

The complaint

Ms S complains about the advice given by National Westminster Bank Plc ('NatWest') to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable for her and believes this has caused a financial loss

What happened

The background and circumstances leading up to the complaint, and my provisional findings were set out in my provisional decision of December 2023. A copy of my provisional decision is set out below, in italics and forms part of this final decision.

What I said in my provisional decision

What happened

There is limited evidence available in this case – there is little paperwork and Ms S' recollections of events is limited. So, the following is a summary of what happened here.

Ms S had a DB pension scheme representing benefits accrued over 13 years' service. In January 1996, facilitated by NatWest, Ms S' benefits were transferred to a pension plan with a major pension provider. The transfer value was £21,004.

Ms S complained to NatWest, through a representative in November 2022. She said NatWest provided negligent advice to transfer her pension and as a result she's suffered a financial loss.

When Ms S hadn't heard back from NatWest, she asked the Financial Ombudsman Service to consider her complaint. Because NatWest said it hadn't recognised Ms S' correspondence as a complaint sooner and it then spent time confirming the correct entity the complaint should be set up against, the Investigator considered the matter before NatWest concluded its investigation. And they didn't uphold the complaint. In summary they said while NatWest were involved in the transfer of Ms S' pension – they said NatWest received the commission for it – because of the lack of available evidence, there wasn't enough to show what advice was given or to suggest the transfer was unsuitable for Ms S.

Ms S, through her representative disagreed. She said because the transfer took place in 1996, it's not surprising there isn't a lot of evidence. But she said, the documentation from the pension provider shows NatWest received commission as a result of the transfer.

So she said, the limited evidence available shows NatWest was likely involved in the transfer and received money for it. She said where payment is received, it is on the whole due to the transfer advice provided. Ms S asked the Investigator to reconsider things.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred for a final decision.

NatWest then provided Ms S with its final response to her complaint following the conclusion of its investigation. In summary it said Ms S' transfer of her DB scheme benefits was made to a Section 32 pension and not a personal pension plan. It said a Section 32 must guarantee to pay any guaranteed minimum pension (GMP), which is shown in the available policy schedule. It said while NatWest facilitated the transfer, the scheme trustees made the decision to wind up the scheme and Ms S therefore had no option but to transfer her benefits to a personal arrangement.

What I've provisionally 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having considered all of this and the evidence in this case, I've provisionally decided to not uphold the complaint. My reasons are set out below.

I can see that Ms S' representative has acknowledged that there is a lack of evidence in this case. And that's not surprising – things happened 27 years ago. But it says the limited evidence that is available shows the business had an involvement in Ms S' pension transfer and that because it received money that points to it providing transfer advice.

NatWest's involvement in or its facilitation of Ms S' pension transfer is not disputed. But just because it facilitated the transfer and perhaps received commission for doing so, does not in my view automatically mean Ms S received transfer advice. Indeed, having carefully considered what evidence has been provided, on balance I don't think NatWest did provide Ms S with individual pension transfer advice. I'll explain why.

Ms S' representative says her DB scheme benefits were transferred to a personal pension. And the evidence supports a transfer having taken place to an individual arrangement. But rather than a traditional personal pension, NatWest says that Ms S transferred to a Section 32 plan – also known as a buyout plan or deferred annuity contract. And in my view the evidence supports what NatWest says. This is because Ms S' workplace pension included a GMP and Section 32 plans could receive transfers from schemes which included this – personal pension plans couldn't. And looking at the policy schedule I can see it referred to a GMP payable from Ms S' state pension age, which the pension provider had to guarantee to meet.

NatWest also says that the transfer happened because Ms S' scheme trustees took the decision in 1996 to wind up the scheme, so she had no alternative but to transfer her benefits to an individual arrangement. And again I think the evidence supports this likely being the case. I say this for two reasons.

Firstly, one of the reasons a Section 32 plan was created was to cater for the scenario where the trustees of a workplace scheme decide to wind up the scheme and transfer each member's pension rights to an individual pension arrangement. And secondly, Ms S' pension provider has said that her transfer was processed as part of a bulk transfer. So this wasn't an individual transfer – Ms S' pension was transferred along with other scheme members at the same time.

The pension provider also says this is why there is no proposal form. I think this is further evidence that Ms S wasn't likely individually advised. And I think this all explains why there is limited paperwork available from the time. I can see Ms S was provided with an illustration document at the time – but I don't think this is evidence of her receiving advice. Ms S' benefits were being transferred to an individual arrangement, so I think it would've been provided to her as part of the transfer process.

Furthermore, looking at the Government's website for searching old workplace pensions, the results for Ms S' DB scheme show NatWest as the last known address. I think this supports that NatWest's involvement in Ms S' pension transfer was not on an individual basis but was the result of a bulk transfer because the scheme was being wound up.

So while Ms S' pension provider says NatWest was the introducer of the transfer and says they were entitled to receive commission, albeit it's not entirely clear they received the commission, I'm not persuaded this is evidence in this case of it providing individual pension transfer advice to Ms S. I think the evidence points to this being a transfer that Ms S had to accept because her DB scheme was being wound up. In my view, any advice that might have been given by NatWest at the time, was likely given to the scheme trustees and not to Ms S as an individual scheme member.

But even if I thought Ms S had received individual pension transfer advice from NatWest (which for the avoidance of doubt I'm not persuaded she did) I've not seen enough evidence here to persuade me that it was unsuitable. Firstly, expectations around future investment growth at the time were very different from those in more recent times. For example, the discount rate – an expectation of what a typical investor could expect to receive by way of an annual investment return at the time – was 9.9% for 25 years to retirement (age 60) in Ms S' case. And the regulator's industry standard projection rates were 6% (lower rate) 9% (middle rate) and 12% (upper rate). So taking this into account and absent any information to show the level of return Ms S needed to match her DB scheme benefits by transferring, I can't fairly say that the transfer wasn't financially viable. As the Investigator told Ms S, given the expected returns, it's entirely possible that she could be better off as a result of transferring.

Ms S also retained some form of guarantee following the transfer. As I referred to above, her scheme provided a GMP and widows GMP, which the new pension provider accepted and guaranteed, as a minimum, to pay at her normal retirement age; albeit I accept this was still a money purchase arrangement.

Ms S' pension funds were invested in a with-profits fund. The nature of this type of investment means it has the ability to smooth returns and progressively build a guaranteed value that can't be reduced at normal retirement age. It is typically suitable for lower risk or cautious investors. So I can't fairly say that the investment strategy adopted in Ms S' case was unsuitable.

Overall, I'm not persuaded there is sufficient evidence to demonstrate that Ms S received pension transfer advice from NatWest. I currently think that Ms S' transfer to an individual arrangement was the result of a decision her DB scheme trustees took to wind up the scheme resulting in Ms S having no choice but to transfer out.

But even if I thought Ms S did received advice from NatWest on an individual basis, for the reasons I've indicated above, I've not seen enough to persuade me it was unsuitable.

So it is my intention to not uphold this complaint.

Both NatWest and Ms S, through her representative said they had nothing further to add in response to my provisional 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.

Because neither party has given me anything new to consider, I've no reason to change my mind. So, I've reached the same conclusion and for the same reasons as I set out in my provisional decision. I do not uphold this complaint.

My final decision

I've decided to not uphold this complaint, so I make no award in Ms S' favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 13 February 2024.

Paul Featherstone

Ombudsman