

## **The complaint**

Mrs R has complained that National Westminster Bank Plc gave her unsuitable advice to switch out of her 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.

Mrs R and her husband (who has raised his 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 Mrs R included the following:

- She was 59 and married with no financial dependants. She was employed as a director and was a basic rate taxpayer with a net income of around £3,000 pm.
- The residential home was valued at around £3m and Mr and Mrs R 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.
- She had a personal pension with SJP in drawdown with a fund value of circa £558,000.
- She was expected to receive a full state pension from 2030 and had membership of two other pension schemes which weren't yet in payment.

Mrs R was assessed as a low-medium risk investor. Mrs R was invested in a high-medium strategy with SJP. Mrs R was recorded as having a high-risk capacity for loss because of the significant asset base and surplus income.

Regarding Mrs R's objectives, the Fact Find noted the following:

- She wished to move away from SJP as she 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 Mr and Mrs R 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 Mr and Mrs R.

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, Mrs R proceeded to transfer the pension to Embark in June 2023.

Just over four months later, on 11 October 2023, Mr and Mrs R complained to NatWest. The complaint letter covered various points. Mr R said, on their behalf, that although he and Mrs R had differing ideas of what to do with their pensions, NatWest treated them as a unit.

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

In resolution of the complaint, Mr R said they 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.

Mrs R referred her 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 Mrs R. It declined to uphold the complaint and considered that the advice was suitable. It did, however, offer Mrs R £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 Mrs R's attitude to risk, but it didn't definitively match her personal circumstances.
- Mrs R was close to retirement age and was making contributions, and was planning on taking withdrawals. And so setting up a plan with no ongoing advice or adviser wouldn't have suited her. The suitability report in fact set out that Mrs R didn't wish to self manage her pension and that she was interested in receiving advice in the future.
- NatWest was therefore aware that Mrs R required ongoing advice and that it was important to her, but nevertheless recommended that she 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 Mrs R.
- The readjustment of Mrs R'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 Mrs R had wanted a "transaction based" advice service she 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 Mrs R distrusted SJP – she'd in fact mentioned that she may move back to it.
- There was therefore no robust rationale for Mrs R to switch out of SJP. But Mrs R needlessly paid an exit penalty of £7,169 for doing so.

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

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 Mrs R as close as possible to the position she would probably now be in if she hadn't been given the unsuitable advice.

She thought that Mrs R would have simply remained in the same investments within SJP, as these were consistent with her attitude to risk.

The investigator said that NatWest should compare the actual value of Mrs R's pension, taking into account the exit penalty which Mrs R had paid, with the notional value of the investment had it remained invested with SJP.

But if the previous provider wasn't able to calculate a notional value, then NatWest should use a proxy for the type of investments which would have been suitable for Mrs R, using 50% FTSE UK Private Investors Income Total Return Index and 50% average rate from fixed rate bonds. This was because Mrs R wanted income and some growth and was willing to accept a small investment risk, the investigator said.

If this demonstrated a loss, this should in the first instance be paid into Mrs R'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 Mrs R's pension plan, then NatWest should pay the loss amount directly to Mrs R, with a (post tax free cash) deduction for the income tax which Mrs R would likely pay on the benefits in retirement, presumed to be 20% - so an overall deduction of 15%.

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

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

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

- It maintained that the advice given to Mrs R to switch was suitable and was in line with her recorded attitude to risk and her personal circumstances. Mrs R 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 Mrs R (and Mr) R were unhappy with SJP at the time, which was evidenced by emails it attached to its response.
- Although Mrs R may have indicated that she 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. Mrs R was also made aware that she could transfer £397,967 of the total

£550,869 without paying an exit penalty, and the fact that Mrs R didn't take up this option evidenced that Mrs R wished to entirely transfer away from SJP.

- It was made clear to Mrs (and Mr) R 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.
- Mrs R did complain about the non-advised process for making a withdrawal, but she could have paid for advice regarding this if she wished. But it was in any case evidence that the adviser was helping her facilitate the withdrawal with no charge. And had it been determined at the point of advice that Mrs R wished to take withdrawals, this could have been set up on an advised basis at the same time without any additional advice fees being payable.
- The Embark SIPP met Mrs R's objectives fully, and whilst there was no suggestion that the SJP SIPP couldn't have met Mrs R's needs, this wasn't a motivator for Mrs (and Mr) R to switch away from SJP.

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

- Based upon Mrs R'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.
- Mrs R had substantial net worth and so advice would likely have been necessary so that she 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 Mrs R's complaint points.

NatWest maintained its disagreement, however, saying the following:

- Mrs R'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 Mrs R remained invested for at least ten years, the cost savings would be in the region of £29,000.
- Whilst Mrs R incurred the exit penalty, it was clearly pointed out to her that she could leave those chargeable elements with SJP, but Mrs R decided to pay the exit costs. And therefore, these costs shouldn't be taken into account when assessing suitability here.
- Mrs (and Mr) R'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 Mrs (and Mr) R 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, Mrs (and Mr) R 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 Mrs (and Mr) R 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 Mr (or Mrs) R 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.
- Mrs (and Mr) R would also still be able to request help and support on a non-advised basis, as Mrs R 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 Mrs R would have found the prospect of switching to the Embark SIPP, for the sake of lower overall ongoing costs, and especially given her dissatisfaction with the service she 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 Mrs R.

To begin with, there's evidence of Mrs R 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 Cautious 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 cautious fund in which Mrs R 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 Mrs R would need to discuss this

with her existing adviser. In my view, it should have been made clearer that it was likely that Mrs R could have invested in an appropriately risk rated fund with her existing arrangement. Indeed, it appears that she was already invested in a similar manner.

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

It further said that Mrs R was aware that she could approach her existing SJP adviser to switch funds. But it's unclear as to why Mrs R would need to do so, given that the existing funds were already aligned to her risk attitude.

I also think the following extract, as noted by the investigator, is quite indicative of how Mrs R 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 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 Mrs R in the report, such that she understood the change in the ongoing advice proposal. And I think this change in the service level provided is a key driver here in Mrs R's complaint, as I set out further below.

And there is significant disagreement between Mrs R's own version of her situation and objectives (as set out on her behalf by Mr R) and those as set out by the adviser in the suitability report. And these disagreements were detailed in a complaint letter from Mr and Mrs R 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.

Mr R's account of Mrs R's circumstances is that she was planning on making income withdrawals and always wanted the option of taking flexible withdrawals. Mr R has also said, contrary to the content of the report, that Mrs R envisaged reducing her activity over the next few years and that she wanted to both boost her contributions and use flexible withdrawals to fund her retirement. Further, Mr R said that Mrs R had commented that she wished to use her tax free allowance to help their daughter buy a house, but this hadn't been recognised in the report by the adviser.

However, this is in any case where I think the importance of the ongoing advisory service to Mrs R 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 Mr R'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 Mrs (and Mr) R'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 Mr and Mrs R's complaint letter that they say they felt they'd effectively been abandoned by the NatWest adviser, who they said had "washed his hands of his responsibilities" and that they'd need to contact Embark and deal with their withdrawal requests directly.

Mrs (and Mr) R were seemingly accustomed to a more straightforward proposition, whereby they could in essence pick up the phone or compose an email and contact their dedicated adviser for advice or to help with a withdrawal. Mrs R's current adviser had replaced her previous contact, with whom Mrs R 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 Mrs R simply request another adviser, with whom she 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 Mrs R, certainly in the suitability report, and as I've also said above I think Mrs R's sense that she's been left to her 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 Mrs R, or that she 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 Mrs R has been able to negotiate a lower charging level – and so this is something which NatWest could also have proposed to Mrs R as being worth exploring. This would have avoided the situation of her paying an exit penalty to move away from SJP and would have meant that she 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 Mrs R is clearly dissatisfied.

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

Had Mr R only transferred some of her pension funds, she would then have been in the rather more complicated position of having some of her funds in one SIPP and some of her funds in another. As has been made apparent in this complaint, Mrs R wasn't an individual who had an appetite for managing her own pension affairs, and I think the added complication of having her 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 Mrs R 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, she 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 Mrs R, which it should also reasonably have assumed she would accept.

NatWest has said that Mrs R was recorded in the suitability report as being "adamant" that she wished to make a clean break from SJP, which NatWest has said explained her 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 Mrs R was accustomed, negotiate a lower overall fee, remain invested in a way which would have been appropriate for her risk rating, and avoid paying the exit penalty, I think Mrs R 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 Mrs R paying lower overall fees, but these would have been negated to an extent by the exit penalty Mrs R paid to transfer her 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 Mrs R's likely future activity on the account. But if Mrs R was intending on making regular withdrawals (and contributions), as she has said was explained to the adviser, and she 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 Mrs R's objectives and her keenness to not handle her pension affairs herself. I think this is something which should have been looked at with Mrs R 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 Mrs R.

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

### **Putting things right**

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

It seems to be the case that Mrs R was already invested in a way which was consistent with her risk profile with SJP.

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 Mr R's pension, including the exit penalty which Mr R had paid, with the notional value of the investment had it remained with SJP.

But, as with the investigator, if the previous provider isn't able to calculate a notional value, then National Westminster Bank Plc should use a proxy for the type of investments which would have been suitable for Mrs R, using 50% FTSE UK Private Investors Income Total Return Index and 50% average rate from fixed rate bonds.

I agree that this is a reasonable proxy for what would have been suitable for Mrs R. This was because Mr R was planning to take income, wanted some growth and was willing to accept a small amount of investment risk.

If this demonstrates a loss, this should in the first instance be paid into Mrs R'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 Mrs R's pension plan, then National Westminster Bank Plc should pay the loss amount directly to Mrs R, with a (post tax free cash) deduction for the income tax which Mrs R would likely pay on the benefits in retirement, presumed to be 20% - so an overall deduction of 15%.

Any redress should be paid within 28 days of National Westminster Bank Plc being informed of Mrs R'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 Mrs R £300 in respect of the concern caused to her by the unsuitable advice and the erosion of her retirement benefits through unnecessary exit charges. This should include the £125 which has been offered to Mrs R already.

Further, National Westminster Bank Plc should cover the cost of any exit charges or penalties which Mrs R might face if she 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 Mrs R to accept or reject my decision before 26 November 2024.

Philip Miller  
**Ombudsman**