

The complaint

Mr S complains about the advice JLT Wealth Management Limited gave to him concerning transferring the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension plan. He says the advice was unsuitable for him and believes this has caused him a financial loss.

What happened

Mr S was a deferred member of his former employer's DB scheme. The scheme was in deficit and in April 2010 Mr S' employer wrote to Mr S offering him an enhanced cash equivalent transfer value ('CETV') on a time limited basis if he transferred out of the scheme. The employer engaged JLT to offer scheme members advice on the suitability of a transfer. The employer paid JLT's fees.

JLT gathered information about Mr S' DB scheme entitlements. It asked Mr S to complete a fact find questionnaire including information about his attitude to risk and it obtained a transfer value analysis report. Amongst other things JLT recorded that Mr S was aged 31, in good health with no dependants. He had one other pension, but no details about its size were recorded. Mr S assessed his own attitude to risk as cautious. His DB scheme had an unenhanced CETV of £5,588.00. The scheme's trustees were offering an enhanced value of £6,433.67. Mr S had the option of taking the enhanced CETV and reinvesting it in a personal pension or alternatively taking up to £749.70 of the enhancement as a cash sum. Mr S told JLT he would like to take the enhancement as a lump sum to free up some cash.

In June 2010 JLT sent Mr S its suitability report. Amongst other things it said that given the growth rates required (the critical yield) to match the DB scheme benefits it couldn't recommend the transfer. It appended an acknowledgement slip in which it asked Mr S to confirm he'd read and understood the report. It also asked him whether he wanted to stay in the plan or to transfer against JLT's advice. Mr S said that he wanted to go ahead with the transfer. He gave his reasons for doing so as:

"To minimise the number of pensions and keep more in one pot."

JLT then wrote to Mr S on 5 July 2010. It recommended a named personal pension for Mr S to reinvest his funds in. Mr S then went ahead and transferred out of the DB scheme.

In 2021 following the regulator's review of DB transfer advice JLT examined the advice it had given to Mr S in 2010. It said its advice was appropriate at the time. But it said the funds his monies were invested in were not in line with his personal circumstances. However, having carried out a calculation, JLT didn't think Mr S had been financially disadvantaged.

Mr S complained. JLT didn't uphold his complaint. It said that its advice had been that Mr S should not transfer. But he had gone ahead because he wanted to consolidate his pensions and release some cash.

Mr S brought his complaint to us. One of our investigators looked into it. She didn't think JLT had treated Mr S fairly, so felt it should pay him compensation.

JLT didn't agree with our investigator's assessment of the complaint. The investigator wasn't persuaded to change her opinion, so the complaint was referred 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.

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. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of JLT's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But there were Conduct of Business Sourcebook ('COBS') rules in the regulator's Handbook which required JLT to '*act honestly, fairly and professionally in accordance with the best interests of its client*'. In addition, COBS required JLT to provide information that was clear, fair and not misleading. So, its recommendation had to be clear and Mr S had to have understood the consequences of going against the recommendation.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our investigator gave.

Financial viability

In its suitability report JLT set out that the critical yields were too high to be achieved by reinvesting the funds in a personal pension. It said for that reason it didn't recommend that Mr S should transfer out of his DB scheme. I agree with JLT's analysis. That is that it was more likely than not that Mr S would be worse off in retirement by transferring. And as this isn't disputed by either party to the complaint, I don't intend to spend further time analysing the viability of the transfer when it clearly wasn't viable.

Did JLT fairly treat Mr S as an insistent client?

JLT's said that it gave Mr S clear advice not to transfer out of the DB scheme. But, because he chose to go against that advice it treated him as an insistent client; that is an individual who wants to proceed with a transaction against the financial adviser's advice.

There's no doubt that JLT's suitability report said its advice was that Mr S should not transfer out of his DB scheme. But I think there were flaws in JLT's process which means that it wouldn't be fair for Mr S to rely on its recommendation not to transfer.

It's notable that JLT sent its suitability report without the specific details of an alternative personal pension for comparison purposes. I find this undermines the advice process. That's because the information JLT provided was limited and essentially relied on a comparison of the critical yield against what JLT thought Mr S' personal pension might reasonably grow at. So I think Mr S had little information to go off to decide if going against JLT's advice was truly in his best interests.

I don't see how JLT could expect Mr S to make an informed decision about going against its recommendation when it hadn't given him all the information he needed in order to make that decision. That is, it gave him some limited information relating to critical yields and expected him to make a determination that started him down the road of the insistent client process without giving him enough detail to reasonably make that decision.

A clearer process would have been for JLT to provide its advice and recommendations as a whole, taking into account Mr S' objectives and attitude to risk. That advice should have considered the overall picture – both of transferring out of the DB scheme together with the choice of alternative pension and Mr S' desire to take the additional payment as a lump sum immediately. Only then should JLT have clearly set out in one document why transferring out of the scheme wasn't in Mr S' best interests.

JLT's recommendation was that it wasn't in Mr S' best interests to transfer. But it made it very easy for him to do so anyway. I say this because Mr S simply had to choose an option on the acknowledgment slip sent with the suitability report to say whether or not he accepted its advice. He also added a few words of his own to say why he wanted to do that. Had JLT not given him that option at that time, then it would have placed the onus on Mr S to contact JLT again to find out what he needed to do if he did genuinely insist on going against JLT's recommendations and intended to transfer out of the scheme.

Further Mr S' explanation for wanting to give up the safeguarded benefits from his DB scheme was that he wanted to minimise the number of pensions and keep them in one pot. But as I understand it Mr S only had one other pension. And he didn't need to take any action at all in terms of administering or managing his DB scheme funds. He had a guaranteed income in retirement from that, whatever happened to his other funds. And given his cautious attitude to risk, as JLT had already identified, it was extremely unlikely that he would be better off by transferring to a personal pension, so it wasn't in his best interests to transfer.

Also, when answering the fact-find questions Mr S said that he would like to take the enhancement as a lump sum to free up some cash. So he'd made it clear from an early stage that he was already leaning towards transferring so he could have access to some cash, but I've seen no evidence JLT discussed with Mr S why he wanted to do that. That is what Mr S wanted to achieve by taking the additional payment. While JLT recorded very little detail about Mr S' income or outgoings, it did note that he had £8,000 in savings and didn't have any debts. So it appears that Mr S was managing his finances effectively. And therefore had no obvious need for the cash lump sum. But I can't see that JLT made a

concerted attempt to explain to Mr S that giving up guaranteed pension benefits for a cash lump sum that wasn't obviously needed was not in his best interests.

Given that JLT was well aware there was very little prospect of a personal pension matching the DB scheme benefits in monetary terms, then other reasons for transferring needed to be sufficiently compelling. But JLT didn't apparently explore this with Mr S. I don't see how JLT could give Mr S suitable advice in respect of his objectives without knowing the basic facts about what he wanted the cash for. And I've not seen evidence that JLT effectively advised Mr S about the long-term nature of pension planning- such as the need for a pot of funds to provide an income for many years ahead.

JLT's role was to discern what Mr S' wants and needs were and why Mr S wanted to transfer his pension. Its role wasn't simply to do what Mr S wanted without appropriate analysis and challenge of his motives for doing so whilst discussing the implications of those actions with him. But I've seen little evidence of such a challenge even though that would have been in Mr S' best interests. Indeed I've seen no evidence that JLT explored with Mr S exactly what he wished to do with the additional payment and why. So I don't think JLT met its obligations to challenge Mr S' objectives in light of what he would be giving up. That also meant it didn't appropriately consider whether Mr S' aims could be met through other means without giving up the benefits from his DB scheme at all

JLT did give Mr S advice not to transfer out of his DB scheme and did bring some of the risks and disadvantages of doing so to his attention. But I don't think it can fairly rely on its recommendation for Mr S not to transfer. That's because Mr S apparently made his initial decision to go against its advice without having all the facts available to him. It's also notable that Mr S said that one of the reasons for transferring was that so he'd have all his pensions in one place. But JLT then made a recommendation to transfer to another personal pension, so keeping the same number of separate pension pots as before and entirely ignoring Mr S' given reasons for going against its advice.

Further, with its suitability report recommending that Mr S shouldn't transfer, it provided him with a simple to complete acknowledgement slip that gave him the means to go ahead with the transfer anyway. I think that sent mixed messages about what its genuine recommendation was.

JLT was in a good position to have analysed, tested, challenged and advised Mr S about what was in his best interests for retirement planning. It knows valuable pension pots like Mr S' DB scheme were paid into with the intention of providing a guaranteed income for retirement. But Mr S' chosen path was to give up that income in retirement for the chance of getting hold of a lump sum of cash, for which he had no obvious need, rather than long-term planning. And I don't think that applying an insistent client label to someone when they express that their preference is not to follow advice, is the same as applying the rigorous process of arriving at a fair determination of who an insistent client really is. So, given the flaws described above in JLT's advice process, I don't think it fully and accurately informed Mr S about his position.

On balance, given these failings, I don't think it would be reasonable for me to conclude the process JLT followed meant that it's fair to truly regard Mr S as an insistent client. So I don't think JLT acted in his best interests. Neither do I think it treated him fairly.

I've thought about whether Mr S would have transferred out of the DB scheme regardless of what JLT told him. But I'm not persuaded that Mr S would have insisted on transferring out of the DB scheme, against JLT's advice if it had brought all of the important points to his attention. I say this because Mr S was an inexperienced investor with a cautious attitude to risk. But he was taking a significant risk of losing the guarantees from his DB scheme by

transferring out of it. So, I think If JLT's advice had been suitably robust Mr S would have remained in the DB scheme.

In light of the above, I think JLT should compensate Mr S for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

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 S whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr S.

For clarity, Mr S has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 S' acceptance of the decision.

JLT may wish to contact the Department for Work and Pensions (DWP) to obtain Mr 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 S' SERPS/S2P entitlement.

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.

If the redress calculation demonstrates a loss, JLT should pay the compensation if possible into Mr 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, JLT should pay it directly to Mr S 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 S within 90 days of the date JLT receives notification of his acceptance of my final decision. Further JLT must add interest 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 S.

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. In those circumstances, 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.

My final decision

Determination and money award: I uphold this complaint and require JLT Wealth Management Limited to pay Mr S the compensation amount as set out in the steps above.

If Mr S accepts this decision, the money award becomes binding on JLT Wealth Management Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 March 2023.

Joe Scott
Ombudsman