DRN-4589447

The complaint

Mr B complains that he was unsuitably advised by Newstead Clark Financial Services Ltd regarding the choice of pension provider for his transferred occupational pension scheme benefits.

What happened

In October 2020 Mr B was thinking of transferring his defined benefit ('DB') occupational pension scheme fund to a personal pension plan. His existing financial adviser didn't hold the necessary permissions to provide the advice so it suggested to Mr B that he approach Newstead Clark instead. The cash equivalent transfer value ('CETV') of his employer's DB scheme was £881,117.36 and Mr B told Newstead Clark that he wanted to explore the viability of transferring the preserved benefits he had accrued to a more modern, flexible arrangement. Mr B said many of his work colleagues were in the process of transferring there preserved benefits away from their employer's scheme.

Newstead Clark completed a fact-find with Mr B to gather information about his personal circumstances and objectives. It was noted on the form that: -

- Mr B was aged 56 and was married; Mrs B was aged 57.
- His desired retirement age was 58 and his wife wanted to retire at age 60.
- Mr B had worked for his employer for 40 years and earned £34,000 per year. Mrs B had worked for her employer for over 20 years and earned £9,600 per year.
- Mrs B was a member of her employer's DB scheme.
- Mr and Mrs B owned their home which was mortgage free and valued at £200,000. They had joint savings of £50,000 and no other investments.
- Both Mr and Mrs B were entitled to the full state pension at age 67.
- Mr and Mrs B's total monthly outgoings were £3,200 and they anticipated needing a monthly income in retirement of £3,000.
- Mr B felt the freedoms afforded to him by transferring his DB scheme benefits would suit him better than the fixed benefits offered by his employer's scheme.
- Mr B thought that his DB scheme wouldn't be able to provide him with enough of an income to retire at 58 and he said he would like to have access to one-off lump sums when he needed them.
- Finally, Mr B said he had no other means of achieving his retirement goals.

Newstead Clark also completed a risk profile for Mr B assessing him as having a 'cautious balanced' attitude to risk, or 4 on a scale of 1 to 10.

A pension transfer report dated 21 October 2020 was prepared for Mr B by Newstead Clark. It included details of Mr B's DB scheme benefit entitlements, noting that at the scheme's normal retirement date ('NRD') of age 65 Mr B's income entitlement form the scheme was projected to be £27,726 (if no tax-free cash was taken). It was further noted that the estimated open market cost of acquiring the same income as provided by the DB scheme was £1.27m. The critical yield (annual investment return) Mr B's transferred funds would need to attain to match his DB scheme benefits at his normal retirement age was cited as 5.13%.

Newstead Clark also provided Mr B with a suitability report dated 26 October 2020 in which Mr B's objectives were noted. These were: to take early retirement at age 58, to have a joint income in retirement of £3,000 per month, to be able to draw his pension benefits flexibly and to have better death benefits. The report recommended that Mr B transfer his DB scheme benefits to a retirement account (personal pension) with a provider I shall call 'S' so that he could meet his stated needs and objectives.

In February 2021 £887,451.11 was transferred from Mr B's DB scheme to a personal pension provided by S. Newstead Clark charged Mr B £14,405 for the advice it provided. S charged Mr B an annual service of 0.5% of the fund value.

Not long after the transfer, Mr B retired. He withdrew £30,000 from his pension as tax-free cash and began drawing down a monthly income of £2,500. In February 2022, at the annual review of his pension, Mr B expected to find that his fund would be worth in excess of £950,000 and was shocked to find it was only worth £890,000. At the annual review in February 2023 Mr B was further surprised to find his fund with S was valued at only £768,091.30.

Disappointed with the investment performance of his fund, Mr B moved it to another pension provider in May 2023 – the amount transferred was £752,972.44. By September 2023, despite continuing to drawdown £2,500 per month, Mr B's fund with his new provider (who I shall refer to as 'P') had increased to £757,214.76.

In October 2023, Mr B complained to Newstead Clark. He said he was unhappy that it had recommended S as his pension provider. Mr B explained that his work colleagues had all transferred their DB scheme benefits to pensions provided by P and they had all performed far better than his had performed with S. Mr B said had Newstead Clark advised him to transfer his DB scheme benefits to a pension provided by P, he would have made approximately £100,000 whereas his fund had lost him £80,000. Mr B said he could not understand why Newstead Clark recommended such a poorly performing fund when there were better funds available.

Newstead Clark looked into Mr B's complaint and issued him with its final response letter on 24 October 2023. Newstead Clark said it hadn't done anything wrong. It said it had provided him with suitable advice in line with his attitude to risk. It also said it had explained to him that past performance was no guarantee of future performance.

Unhappy with the outcome of his complaint to Newstead Clark, Mr B complained to this service. One of our Investigator's looked into Mr B's complaint for him. She confirmed with Mr B that his complaint was about Newstead Clark's choice of S as his pension provider rather than about the advice to transfer his DB scheme away from his employer. Mr B confirmed that he only wanted to complain about Newstead Clark's selection of S as his pension provider.

Having considered the complaint, our Investigator said she wasn't recommending that it was upheld. She thought that Newstead Clark recommended a suitable pension provider for Mr B and a suitable investment fund that was in line with his attitude to risk.

Mr B disagreed with our Investigator's findings. He said he had told Newstead Clark that he wanted to preserve the amount he had had transferred and to live only off his fund's investment growth. Mr B said Newstead Clark should have known the market better and that no-one else he knew was recommended to transfer to S. Further, Mr B said his colleagues' pensions had all performed well so he felt Newstead Clark had charged him good money for poor advice. Mr B asked for his complaint to be referred to an ombudsman.

As it wasn't possible to informally resolve Mr B's complaint, it has been passed to me to make 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.

Mr B has made it clear that he is only complaining about the advice he received from Newstead Clark in respect its recommendation as to the choice of provider and the investment fund selected; he is not complaining about the suitability of the advice he received to transfer his DB scheme benefits.

With regret for the disappointment I appreciate this will cause Mr B, I don't think his complaint should be upheld. I'll explain why.

As I've set out above, Newstead Clark carried out an assessment of Mr B's circumstances and objectives before it made its recommendation to transfer his DB scheme benefits to a retirement account/personal pension with the provider S. Significantly, Newstead Clark carried out a risk profile report for Mr B before it made its recommendation. I can see from the questionnaire that was completed that the answers Mr B gave to the questions he was posed led to his natural risk level being assessed at level 5 (on a 1 to 10 scale). Having taken into account Mr B's capacity for loss alongside his natural risk level however, I can see that following an interactive discussion, it was agreed to assess Mr B as level 4 (or cautious balanced).

Having considered the risk profile report alongside Mr B's circumstances as documented in the fact-find and suitability report, I think that Newstead Clark's fairly assessed Mr B's risk profile as level 4. So, to be able to fairly and reasonably uphold Mr Bs complaint, I would have to be satisfied that the recommended pension provider (S) and the investment fund were unsuitable for someone with a cautious balanced attitude to risk such as Mr B.

I can see from the risk profile report that Newstead Clark created a shortlist of 14 funds from a list of 346 level 4 investment funds from which it selected the fund it recommended to Mr B. The shortlist included funds from a variety of different pension providers but they all had a risk rating of level 4. So I'm satisfied that, having assessed Mr B's attitude to risk, Newstead Clark went on to consider only investment funds and their providers that matched it, one of which was that provided by S.

Also I can see from the suitability report that Newstead Clark recommended S because it felt it most suited Mr B's requirements and objectives and the contract offered contained the right features to meet his requirements. Newstead Clark's reasons for selecting S included, good investment performance, online access, a transparent charging structure, quality service provision, a good market reputation and flexi access to the fund. I can see too that it considered a stakeholder pension but concluded that S was better suited to Mr B because it permitted him to instigate flexible/phased drawdown.

Further on in the suitability report I can see that Newstead Clark considered the appropriate investment strategy for Mr B by taking into account his investment objective and its likely length, his capacity for loss, attitude to risk and his access requirements; it then recommended he invest in the Pension Portfolio 4 fund. I can see that this fund had a level 4 risk rating. Newstead Clark explained that the fund aimed to deliver growth by investing in other funds and that it had an emphasis on fixed interest securities, with the remainder in equities. A small proportion was invested in listed property securities by investing in passive index tracking funds.

So having considered Newstead Clark's recommendation I think that it was suitably made for someone with Mr B's objectives and attitude to risk, both in terms of the provider and the investment itself.

I appreciate that Mr B is dissatisfied with the performance of his fund with S, particularly so given his work colleagues' personal pensions seemed to be performing much better. But where a suitable provider and investment fund has been recommended, after taking into account a consumer's circumstances, objectives and attitude to risk, I can't fairly uphold a complaint that is about the performance of the fund selected. I can see that Newstead Clark provided Mr B with the warnings about investment performance that we would expect it to give. I think the provider and the fund selected met Mr B's criteria and weren't classified as having a risk profile that was greater than the one he was willing to accept. That's not to say the fund Mr B was placed in was devoid of all risk – it clearly wasn't – but any decrease in value wasn't the result of Mr B being unsuitably advised rather it was a consequence of typical market factors being at play.

I'm sorry to hear that Mr B feels his investment fund didn't perform as well as some of his colleagues' but I can only look at the advice he received, and the recommendation Newstead Clark made, and reach a conclusion as to whether it was suitable for him. I don't know what the personal circumstances of his colleagues were or the investments they made; so I can't fairly consider this aspect of Mr B's complaint. Investment performance is influenced by numerous factors and its not my role here to analyse if another individual's pension has outperformed Mr B's. Nor can I hold Newstead Clark responsible – given it provided Mr B with a recommendation that was suitable for his circumstances and attitude to risk – for the investment performance of his pension. Unfortunately, future investment performance is not something that is possible to predict.

Having taken all the circumstances of this complaint into account, I'm satisfied that the provider recommended by Newstead Clark, along with the investment fund selected, were suitable for Mr B's circumstances, objectives and attitude to risk. It follows that this is a complaint I can't fairly or reasonably uphold.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 March 2024.

Claire Woollerson
Ombudsman