

The complaint

Mr F complains about advice he was given to transfer the benefits of a defined-benefit (DB) occupational pension scheme (OPS) to a personal pension plan. He says the advice was unsuitable for him and believes this has caused him a financial loss.

JLT Wealth Management Limited is responsible for answering this complaint. To keep things simple I'll refer to "JLT".

What happened

At the time, Mr F was a deferred member of an OPS, having accrued nine years benefits in a scheme previously operated through his employer. The OPS had been closed and replaced by another scheme. In 2010, Mr F's OPS had signalled an intention to offer a time-limited enhancement to the cash equivalent transfer value (CETV) for deferred members like Mr F who opted to leave the DB scheme. Members were also being offered regulated financial advice, the cost of which was being met by the scheme. JLT was contracted to provide that advice.

Information gathered in 2010 about Mr F was broadly as follows:

- Mr F was 33 years old living with his wife and two young children in a mortgaged property. He earned approximately £34,000 (gross) a year.
- The cash equivalent transfer value (CETV) of the OPS was around £21,425. The enhancement on top was up to £3,242 (although this was subject to taxation).
- Mr F said he wanted to retire at the age of 60, if possible, but his normal retirement age (NRA) for the pension in question here was 65.

Mr F had a number of options which included doing nothing and leaving his deferred pension where it was, inside the DB scheme. Or he could transfer out to a personal pension plan. If transferring out, Mr F was able to transfer the whole CETV with the enhancement added, or he could transfer only the CETV with the enhancement paid to him as cash.

A recommendation letter was issued by JLT, on 24 June 2010. It recommended Mr F should transfer his pension out from the OPS to a personal pension. It implied there were several reasons supporting this. Mr F accepted this, and he did go ahead and transfer out.

In 2021, Mr F complained to JLT which replied saying it hadn't done anything wrong in terms of recommending that he should transfer out. It did, however, acknowledge that Mr F's transferred funds hadn't been properly invested, as per his attitude to risk (ATR). So it made an offer specifically in relation to this matter, which hasn't been accepted by Mr F.

Mr F has referred his complaint to our Service. One of our investigators looked into the complaint and said we should uphold it. They thought JLT's recommendation to transfer to a personal pension wasn't suitable. JLT responded by saying it still believes it made the correct recommendation.

As the complaint couldn't be resolved informally, it's come to me for a 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.16 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, JLT should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr F's best interests.

Having looked at all the evidence available, I'm upholding this complaint.

Financial viability

JLT referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme.

The transfer analysis commissioned by JLT in this case incorporated the enhancement offer and said that the critical yield for a retirement at the NRA (65) was 7.6% if Mr F eventually drew a full pension with the scheme. If taking a tax-free lump sum upon retirement and a reduced pension, the figure was 7.3%. However, JLT seemed to accept that Mr F's aspirations at the time were for an earlier retirement, so critical yield figures for a retirement at the age of 60 were calculated: these were found to be 7.9% and 7.5% respectively.

So, I think it's fair to say there should have been an expectation that the future growth that Mr F's transferred funds would need to achieve was at least 7.5% just to make transferring compatible with what he already enjoyed in his current OPS.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The relevant discount rate was around 7 to 7.5% per year, depending on whether a retirement at 60 or 65 was assumed. For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5% per year. So, on this basis alone, the financial viability benefits of JLT recommending a transfer to a personal pension plan are unclear. While discount rate tends to imply reaching a growth rate of around 7.5% might be possible, the regulator's middle projection falls short of this.

I think it's also right to consider that there were costs associated with the transfer to a personal plan. I accept the advice was being offered free as it was being paid by Mr F's employer, but there are still certain management fees which are normally associated with personal pension schemes and which we know applied here. These would have the effect of eroding 'better' growth rates which were already questionable, as I've explained above. I've

also noted that whilst Mr F's ATR was assessed as "balanced-to-adventurous" by JLT, he eventually 'self-selected' funds at the "balanced" end of the risk profile when he came to invest his transferred funds. So in effect, he reduced his ATR down a 'notch' and I think this shows there were some failures in this important area.

In summing all this up, I need to make a judgement on where the advice to transfer away from his DB scheme was likely to lead Mr F, from a financial perspective.

I have looked carefully at the points made by JLT about higher growth being possible and its own projections of over 8% not being too inflated at the time. But I think the reasonable growth assumptions here were around 7.5% – and in arriving at this I've taken account of the regulator's published growth estimates *valid at the time of the advice*, the discount rates, and what I consider to have been Mr F's *actual* ATR, which was more around the "moderate" category. And even if I were to accept a slightly higher expected growth rate, the financial benefits were by no means clearly evident, due to the effect of the ongoing impact of fees and charges.

So, I don't think achieving a growth rate of over 8% could have been fairly viewed at the time as likely, especially considering this needed to be consistently achieved until Mr F's retirement, which was decades away. Even small parts of a percentage point can erode growth over the long term. And there would be little point in Mr F giving up all the guarantees and benefits available to him through his current DB scheme only to achieve, at best, broadly the same, or even slightly less, levels of financial benefits at retirement.

I do accept this is a somewhat marginal call. But the stance of the regulator was also clear in that the starting point should be assumed as these types of transfer more likely being unsuitable.

Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer *is* suitable, despite providing overall lower benefits. In this case, in addition to the growth assumptions JLT mentioned Mr F's early retirement aspirations. It also set out the following areas as being further reasons to transfer. I've summarised these as:

- Transferring away could generate more tax-free cash.
- Transferring away would give him access to the cash enhancement which could be £2,874 after tax.
- Mr F could achieve more flexibility and control over the transferred funds.

I've considered these issues below.

Taking a tax-free lump sum and the age Mr F could retire at

In this case, JLT noted that taking a tax-free lump sum at retirement was evidently important to Mr F. It also took what Mr F said about early retirement and factored this into its advice.

However, Mr F was only 33 years old at the time of the advice, and unsurprisingly, he didn't have concrete retirement plans. In fact, given that Mr F was so young, in my view this represented a major risk in advising him to transfer away from his OPS and I don't think JLT properly considered this aspect. It simply wasn't credible, in 2010, that retiring at the age of 60 was something that Mr F could say was likely – in his case this would be in 2037 and if he

needed to refrain from accessing the benefits until his NRA age of 65 under the OPS, it would have been 2042.

Mr F was married, had a mortgage and had very young children at the time. So all these factors had years yet to unfold and I think it's fair to say that in terms of his employment, he wasn't even yet at the point of 'mid-career'.

On this basis, anything to do with his eventual retirement was no more than guesswork, in my view. I've also noted that whilst Mr F did have two other pensions, these were very modest ones, and they were also defined contribution (DC) schemes. This means that transferring away from this DB scheme needed to be carefully considered against the overall and modest pension provisions he had at the time. And whilst we can't predict what Mr F's income requirements in retirement would yet be, I think it's fair to assume that with a young family and a mortgage with years left to run, he would have needed his DB scheme to complement the more uncertain DC pension provisions he would seek to build upon in the coming years.

To sum this up therefore, I think JLT's comments about Mr F's likely retirement were highly speculative. Whilst I'm sure, like many people, Mr F might have aspired to retiring early, there's simply no credibility in what JLT said he would likely go on to do, or what his retirement needs might be. It should not have based its recommendation on these reasons.

Control over his pension and flexibility

I'm not persuaded that Mr F really wanted to manage his own pension affairs more directly by transferring out to a personal pension fund. I also can't see that Mr F required 'flexibility' in retirement in the way JLT suggested, which in any case, was very poorly defined. I agree with our investigator when he said these reasons seem to have been no more than 'stock' objectives used to help justify the overall recommendation to transfer. I don't believe they were related to Mr F's personal circumstances.

For example, Mr F was at the time in an DB scheme managed by trustees and I've seen no evidence he had either a desire or the capacity to personally manage this pension investments or strategy going forward, rather than keeping it where it was, and being managed for him.

From what Mr F has told us, his understanding of investing was (and still is) limited and I've seen nothing recorded from the time of the advice to persuade me otherwise. Mr F eventually transferred his funds but he took the enhancement element as a cash sum, paying tax in the process. I think if Mr F really was more experienced or knowledgeable about these sorts of investment decisions, he'd have at least reinvested the enhanced amount in a way that was more tax efficient. I think this is substantiated by some of the comments about why he wanted the money at the time, which I think portray a lack of understanding of the consequences of giving up his DB scheme and the benefits and guarantees that came with it.

In essence, Mr F had no fixed plans for the enhancement money and was using it to get by. And I think if he had needed money in this way then JLT should have advised him that there were probably other – and better – ways of him getting it, without compromising his retirement income and the benefits attached to this particular scheme.

As far as flexibility is concerned, this wasn't defined or explained by JLT, so I think it was used in an attempt to add weight to the otherwise weak reasoning to transfer. Any flexible uses of the pension, or the funds from it, were restricted due to Mr F's age at the time and as

I've said above, there's nothing showing he wanted active involvement in the investment strategy going forward.

The enhancement

We do sometimes see DB schemes offering these types of enhancements to persuade deferred members like Mr F to transfer away from the scheme to reduce the future pension liabilities. However, this wasn't a particularly attractive offer, in my view. What the offer basically consisted of here was an initial *reduction* to the CETV, before then adding the enhancement element on top. It was basically taking money away – and then adding some back on. This had the effect of providing around 107% of the overall CETV and certainly at the lower end of the various incentives I've seen elsewhere. If taking the cash, this amounted to only £2,874 after taxes.

I've noted too, that JLT's pre-formatted option / decision form included the option to take the enhancement as cash by just ticking a box. In my view, this offered Mr F an easy and quick opportunity to release cash which, at his time of life, would no doubt have come in useful.

However, I've noted that directly next to this, Mr F also made it clear his preference was for a pension that would increase with inflation, so I think these things conflict with each other, again implying Mr F's vulnerability. Overall, the options form and the other documents I was sent from the advice reflect a somewhat poor level of attention to detail by the JLT adviser. It's possible this reflects the relatively small size of the fund, or the 'free' advice it was being contracted to give to others in Mr F's situation, but this was nonetheless important to Mr F and his future overall pension provisions.

Suitability of investments

JLT recommended that Mr F invest his funds in a type of personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr F, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

In this decision I've explained why I'm upholding Mr F's complaint.

Mr F was very young by pension standards. He had a growing family and faced all the financial challenges this usually brings. He had a mortgage and no savings at the time, so I think the chance to access a few thousand pounds would have been very appealing to him from a short-term outlook. I think the JLT adviser took insufficient account of this.

It's true that Mr F had two other pensions but these were very modest affairs at the time. So, as modest as *this* DB pension also was, it contained a number of valuable benefits and guarantees not found in Mr F's other pensions, which were DC schemes. And so, I think that by retirement, whenever it came, this DB scheme would have complemented any other retirement funds Mr F had been able to build up throughout his life. In this context, I think it was in Mr F's best interests to remain within the DB scheme – one which would have retained some useful features throughout most of his life such as indexation, spousal benefits and potential benefits for his children. By his retirement he'd have been able to add to, and hopefully grow, his other (DC) pensions.

What Mr F was being offered here was only a very small enhancement to leave the OPS he was a deferred member of. Whilst I accept he was given quite a lot of information, and

indeed some warnings about leaving, JLT nevertheless ultimately advised him to transfer away. JLT recommended that transferring was suitable whether his retirement was at the age of 60, or if he'd waited to the NRA of 65. I think this type of recommendation would have demonstrated to Mr F that it really was the right thing for him to do.

However, as I've explained, JLT should have been aware that, from a financial comparison perspective, the chances of exceeding the critical yield rate consistently until retirement was, at best, marginal.

In my view, there were no other viable reasons, for Mr F to transfer. Assessing Mr F's likely retirement needs with any accuracy was not possible, because he had decades until this would have likely happened. So, for the reasons above, JLT's recommendation simply wasn't a suitable one.

Finally, I have considered whether, if advised properly to stay in his DB scheme, Mr F would have still opted to transfer out anyway. However, I think if he'd been given advice that was specific and clear – that he shouldn't transfer at all - I think Mr F would most likely have followed that advice. I say this because he was inexperienced in this field and there were certainly other ways of raising money.

Overall, I don't think JLT's recommendation was in Mr F's best interests. I am therefore upholding his complaint.

Putting things right

A fair and reasonable outcome would be for the business to put Mr F, as far as possible, into the position he would now be in but for JLT's unsuitable advice. I consider Mr F would have remained in his occupational scheme.

Mr F has not retired. Compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA said that it considers that the current redress methodology in [Finalised Guidance \(FG\) 17/9](#) (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-<https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr F whether he preferred any redress to be calculated now, in line with current guidance, or wait for any new guidance/rules to be published. He hasn't made a choice, so as outlined before to him, we've assumed he wants the calculations done under

the current guidelines. I am therefore satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr F.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr F's acceptance of the decision. As I've said above, compensation should be based on his normal retirement age of 65.

JLT may wish to contact the Department for Work and Pensions (DWP) to obtain Mr F's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr F's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr F's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr F as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr F within 90 days of the date JLT receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes JLT to pay Mr F.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect JLT to carry out a calculation in line with the updated rules and/or guidance in any event.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I've decided to uphold this complaint and I now direct JLT Wealth Management Limited to pay Mr F the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require JLT Wealth Management Limited to pay Mr F any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require JLT Wealth Management Limited to pay Mr F any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that JLT Wealth Management Limited pays Mr F the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr F.

If Mr F accepts my final decision, the money award becomes binding on JLT Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr F can accept my decision and go to court to ask for the balance. Mr F may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 February 2023.

Michael Campbell
Ombudsman