.
- The residential home was valued at around £3m and X and his wife had an outstanding interest only mortgage of around £150,000.
- They also held two rental properties valued at £700,000 and £550,000.
- They held joint savings of around £30,000 in cash.
- They had ISA portfolios with Hargreaves Lansdown and Interactive Investor valued at around £250,000 in total. So X's investment experience level was considered to be good.
- X had life assurance of £550,000 expiring on his 85th birthday.
- He had a personal pension with SJP in drawdown with a fund value of circa £260,000.
- He also held a separate personal pension with a different provider valued at £2,200.
- He was expected to receive a full state pension from 2025 and currently received an occupational pension scheme income of just under £3,000 per month.

X was assessed as a medium risk investor which was a "four out of ten", where "one" would be the lowest risk and "ten" would be the highest risk. X was invested in a high-medium strategy with SJP. X was recorded as having a high-risk capacity for loss because of the significant asset base and surplus income.

Regarding X's objectives, the Fact Find noted the following:

- He wished to move away from SJP as he trusted NatWest as a brand.
- The main reason for the move was the higher costs associated with SJP.

On 30 May 2023, the adviser sent X and his wife a joint suitability report explaining his recommendations.

The recommendation was to transfer from the SJP Retirement Account into an Embark

Option SIPP with a Coutts Managed Cautious Fund.

Regarding a comparison of charges between SJP and Embark, a table outlined that the SJP plan had a fund and platform charge of 1.17% and, in comparison, the Embark option had a fund and platform charge of 0.89% per annum. It also had an annual wrapper fee of £240 and a one-off transfer fee of £60. The drawdown fee of £126 per annum was not listed.

There was an exit penalty of £3,118 applicable on the SJP plan. Initially, the advice fee to recommend the transfer was detailed as £6,000 which was later reduced to £2,600 plus VAT (£3,120) on the total transfer value of £812,000 between X and his wife.

The ongoing adviser charge of 0.50% on the SJP plan wasn't included as it could have been switched off at any time. It was noted that:

"You do not want to self-manage your pension as you do not feel you have the expertise or interest to do so.

As discussed, we don't offer on-going advice however you are prepared to receive transactional advice in the future, subject to a fee."

Potential disadvantages of the SJP plan were listed and these included higher charges and early withdrawal charges which would apply to the plan.

As a result of the advice, X proceeded to transfer the pension to Embark in June 2023.

Just over four months later, on 11 October 2023, X and his wife complained to NatWest. The complaint letter covered various points. X said that, although he and his wife had differing ideas of what to do with their pensions, NatWest treated them as a unit. Flexible drawdown was important to X, however the adviser assumed that X had surplus income so the flexible drawdown income or pension capital wouldn't be required, he added.

X further said that the ongoing charges weren't explained and that he wasn't told about the complex arrangement with Embark and Coutts, and that there were too many "moving parts" in the replacement arrangement. He wasn't aware that he wouldn't have access to an adviser on an ongoing basis and that he would have to deal with Embark himself for any contributions or withdrawals.

A normal retirement age of 75 was recorded and it was assumed he wanted to buy an annuity at age 75, but this was never discussed, X added.

In resolution of the complaint, X said he wanted a refund of the exit penalty imposed by SJP, a refund of all the charges paid to Embark and Coutts and a total compensation towards the inconvenience he'd been caused of £2500 – along with no charges being applied to transfer back to SJP.

X referred his complaint to this service on 13 March 2024 as NatWest hadn't by that point completed its investigations.

NatWest issued its final response letter to our service on 7 June 2024, which has since been shared with X. It declined to uphold the complaint and considered that the advice was suitable. It did, however, offer X £250 in respect of the delay in responding to the complaint.

Having considered the matter, our investigator thought that it should be upheld, saying the following in summary:

- In 2008, the regulator issued a report entitled "Quality of advice on pension switching". This report included examples of poor, compliant and good advice which might have been given since the pensions "A-day". The regulator thought that the below examples would constitute unsuitable advice:

    - A pension that is more expensive than a stakeholder pension, but a stakeholder pension would have fulfilled the customer's needs.
    - A pension incurring extra product costs without good reason. This outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility but this was not likely to be used; the reason was fund performance but there was little evidence the new scheme was likely to be better; or the reason was the flexibility of a drawdown option but there is no evidence this option was needed.
    - The customer had switched into a pension that does not match their recorded attitude to risk and personal circumstances.
    - The customer had switched into a pension where there is a need for ongoing investment advice, but this was not explained, offered or put in place.
    - The switch involved loss of benefits from the ceding scheme without good reason.

- The investigator was satisfied that the last three points applied here. The replacement arrangement may have been consistent with X's attitude to risk, but it didn't definitively match his personal circumstances.

- X was close to retirement age and was making contributions, along with taking withdrawals. And so setting up a plan with no ongoing advice or adviser wouldn't have suited him. The suitability report in fact set out that X didn't wish to self manage his pension and that he was interested in receiving advice in the future.

- NatWest was therefore aware that X required ongoing advice and that it was important to him, but nevertheless recommended that he switch to an alternative product with no ongoing advice function.

- The investigator also noted the reasons as to why the switch had been recommended, as follows:

    - A plan which has flexible benefits under "Pensions Freedom" legislation.
    - A plan that offers flexible death benefits.
    - To access a plan with lower ongoing costs.
    - Investing in line with a medium risk level.
    - Investing in an actively managed multi asset fund.
    - Advice offered on a transactional basis (subject to a fee), with an organisation that you trust and value your relationship with.

- But in terms of the first two points, SJP already had these features. The difference in ongoing costs wasn't significant, and any saving here would be negated by the exit fee payable by X.

- The readjustment of X's attitude to investment risk could have been addressed with SJP at the next review meeting and it had diverse choice of funds from which to choose.

- And although NatWest had said that, if X had wanted a "transaction based" advice service he could have ceased the ongoing advice fee and requested ad hoc advice from SJP, with the replacement arrangement this would have been more expensive in the long run. And it wasn't clear that X distrusted SJP – he'd in fact mentioned that he may move back to it.

- There was therefore no robust rationale for X to switch out of SJP. But X needlessly paid an exit penalty of £3,118 for doing so.

- NatWest had suggested that X was keen on implementing the switch irrespective of the exit penalty, but it was up to NatWest to provide suitable advice to X and act in his best interests. Had X been given suitable advice to remain with SJP, then he would have heeded that advice.

- In terms of X's other complaint points, he'd said that flexible drawdown was important to him, but that he'd been advised to not take income. The investigator said that a pension was a very tax efficient vehicle, especially in terms if inheritance tax (IHT) liabilities and so it could be suitable to withdraw other assets first.

- As to the retirement age showing as 75, this was for illustration purposes and wasn't indicative of when X might retire.

- In terms of the matter relating to X's Fixed Protection, it seemed that X had already made contributions to his SJP plan and so this had already been invalidated.

The investigator said that, in assessing what would be fair compensation for what she considered to have been the unsuitable advice given here, her aim was to put X as close as possible to the position he would probably now be in if he hadn't been given the unsuitable advice.

She thought that X would have invested differently, as the funds within which he'd been invested with SJP were too high risk for his risk appetite. She thought that he would have simply switched into other funds within SJP.

But as she couldn't be certain what fund, or funds, would have been chosen, she considered that the FTSE UK Private Investors Income Total Return Index would be an appropriate proxy for X's risk rating. This was because X wanted income and some growth and was willing to accept some investment risk.

The investigator said that NatWest should compare the actual value of X's pension, taking into account the exit penalty which X had paid, with the notional value of the investment had it been invested in line with that index.

If this demonstrated a loss, this should in the first instance be paid into X's pension plan so that it was made up to the value of that loss, taking into account any available tax relief and the effect of charges.

But if it wasn't possible to pay into X's pension plan, then NatWest should pay the loss amount directly to X, with a (post tax free cash) deduction for the income tax which X would likely pay on the benefits in retirement, presumed to be 40% - so an overall deduction of 30%.

The investigator said that NatWest should also pay X £300 in respect of the concern caused to him by the unsuitable advice and the erosion of his retirement benefits through unnecessary exit charges. This included the £125 which had been offered to X already.

Further, NatWest should cover the cost of any exit charges or penalties which X might face if he chose to revert to SJP, the investigator said.

X agreed with the investigator's conclusions. NatWest didn't, however, saying the following in summary:

- It maintained that the advice given to X to switch was suitable and was in line with his recorded attitude to risk and his personal circumstances. X had the availability of ongoing transactional advice after the switch and there was no loss of benefits from the SJP SIPP.

- The available evidence indicated that X and his wife were unhappy with SJP at the time, which was evidenced by emails it attached to its response.

- Although X may have indicated that he was planning to move back to SJP at a lower fee, one of the motivators for switching was the lower fee with the Embark SIPP. X was also made aware that he could transfer £196,342 of the total £261,731 without paying an exit penalty, and the fact that X didn't take up this option evidenced that X wished to entirely transfer away from SJP.

- It was made clear to X (and his wife) that they wouldn't have the ongoing advice facility which they had with SJP, but under the replacement arrangement they could receive advice whenever they wished rather than paying ongoing charges. It couldn't be concluded (at the time) that the transactional advice service would cost more than the ongoing advice – this would very much depend upon the regularity with which advice would be required.

- X wasn't making regular contributions at the time of the advice, and so may not have been as "active" as the investigator had implied. X had made contributions in January 2020, March 2021 and December 2021. There was no suggestion that X would want to make future contributions and there didn't seem to be any immediate need for X to take further income from his SIPP. It could therefore be argued that advice on a transactional basis would have been cheaper than the fee for (largely unneeded) ongoing advice.

- The Embark SIPP met X's objectives fully, and whilst there was no suggestion that the SJP SIPP couldn't have met X's needs, this wasn't a motivator for X (and his wife) to switch away from SJP.

The investigator wasn't persuaded to change her view, however, saying the following in summary:

- Based upon X's personal circumstances, she remained of the view that the advice to transfer from SJP where there was proactive ongoing advice to a SIPP where the customer was meant to make "execution-only" style withdrawals wasn't appropriate. There may have been assistance from NatWest in those transactions, but there was a difference between assistance and advice.

- X had substantial net worth and so advice would likely have been necessary so that he understood the ramifications of withdrawals for issues such as IHT planning.

- Although NatWest's position was that it had been made clear that ongoing advice wouldn't be available in the Embark SIPP, it would seem that this hadn't been explained well enough as it was one of X's complaint points.

- She agreed that it might be hard to evidence that a transactional service would be expensive in the long term unless it was looked at in hindsight. But it appeared that X wanted to withdraw from his pension annually and so this makes the case for advice when withdrawing stronger.

NatWest maintained its disagreement, however, saying the following:

- X's main reason for wanting to switch was for the reduced annual charges and the detailed cost comparison provided in the suitability report. Assuming that X remained invested for at least ten years, the cost savings would be in the region of £4,870.

- Whilst X incurred the exit penalty, it was clearly pointed out to him that he could leave those chargeable elements with SJP, but X decided to pay the exit costs. And therefore, these costs shouldn't be taken into account when assessing suitability here.

- X's (and his wife's) circumstances may have changed since, but it was clear that they wished to sever all ties with SJP at the time of the advice.

- Whilst X (and his wife) couldn't have ongoing advice with the replacement arrangement, they could pay for ad hoc transactional advice. This would have cost £5,000 on a joint basis. So even if just one of them needed advice at any given time, the other would be able to receive advice as well.

- If they'd stayed with SJP, and on the basis of a combined SIPP value of £812,000, X (and his wife) would have paid ongoing advice fees over ten years of £40,630. NatWest thought it was fair to say that ad hoc transactional advice may be required every three years, e.g. triggered by new GAD figures. If they'd required four lots of advice over ten years, this would have amounted to £20,000, which represented a considerable saving compared to the ongoing advice fees with SJP.

- Although it could be argued that X (and his wife) could have turned off the ongoing advice fee with SJP, there was no evidence from SJP's website that it too offered ad hoc advice on a transactional basis. Nor did X (or his wife) have any intention of self managing their pension affairs. But even if SJP did offer advice on a transactional basis, this still left the not insignificant cost savings as previously outlined.

- X (and his wife) would also still be able to request help and support on a non-advised basis, as his wife had done when requesting a non-advised pension cash sum.

As agreement couldn't be reached on the matter, it's been referred to me for 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.

And having done so, I've reached broadly the same conclusions as the investigator, and for similar reasons.

At the outset, I'd say that I think this case is quite finely balanced. I acknowledge the points made by NatWest and I think that X would have found the prospect of switching to the Embark SIPP, for the sake of lower overall ongoing costs, and especially given his dissatisfaction with the service he was receiving from SJP at that point, to be appealing.

But there are some key issues here which I think tips the balance over to the advice not having been suitable for X.

To begin with, there's evidence of X having been given what I consider to have been misleading information. For example, in the letter of recommendation, it said the following about the available investment funds in the existing arrangement as compared to the proposed new arrangement:

"In order to make an appropriate assessment to allow you to make an informed decision on costs associated with your existing and proposed funds, I have reviewed your existing arrangement to consider if there are funds available to you now that follow a similar style and make-up to the proposed Coutts Managed Balanced fund. However, there is no fund available with your existing provider and therefore we have not been able to undertake a like for like comparison and the cost differential below is based on the actual existing position against the proposed solutions."

However, I think it's very likely that SJP would have been able to identify, recommend and access a managed balanced fund in which X could have invested, and it ought to have been a relatively straightforward exercise for NatWest to identify one, and the costs involved. It was noted later in the suitability report that it was possible that SJP would have access to a similar type of fund as was being proposed here, but that X would need to discuss this with his existing adviser. In my view, it should have been made clearer that it was likely that X could have invested in an appropriately risk rated fund with his existing arrangement.

This served to do two things, which contrary to the stated aim of placing X in an informed position, in my view did the opposite – it suggested to him that SJP may not have access to the type of fund which might be more suitable for him and his risk attitude than his existing investments, and that the only way of comparing costs would be to do so on the basis of his existing investments.

I also think the following extract, as noted by the investigator, is quite indicative of how X felt about the ongoing advice arrangement which he had with SJP:

"You could also remove the ongoing advice service through your existing adviser, which has an annual charge of 0.5%, and make your own choices. However, you do not want to self manage your pension as you do not feel you have the feel you have the expertise or interest to do so.

As discussed, we don't offer on-going advice however you are prepared to receive transactional advice in the future, subject to a fee."

For someone who had expressed no desire to manage their own pension affairs, and who had up to that point enjoyed an ongoing advice service through a dedicated SJP adviser, I think this was covered too briefly. I'm not satisfied that the ramifications of this were sufficiently explained to X in the report, such that he understood the change in the ongoing advice proposal. And I think this change in the service level provided is a key driver here in X's complaint, as I set out further below.

And there is significant disagreement between X's own version of his situation and objectives and those as set out by the adviser in the suitability report. And these disagreements were detailed in a complaint letter from X (and his wife) on 11 October 2023, which was just over four months from the issue of the suitability report. So this wasn't a change in circumstances which happened some years later and resulted in a complaint which might have been based on a view formed with the benefit of hindsight. This was very soon after the initial meeting.

X's account of his circumstances is that he was taking annual income withdrawals and always wanted the option of taking flexible withdrawals. X has also said, contrary to the report's record of him having no plans to retire, that he envisaged retiring over the next few years and that he wanted to both boost his contributions and use flexible withdrawals to fund his retirement. And certainly in terms of the income withdrawals, this is confirmed by the adviser's record of X taking a regular income of £7,000 every six months, with the last one having been taken in December 2022. Although I note that the adviser seems to have recommended that X not take further withdrawals, this clearly wasn't X's understanding as to what would happen.

However, this is in any case where I think the importance of the ongoing advisory service to X has most significance. It's clearly not possible for me to know exactly what was discussed in the review meeting, although I think the disparity between what was recorded and X's version of his and his wife's situation and intentions is striking. It seems to have been the case that, although the adviser may have felt that accessing assets other than the pension funds was the appropriate course of action, this wasn't X's and his wife's intention, and they were clearly surprised and disappointed that this hadn't been taken into account. But I think it's quite telling in X's complaint letter that he says he felt he'd effectively been abandoned by the NatWest adviser, who he said had "washed his hands of his responsibilities" and that he'd need to contact Embark and deal with his withdrawal request directly.

X was seemingly accustomed to a more straightforward proposition, whereby he could in essence pick up the phone or compose an email and contact his dedicated adviser for advice or to help him with a withdrawal. X's current adviser had replaced his previous contact, with whom X had presumably been more content, after he'd retired, and I think NatWest ought reasonably to have been aware that it was possible for SJP customers to seek a different adviser if they thought that they weren't receiving the expected standard of service. NatWest could have suggested that X simply request another adviser, with whom he may have been more comfortable.

As I've said above, I don't think the effects of the change in this service proposition was made sufficiently clear to X, certainly in the suitability report, and as I've also said above I think X's sense that he's been left to his own devices is a key driver in this complaint. I appreciate that it's NatWest's position that ad hoc advice could be sought in the replacement arrangement by similar means, but I don't think this was well explained to X or his wife, or that he understood how it would work, hence the comments about needing to approach Embark directly when wanting to make a withdrawal.

And as to the higher fees being charged with SJP, it seems that X has been able to negotiate a lower charging level – and so this is something which NatWest could also have proposed to X as being worth exploring. This would have avoided the situation of him paying an exit penalty to move away from SJP and would have meant that he still had access to a dedicated adviser, rather than the ad hoc transaction based advice which was offered by the replacement arrangement, and with which X is clearly dissatisfied.

NatWest has said that the fact that X was made aware of the option of being able to only transfer a proportion of his SIPP to Embark to avoid the exit penalty, but chose to transfer all of the pension funds, was evidence that he was intent upon transferring all of his money from SJP. But I don't think that's necessarily the case.

Had X only transferred some of his pension funds, he would then have been in the rather more complicated position of having some of his funds in one SIPP and some of his funds in another. As has been made apparent in this complaint, X wasn't an individual who had an appetite for managing his own pension affairs, and I think the added complication of having his pension money spread around different providers, rather than having them all in one place, would have been quite unpalatable.

Further, I need to emphasise that X was seeking professional advice, and having received that advice, would have been more likely that not to have heeded and accepted it. And so, on the basis of the advice given, he would more likely than not have proceeded with the recommendation to switch. NatWest was the professional party here, and had an obligation to provide suitable advice to X, which it should also reasonably have assumed he would accept.

NatWest has said that X was recorded in the suitability report as being "adamant" that he wished to make a clean break from SJP, which NatWest has said explained his reason for being prepared to pay the exit penalty. But had the adviser explained that it might be possible to remain with SJP but change adviser, receive the ongoing advice to which X was accustomed, negotiate a lower overall fee, invest in a fund which would have been appropriate for his risk rating, and avoid paying the exit penalty, I think X might reasonably have been somewhat less adamant.

As I've said above, I think the case is quite finely balanced. I acknowledge that there was merit in the prospect of X paying lower overall fees, but these would have been negated to an extent by the exit penalty X paid to transfer his pension funds. The actual extent to which the benefit of paying ad hoc transaction based advice fees as opposed to the annual ongoing advice fee with SJP couldn't really be known, and it's unclear as to what was said about X's existing and likely future activity on the account – although I do think the disparity between it being recorded that there would be no income requirement from the plan and X's actual regular withdrawals and his own understanding as to what would happen in the future is significant and should have been explained or explored in more detail.

And if X was intending on continuing to make regular withdrawals (and contributions), as he has said was explained to the adviser, and he expected advice on each occasion, then this would rather quickly mitigate or surpass any saving in fees.

However, there's a wider point here in that I don't think the overall proposition suited X's objectives and his keenness to not handle his pension affairs himself. I think this is something which should have been looked at with X in greater depth rather than covering it in a single sentence, with no real explanation as to what this alternate advice service might mean for X.

And for the reasons I've set out above, I think if options relating to X remaining with SJP had been set out in a clearer way, along with the prospect of him being able to invest in a fund or funds which was more suited to his risk attitude, then I think it's more likely than not that he would have remained with SJP.

Putting things right

As with the investigator, my aim here is to place X as closely to the position he would have been in, had he not switched out of the SJP arrangement.

I agree that it was suitable to recommend that X switch into an investment fund, or funds, which would be more suited to his medium risk rating, as opposed to the "high-medium" investment strategy he was in with SJP. But as set out above, I think this could have been achieved without X needing to transfer away from SJP and pay the associated exit penalty.

So, as with the investigator, my view is that, to put things right, National Westminster Bank Plc should compare, as at the date of this decision, the actual value of X's pension, including the exit penalty which X had paid, with the notional value of the investment had it been invested in line with the FTSE UK Private Investors Income Total Return Index. I agree that this is a reasonable proxy for what would have been suitable for X. This was because X was taking income, wanted some growth and was willing to accept some investment risk.

If this demonstrates a loss, this should in the first instance be paid into X's pension plan so that it is made up to the value of that loss, taking into account any available tax relief and the effect of charges.

But if it isn't possible to pay into X's pension plan, then National Westminster Bank Plc should pay the loss amount directly to X, with a (post tax free cash) deduction for the income tax which X would likely pay on the benefits in retirement, presumed to be 40% - so an overall deduction of 30%.

Any redress should be paid within 28 days of National Westminster Bank Plc being informed of X's acceptance of this decision. If it isn't, then interest at the rate of 8% simple pa should be added to the loss from the date of this decision to the date of settlement.

As also set out by the investigator, National Westminster Bank Plc should pay X £300 in respect of the concern caused to him by the unsuitable advice and the erosion of his retirement benefits though unnecessary exit charges. This should include the £125 which has been offered to X already.

Further, National Westminster Bank Plc should cover the cost of any exit charges or penalties which X might face if he chooses to revert to SJP.

My final decision

My final decision is that I uphold the complaint and direct National Westminster Bank Plc to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 26 November 2024.

Philip Miller
Ombudsman