

The complaint

Mr W complains about advice he received around the transfer of benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

The advice was given by a business which JLT Wealth Management Limited ('JLT') is now responsible for answering complaints about. So, for ease of reading this decision, I'll largely just refer to JLT.

What happened

Mr W had deferred benefits in a DB scheme pension which he had accrued working for a previous employer between 1978 and 2003.

His former employer made offers to some scheme members in respect of their pensions where it would offer an enhancement on transfer values, in the event they transferred their benefits away from the DB scheme. The enhancement could be taken as an increase on the transfer value or as a cash lump sum. As part of the process, it appointed the business which JLT is now responsible for as the adviser in respect of the offers and would pay for advice provided by that business. And it directed members to that adviser if they wished to discuss the offer.

Mr W received his offer in May 2009. The cash equivalent transfer value ('CETV') of his benefits at that time was £89,030. And, if he chose to transfer, his employer would increase this offer by £19,176.04, or he could elect to just transfer the existing CETV and take a cash payment of £15,076.77.

I understand Mr W enquired about potentially accepting the offer. And JLT subsequently sent him a questionnaire to complete – to provide it with information about his circumstances and objectives. This consisted of requesting some basic personal information and asking Mr W to select answers from a list of options to some pre-determined questions. Mr W returned this questionnaire in June 2009.

This recorded that Mr W was 50, in good health, married with one dependent child. No specific questions were asked about his employment status, financial position, income and expenditure, when he planned to retire or what he believed his income needs in retirement would be.

In the section where answers were selected from a pre-determined list, Mr W indicated, while he did have some other pension arrangements, including at least one where active contributions were being made, he anticipated the DB scheme would form the majority of his retirement provisions. He was asked how he would ideally like benefits to be paid in the event of his death – to which he selected the maximum possible as a lump sum. He was also asked if taking tax-free cash ('TFC') at retirement was a priority to him, to which he selected the answer that he would like the maximum possible TFC, but he didn't have a reason for this at that point. When asked if he had a preference how he'd receive the enhancement being offered – either as cash or as an increase to the transfer value – he indicated that he did not know at that stage.

Mr W indicated he had little or no investment knowledge and would only tolerate low volatility in the value of his pension. He said he was only looking for his pension to increase in line with inflation and would be most comfortable investing in a manner that would provide some growth with a limited amount of volatility. And he said his choice would be for 100% of his pension to be invested in low risk, low potential return funds. Based on this, JLT considered Mr W had a 'low to medium' attitude to risk.

On 19 June 2009, JLT issued its written recommendation to Mr W. The report started with an executive summary of its advice – which JLT said was that Mr W does not move his pension. It explained that *"this is based exclusively on whether your Critical Yield is achievable on a year-by-year basis considering your tolerance to risk, as confirmed in the 'Your investment profile' section of this recommendation."* And that it had only considered Mr W taking benefits at the normal retirement age of the DB scheme. The report went on to say the critical yield - the rate Mr W's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was estimated to be 6.2% if he invested the CETV and enhancement, or 7.6% if he took the enhancement as cash and just invested the underlying CETV. JLT said these were unlikely to be achievable.

Despite the above, the report also said *"Our recommendation, if you decide to move your pension out of the Scheme, is that you should take the maximum enhancement to your transfer value in order to maximise your pension in retirement."*

The report included a 'What to do next section'. This said if Mr W wished to follow the recommendation he didn't need to do anything. But if he wished to transfer against JLT's advice, it explained what documents he'd need to complete, and reminded Mr W that the offer made by his former employer was only valid for a limited time.

On 22 July 2009, Mr W made two calls to JLT's helpdesk. He confirmed he'd received the report and was still interested in transferring, so asked about the next steps. JLT said Mr W could either transfer to a pension with a default provider it recommended, or to his own arrangement. In the first call, Mr W indicated he was aware the deadline for accepting the enhancement offer was imminent, so, questioned if he could be wasting his time. JLT said there was a possibility he could miss the deadline, so he said he'd think about it again. In the second call, on the same day, he said he was still interested in proceeding and would likely transfer to a pension of his choosing.

Mr W had a further call with JLT on 11 August 2009, in which he said he was now looking to transfer to the default fund JLT recommended. Mr W said he'd read the report and understood JLT was advising him not to transfer. JLT ran through some disclaimers and asked Mr W to confirm he agreed to those statements. The first of these was that he felt he had sufficient information to make an informed decision. He also said he understood he'd be treated as an insistent client and that a transfer was irreversible.

Following this call on 11 August 2009, JLT sent Mr W a letter saying, as he was aware, it had recommended against a transfer. But he'd now indicated he wanted to proceed, against its advice. It said that, by not following its advice, Mr W's retirement benefits could be dramatically reduced. And said he needed to understand what this meant and should consider seeking further advice. It also enclosed the relevant application forms for Mr W to apply for a personal pension with the default provider it recommended.

There were two further calls between Mr W and JLT that I've been made aware of. In these he discussed how the relevant application forms needed to be completed in respect of investment choices.

The forms were signed and returned to JLT in early September 2009. Mr W elected, as part of the application, to take the enhancement as a cash sum.

JLT sent Mr W another letter on 14 September 2009, acknowledging receipt of the relevant forms and confirming that these had been forwarded to the pension provider. It said, from this, it understood Mr W wanted to proceed against its advice and repeated that, as Mr W had chosen not to follow its advice, his retirement benefits could be reduced if his chosen fund did not produce the level of growth required to meet the critical yield.

I understand the transfer completed shortly after this.

A number of years later JLT wrote to Mr W saying it was undertaking a review of the advice it had provided previously and asked if he wanted it to review the advice it had given to him. Mr W signed a form confirming he'd like his advice reviewed.

On 16 December 2021, JLT wrote to Mr W with the outcome of its review. It said it considered the advice it had given was appropriate based on his circumstances because it advised him against transferring, which it said was partly because it thought the maximum return he could potentially achieve was 5.7% per year, which was less than the critical yields calculated at the time. But Mr W had insisted on transferring. And JLT thought he was clearly aware he was acting against its advice based on the conversations that had taken place and the written warnings issued.

While it didn't think the advice was inappropriate, JLT thought the investment that Mr W's funds were transferred into were not aligned to his personal circumstances. It said though, having carried out a calculation, based on the assumed values of his pension, it didn't think he'd suffered a financial loss. JLT said Mr W could refer the matter to our service.

Mr W asked our service to consider the matter. One of our Investigators considered the complaint. He thought it should be upheld and that JLT should compensate Mr W for any loss the DB transfer had led to. He felt the recommendation JLT made was incomplete and didn't provide all of the information it should've done. So, he thought Mr W wasn't in a position to make an informed decision on whether to proceed as an insistent client. The Investigator noted that Mr W had said he'd transferred because of the incentive and because he was worried about missing out on this, but that the benefits of remaining in the scheme hadn't been clearly explained. And the Investigator felt, if Mr W had been given further information, he wouldn't have gone ahead. He also felt JLT had made it too easy for Mr W to elect to be an insistent client.

JLT disagreed. It felt it had been clear that it was advising against a transfer and that Mr W had understood this.

As agreement could not be reached, 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. This includes COBS 19.1.6G which says that the starting assumption for a transfer from a DB scheme is that it is unsuitable and should only be considered if it can be clearly demonstrated that the transfer was in the consumers best interests.

Was a transfer suitable for Mr W?

The information that JLT gathered about Mr W's circumstances was limited. It understood his age, marital status and health. And one of the answers to the questions it asked indicated he had other pension arrangements – albeit with the DB scheme expected to form the majority of his retirement provisions. Beyond that though I can't see that JLT gathered any further information about his circumstances.

JLT didn't gather any information about his financial position – whether he had any significant assets or liabilities, what his income and expenditure situation was, how long he intended to continue to work and what income he and his wife expected to need in retirement. It also didn't obtain any information about his other pension provisions, whether his wife had any pension provisions, whether they expected to be reliant on one another's pensions at any stage or if he had any life insurance or other provisions in place.

JLT has said that this was a 'focused advice piece'. But it was advising on whether a transfer was in Mr W's best interests. In my view, in order to establish what was in Mr W's best interests, it needed to understand his circumstances more thoroughly, particularly his retirement needs and provisions. The primary purpose of a pension is after all to provide for the holders income needs in retirement. And COBS 9.2.1R explains that when making a personal recommendation, JLT needed to obtain necessary information about Mr W's financial situation.

So, I don't think JLT obtained enough information to assess if a transfer was in Mr W's best interests. And COBS 9.2.6R says if a firm hasn't obtained the necessary information to assess suitability it shouldn't make a personal recommendation.

These issues with information gathering notwithstanding however, I don't think, based on the information that is available, it can reasonably be argued that a transfer was in Mr W's best interests.

The DB scheme pension that Mr W held would provide him a guaranteed escalating income in retirement. It was estimated that at the normal scheme retirement age, which JLT indicated in the suitability report was age 65, it could provide Mr W £58,761.60 in TFC and an annual pension starting at £8,814.20.

JLT was required by the regulator to carry out a transfer value analysis and to calculate a critical yield. It said the critical yield – the growth rate required to purchase equivalent benefits to those mentioned above that the DB scheme would provide at age 65 - was 6.2% if Mr W invested his CETV and enhancement, or 7.6% if he just invested the CETV.

JLT said it didn't think that rate was achievable. So, Mr W was always likely to be worse off. And in its review of the advice, in 2021, it said the maximum return it expected he could potentially achieve was 5.7% per year. I note though this figure is not reflected in any of the documentation I've been provided from the point of sale and doesn't appear to have been disclosed to Mr W during the advice.

I agree it was unlikely Mr W could have consistently achieved returns in excess of the critical yield. JLT recorded that he had a 'low to medium' attitude to risk. But looking at the answers he gave to questions in the initial client questionnaire I think his attitude to risk was low. So, investing in line with this attitude to risk – in lower risk funds – would've been appropriate for him. And taking into account the regulators standard projections rates at the time, the upper projection rate being 9%, the middle projection 7% and the lower projection 5%, investing in line with that attitude to risk appears to have been unlikely to allow him to consistently exceed the critical yield year on year. Which he'd have needed to do in order to potentially receive higher pension benefits at retirement. And so, I think Mr W was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

This 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. But I can't see that there were any other reasons to transfer here.

Mr W did indicate in the initial questionnaire that he expected to want to take the maximum possible TFC at retirement. But he didn't have a reason for this at the time of the advice. And he didn't require a specific amount for a set purpose. And the DB scheme would've provided him access to TFC. So, he didn't need to transfer at that time to access TFC.

I also can't see evidence that Mr W had a strong need for variable income throughout his retirement – primarily because no information about his retirement needs was gathered at the time. But what this means is, I don't think it can be said that he needed to transfer at the time to achieve flexibility.

I'm also conscious Mr W was still several years away from retirement. So, his needs in retirement may also have been unknown or at least subject to potential change. So, I don't think he needed to make an irreversible decision to transfer, giving up guaranteed benefits, when he did.

Mr W indicated in his questionnaire that his preference in terms of death benefits was for the maximum possible to be paid as a lump sum. But whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr W about what was best for his retirement provisions. Again, a pension is primarily designed to provide income in retirement. And I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr W.

Mr W was an inexperienced investor. He was identified as having minimal investment knowledge and experience. So, I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think transferring to achieve greater control was a genuine objective or in his interests.

The exercise his former employer was undertaking by providing enhanced offers was confirmed in the offer letter as being because the cost of providing pensions was rising, so it was managing and controlling future risk. But I haven't seen anything to suggest the funding of the DB scheme was in a position such that Mr W should have genuinely been concerned about the security of his pension. So, I also don't think transferring for this reason was in his best interests.

Taking all of this into account, I don't think Mr W had a genuine need to transfer at the time. And by transferring I think he was always likely to receive lower retirement benefits than the DB scheme would've provided. So, I don't think a transfer was suitable for him here – which JLT ultimately concluded at the time.

Was JLT's advice suitable and clear

The suitability report made the point several times that JLT's recommendation was solely based on whether the critical yield was achievable. As I've explained above, this isn't the only consideration when giving transfer advice. So, I don't think JLT considered everything it should've done. And as I've said I don't think JLT had all of the necessary information to make a recommendation here. But JLT's recommendation ultimately was that Mr W should not transfer his pension. And, as I've explained above, I think that was appropriate for Mr W. And I am satisfied that this overall recommendation was set out. Like our Investigator though, I don't think the explanation was as clear as it should've been or provided Mr W with clear enough information.

The recommendation report mentioned that moving to a personal pension was likely to meet Mr W's requirement to maximise tax-free cash. As I've said though, he had no recorded need for a specific amount of TFC and I think maximising this was a 'nice to have' rather than a need. But in any event, I'm not sure that I necessarily agree that he was *likely* to achieve this objective – receive more TFC – by transferring.

JLT said Mr W might achieve TFC at retirement of £59,100 if he transferred just the CETV and £71,800 if he transferred the CETV and added the enhancement to his pension. And these figures were greater than the TFC the DB scheme was expected to provide (£58,761.60). But they were based on consistently achieving growth of 7% - the regulator's middle projection rate. JLT has said this return rate was prescribed by the regulator. But JLT said in the suitability report that it didn't think a return of 6.2% was achievable, when discussing the critical yield. And in its review of the advice, it said it thought 5.7% was the maximum return Mr W could expect to achieve consistently, although again no reference was made to that at the time. With that in mind, I think including TFC projections using the rate of 7%, regardless of this being the middle projection rate of the regulator, was misleading in this particular case. And it meant Mr W was relying on a flawed monetary comparison when considering how a transfer might impact him.

And on the subject of monetary comparisons, the recommendation did not include one in respect of the potential annual income the pension would provide. Instead JLT just said, across its correspondence with him, that Mr W's retirement benefits could be reduced. Which I don't think went far enough to allow Mr W to make an informed decision as it failed to provide any context. And, as I've already said, the report indicated, albeit potentially misleadingly that TFC – a retirement benefit – may not be reduced.

The recommendation letter did explain that the DB scheme was projected to provide a pension starting at £8,814.20 per year in retirement. Although I note this was not mentioned until after the 'what happens next section'. But there were no projections of what the potential annual income could be from a personal pension – either if growth was at the regulators standard projection rates or, as in my view would've been more appropriate here, growth of 5.7% - the apparent best case scenario JLT believed could occur – was achieved.

I think such a comparison should've been included, before JLT gave advice here. COBS 19.1.2R required JLT, when giving advice about a pension transfer, to compare the benefits likely to be paid under the DB scheme with those of a personal pension before giving advice and to share that with Mr W so that he could make an informed decision. The annual pension Mr W would receive was a key benefit. And a side-by-side comparison of this in monetary terms was in my view vitally important here – particularly because the enhancement he was being offered in respect of his pension was likely to be a significant factor in his decision making. So, being able to compare that to a monetary value of how much he was projected to be worse off would've been a significant consideration. And JLT highlighting that comparison, and explaining what it meant for its recommendation, would've also been an important factor.

I think a projection of this could've been obtained before JLT gave advice. It's clear from the information I've been provided that JLT had a "default provider" in respect of transfers from Mr W's scheme. So, projections from that provider, using the expected returns Mr W was likely to receive based on his attitude to risk, could've been obtained and included.

In addition, although JLT said it wasn't recommending a transfer, it did include a recommendation on how the enhancement should be utilised in the event that Mr W did proceed with a transfer. Which I don't think was appropriate in the circumstances and could've led to some doubt on Mr W's part about what was being recommended.

I also don't think the suitability report needed to introduce the option for Mr W to go against JLT's advice. This option was outlined to Mr W in the what happens next section. But given JLT thought a transfer wasn't in his interests, I don't think directing Mr W to this possibility was in his interests as I think giving an option to immediately disregard a recommendation undermines it.

Taking all of this into account, while JLT's stance that transferring was not suitable for Mr W was, in my view correct, I don't think this advice was as reasoned or detailed as it should've been. And I think JLT unnecessarily introduced doubt and gave Mr W the option of disregarding that advice.

Was Mr W insistent and would he have acted differently?

Although there were flaws with the advice, JLT did make Mr W aware that a transfer was against its advice. And this message was repeated verbally and in letters following the suitability report. And I'm satisfied that Mr W was aware that he was acting against JLT's advice, as from the call recordings I've been provided, he acknowledged as much in conversation with it. And he also acknowledged this meant he'd be treated as an insistent client.

But without the accurate monetary comparisons that I've referred to, I don't think Mr W was in a position to make an informed decision about this. The enhancement being offered to him, which could be taken as cash, seems to have been the significant motivator for his decision. And the offer of a lump sum of over £15,000 would appeal to most consumers. But Mr W wasn't provided the information to consider this, in a monetary context, against the impact on his retirement provisions. And that context was important. So, in my view, he wasn't in an informed position.

I acknowledge that in one of the calls he had with JLT, it asked him to agree to the statement that he was satisfied he was in an informed position. And he did so. But Mr W was an inexperienced investor with minimal investment knowledge. And he didn't know what he didn't know. So, I don't think him saying he felt he was in an informed position changes my finding on this point.

Of course, I have to think about whether Mr W would still have gone ahead with a transfer, even if this further context and more in-depth explanation had been given. And in the calls he had with JLT he did acknowledge it had recommended he not transfer but that he was still interested in proceeding. And the follow up letters, providing the relevant application forms and acknowledging safe receipt of them, restated this. But he wasn't at any stage asked about the reasons for this decision by JLT. Nor was the advice discussed further over the phone. So, his decision to proceed seems to have solely been based on the recommendation letter – which as I've said I consider was flawed, did not contain enough information for him to make an informed decision and unnecessarily introduced the option of ignoring the advice – and the offer he'd been made. And again, he had minimal investment knowledge or experience.

I don't doubt the appeal of the enhancement or cash incentive would've been significant. And would always have been there. But there is nothing to suggest that Mr W had a purpose for requiring that money. And he said, in the initial questionnaire JLT asked him to complete, he didn't know how he'd take or use the incentive if he transferred.

If JLT, a professional adviser who he had been referred to for advice, had given a thorough and fully reasoned explanation as to why a transfer wasn't in Mr W's best interest, with information to show, from a monetary perspective, the impact the transfer could have on his retirement provisions in comparison to the incentive offered – I think that advice would carried significantly more weight than what he was provided here. And, bearing in mind his inexperience and that this pension was expected to form the majority of his retirement provisions, if this fuller explanation had been provided, without the prospect of this immediately being disregarded being introduced, I think he'd have accepted that advice. So, I think on balance he would not have insisted on a transfer and would've remained a member of the DB scheme.

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

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would have most likely remained in the occupational pension scheme if suitable advice had been given.

JLT must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

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

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, JLT should:

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
 - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts JLT's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, JLT may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr W's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

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 uphold this complaint and require JLT Wealth Management Limited to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that JLT Wealth Management Limited pays Mr W the balance.

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

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 22 June 2023.

Ben Stoker
Ombudsman