The complaint

Mr B complains about the advice given by JLT Wealth Management Limited (‘JLT’) to transfer the 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.

What happened

Mr B was referred to JLT by his DB scheme in 2017. In March 2017 JLT completed a fact-find to gather information about Mr B circumstances and objectives. It noted the following:

- Mr B was aged 60 and his wife, with whom he was in the process of separating, was aged 66.
- Mr B wanted to retire at age 66.
- Mr B had an annual income of £19,000; Mrs B wasn’t working and was in receipt of her state pension at £479 per month.
- Mr B had no mortgage or any other debt.
- He wanted some cash to ‘do certain projects’.
- It was important for Mr B to provide for his wife and others.

JLT also carried out an assessment of Mr B’s attitude to risk, which it deemed to be ‘very low’ or zero.

JLT contacted the DB scheme for information. The information provided by the scheme administrator showed that Mr B had been a member of the scheme for nine years that the total cash equivalent transfer value (‘CETV’) for Mr B’s scheme benefits was £219,434.36. The scheme information also showed that at the scheme’s normal retirement date (‘NRD’) of age 60, Mr B’s deferred pension benefits would provide him with an annual income of £7,152 or a tax-free lump sum of £34,435.56 and a reduced annual income of £5,165.33. At age 66 Mr B could get an annual income of £12,648 or a tax-free lump sum of £54,377 and a reduced annual income of £8,757.

In May 2017 JLT advised Mr B to transfer his pension benefits into an immediate vesting personal pension (‘IVPP’) from which he would take a guaranteed, non-escalating single life income for life of £7,325.16 (a lifetime annuity) and tax-free cash of £54,858.89. The suitability report said the reasons for this recommendation were, in summary:

- That he required immediate cash to generate a cash lump sum and income following his separation from Mrs B and had no other means of obtaining the sums he needed.
- Both the tax-free cash (‘TFC’) and the annuity available from the IVPP were higher than the TFC available from the scheme.
- That Mr B was not prepared to take any investment risk with his pension and wanted the certainty of a guaranteed income for life rather than transfer his DB scheme benefits and take advantage of the pension freedoms available.
- That Mr B had disclosed certain health issues which could improve his retirement benefits.

- Mr B had recently separated from Mrs B and they had both agreed she didn't require a spouse's pension but he preferred Mrs B to receive a lump sum in the event of his death should he pre-decease her.

The suitability report also noted that Mr B had a savings bond due to mature in seven years' time which was predicted to be worth £15,000.

JLT, as required by the regulator, also produced a transfer value analysis report ('TVAS').

Mr B accepted the recommendation and the transfer took effect in June 2017; a total of £219,434.36 was received into the IVPP with a provider I shall refer to as J. The TVAS assumed an annual charge of 0.5% for the IVPP. JLT's fee for arranging the transfer was paid for by the DB scheme trustees.

In September 2021 Mr B, through his representative, complained to JLT about the suitability of the transfer advice. He said:

- JLT owed him a duty of care and had been negligent in the advice it had given him. It should not have recommended that he transfer his DB scheme.
- When giving him advice, JLT had not taken his circumstances into account.
- His investment experience, capacity for loss and attitude to risk ('ATR') had not been adequately assessed by JLT or at all.
- The advice to transfer wasn't suitable for someone with no investment experience and no capacity for loss.
- He had been induced to transfer his DB scheme on the promise by JLT that his pension fund would grow at a rate in excess of any growth that would be achieved by the DB scheme if it remained in situ.
- He had sustained a loss of £114,105.87.

JLT looked into Mr B's complaint but didn't think it had done anything wrong. It said that during a telephone call with Mr B from around the time of the advice he had said that he wanted TFC now and intended to split it in half with his wife as well as give some of his monthly pension annuity to her. It said too that it had discussed various options with Mr B and that he liked the option to have a guaranteed lifetime annuity so he knew what he would be receiving each month.

JLT said that transferring to an income drawdown policy was dismissed because Mr B didn't want to take on any investment risk. Similarly it said staying in the DB scheme was also dismissed because despite it providing a higher pension the TFC was much less. And JLT said Mr B was comfortable with taking on both a level annuity and the loss in buying power he would experience due to the effects of inflation because he felt his state pension would help him manage financially when he did eventually retire at age 66.

JLT also said that it would take 15 years from commencement of the IVPP before any DB scheme payments would catch up with the payments Mr B received from the IVPP and it would take 33 years before the total income received from the DB scheme was more than that received from the IVPP. It also said that Mr and Mrs B were facing a change in their circumstances and that accessing a greater amount of TFC was now of importance to them as was the fact they would no longer require a spouse's pension. So it concluded that the advice it had given Mr B had been suitable in the circumstances.

Unhappy with the outcome of his complaint to JLT, Mr B complained to this service. He told our Investigator that he owned a mortgage free property and that he gave Mrs B £3,000 of the TFC he had received along with £200 per month from the annuity. As for the rest of the

TFC, he said he had spent about £4,000 on clearing debt, a further £12,000 on a car and had put the rest in the bank. He also told our Investigator that he had taken the money too soon. And Mr B said that if he hadn't transferred his DB scheme he would have been able to afford to give his wife £100 per month rather than the £200 he had been paying her.

Our Investigator looked into the complaint and recommended that it was upheld. He thought that it hadn't been in Mr B's best interests to transfer his DB scheme and that JLT hadn't provided Mr B with suitable advice so he recommended that JLT compensate Mr B in line with the regulator's guidance. Our Investigator said that Mr B was likely to receive benefits of a lower overall value as a result of transferring his DB scheme as a result of investing in line with his ATR. And he thought there was no real pressing need for him to transfer his DB scheme to access TFC. He thought that JLT hadn't interrogated why Mr B really needed the money or whether there were other ways for him to achieve his objectives.

Mr B accepted our Investigator's recommendation but JLT didn't. In response to our Investigator's view JLT reiterated many points it had made previously. It also said it had originally contacted Mr B in 2011 when he was offered an enhanced CETV by the scheme trustees. Then he had said he needed cash to pay for a car but its advice had been not to transfer which Mr B had accepted. It said its advice to transfer in 2017 had meant that Mr B had been left with a guaranteed income for life. And, it said Mr B had been clear that he wanted TFC as soon as possible. JLT said that whilst there had been gaps in its advice, it was clear its adviser had explained all the options to Mr B but that, fundamentally, he had wanted to access the TFC element of his pension and that he would have sought to do so even had he been advised not to transfer. On balance, JLT remained of the view that its advice to Mr B to transfer had been suitable.

Our Investigator thought about what JLT said but wasn't persuaded to change his mind about the outcome of the complaint. JLT then sent our Investigator the call recordings between it and Mr B from around the time of the advice. Our Investigator listened to them but they didn't lead him to change his opinion. He thought they illustrated that JLT should have done more to interrogate why Mr B needed capital at that time and that it should have explained that there was no requirement to informally share his retirement savings with his wife at that point as, should they later divorce, it was up to her to raise a claim on them as part of any divorce settlement. And if Mr B had needed some capital, our Investigator thought JLT should have looked into the possibility of him borrowing to do so. Our Investigator also pointed out that Mr B didn't need the additional income either but, as consequence of taking it, would be dependent on a level annuity without inflation protection for the rest of his life. Our Investigator thought that life assurance could have been explored with Mr B by JLT but wasn't.

JLT replied to say advising Mr B to borrow to raise capital would not have been suitable given the impact any repayments would have on his disposable income. It also said that given Mr B's health issues, life cover would have been expensive to arrange. Finally it said Mr B had not made it aware at the time that he only intended to give his wife £3,000 and to pay her £200 per month.

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 Businesses ('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

What follows 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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G 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 B's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

As required by the regulator, JLT carried out a transfer value analysis ('TVAS') report in May 2017 showing how much Mr B's fund would need to grow by each year (the critical yield) in order to provide the same benefits as his DB scheme at ages 65 and 66. Whilst I note that JLT concluded that the required returns to match Mr B's DB scheme were likely to be unachievable, and that transferring to an income drawdown policy was dismissed because Mr B didn't want to take on any investment risk, JLT's advice and recommendation in this case was not based on Mr B retiring at 65 or 66 and investing his pension monies in the meantime in the belief that he would be better off by transferring. Rather JLT's advice was based on addressing what it considered was Mr B's immediate need for both income and a cash lump sum (at age 60). So while I'm satisfied this analysis was clearly explained to Mr B in the suitability report, I don't think it's necessary in this case for me to consider in detail the financial viability of the transfer. What I need to consider in this case are the other reasons JLT believes mean the transfer was both suitable and in Mr B's best interests.

Flexibility and income needs/Mr B's specific objectives

It seems that the main reason for JLT recommending to Mr B that he transfer his DB scheme for a guaranteed level single life annuity and TFC was to have the flexibility to access a TFC lump sum so he could give some capital to his wife in order to assist with their separation; JLT also noted that Mr B had no other means of providing a lump sum to his wife. Additionally JLT said that the increase in his income as a result of having the annuity meant that Mr B could give a monthly amount to Mrs B whilst at the same time maintaining sufficient income in retirement for himself (once he was also drawing his state pension).

But I'm not persuaded that there was a genuine need for Mr B to access his TFC to give a lump sum to Mrs B to assist with their separation. I say this because Mr B in fact didn't split the TFC with Mrs B rather he told our Investigator that, in the end, he gave his wife £3,000 of the almost £59,000 he received. Mr B also told our Investigator he spent another £4,000 clearing debt and about £12,000 on a new car, neither having been mentioned at all during the advice process. The remainder remains in the bank.

I've listened to the phone calls JLT has provided and accept that during the first call Mr B told JLT he intended to split the lump sum 50/50 with Mrs B. In the second call however, Mr B told JLT he intended to keep all the TFC for himself and put at least £40,000 in the bank.

I've seen no interrogation by JLT of Mr B as to why Mr B wanted to give his wife a specific sum or what she needed it for. Whilst JLT has said its 'reasonable to assume' that there were costs associated with the separation for which the money would be required there is no evidence about what those costs specifically were. And on later being told by Mr B that he had changed his mind and intended to keep all of the TFC and put the majority of it in the bank JLT didn't change its advice or challenge Mr B about his plans.

JLT has said to us that the fact-find noted that Mr B wanted cash to pay for a car and had £10,000 in savings; however neither was, in fact, mentioned. The only reason given for accessing a lump sum at that point was that Mr B needed *'some cash to do certain projects'*. But what these projects were and exactly how much was needed went undocumented and uninterrogated. If JLT's understanding was that Mr B had £10,000 in savings and now seemed intent on only using £14,000 from the TFC he was about to receive then it should have explored whether using them to achieve his objectives was an option rather than transferring his guaranteed DB scheme benefits in order to do so.

There is a similar vagueness in the suitability report prepared by JLT. There the objective for the recommendation is stated as being a requirement for an immediate cash lump sum because of the separation from Mrs B and the fact that there was no other means of obtaining it. What the lump sum was specifically needed for isn't documented here either. And, as can be heard from the second phone call (and from what Mr B actually did with the money when he got it) he didn't need or want it for the purpose of giving 50% of it to Mrs B.

So whilst Mr B might have been tempted to access cash from his pension, particularly as the amount of TFC available if he transferred was significantly greater than the TFC he could, at that point, access from his DB scheme (having already attained the scheme's NRD of age 60), I've seen no evidence that he had a genuine need to access funds. It is clear to me from the both the fact-find, the suitability report and the phone calls that JLT established no immediate need at all to access any TFC. I note from one of the calls that Mr B said that he didn't need £54,000 now but just wanted *some* money and at another point he said he just needed £20,000. But I can't see that any alternative means of achieving this objective for Mr B were explored by JLT – such as the possibility of taking out a small mortgage or a personal loan for example or whether he could use the bond he latterly mentioned he had.

I've noted JLT's comment that it understood Mr B to be living in rented accommodation at the time so any borrowing would have been unsecured thereby attracting a higher interest rate than a mortgage would. JLT has said that taking a personal loan of £20,000 over a period of six years would have meant repayments of just under £300 per month. But this overlooks the fact that it wasn't ascertained exactly how much Mr B did need, if indeed he needed anything at all. It's unclear to me why JLT thought Mr B was living in rented accommodation. Having listened to all the calls Mr B says at one point that he's moved into a flat but there is no mention that he's renting it. So I'm not persuaded that any unsecured lending was necessarily unaffordable. Of course it may have been but there is no information available for me to be able to reasonably draw that conclusion because JLT didn't document Mr B's actual circumstances or his monthly outgoings.

So despite the lack of any genuine need to access funds, the option of retaining the DB scheme and taking benefits at some future point was specifically rejected on the grounds Mr B required immediate access to his pension in order to give an unspecified amount of money to his wife for no specifically quantifiable reason.

Nor can I see that JLT explained to Mr B that it was up to Mrs B in any divorce proceedings to raise a claim on his pension rather than there being any requirement for him to informally share his retirement savings with his wife at that point by prematurely giving up his DB pension benefits.

So I don't think JLT did enough to ascertain precisely what Mr B's stated objective was, or how much capital was required or if there was some other means of achieving it. There was no analysis of how much capital and income Mr B wanted to give Mrs B and what it would be used for. Mr B has said that after the transfer he gave Mrs B £200 per month but, had the transfer not proceeded and he hadn't been in receipt of an annuity, he would still have been able to afford £100 out of his monthly income. But without evidence as to what his monthly outgoings were it isn't possible to say with any certainty that the only way he could pay Mrs B £200 per month was by transferring Mr B's DB scheme. Likewise it isn't possible to say with any certainty either – as suggested by JLT – that borrowing to raise capital wasn't an option (because of the impact any repayments would have on Mr B's income). I say that because JLT didn't interrogate Mr B's outgoings so it isn't possible to conclude that any borrowing was unaffordable for him.

Consequently it's not unreasonable to conclude that the sole reason for the transfer was an unsuitable one in the circumstances and not one that was in Mr B's best interests.

There are also clear gaps in JLT's processes and fact-finding that mean that Mr B wasn't provided with all the information he needed to make an informed decision. By way of example, both the fact-find and the suitability report note that Mr S had an annual income of £19,000 but it is unclear, because Mr B's actual outgoings weren't documented, if there was any surplus income left each month from which he could pay Mrs B. All that is recorded was that Mr B wasn't servicing debt of any nature (which in itself is contrary to Mr B's evidence that he used £4,000 of his TFC to clear debt). Mr B has since told our Investigator that he didn't use the full amount of his monthly annuity, putting what was left over in the bank.

Consequently it seems to me that Mr B likely had sufficient income from which he could meet his outgoings and thus had no need for the additional income provided by the annuity at that point; he could have waited the five and half years until his selected retirement age of 66 to draw his benefits from his DB scheme. Had he done so he was forecast to receive an annual pension of £12,648 (the DB scheme benefits after NRC having benefitted from a late retirement factor of 8.5%) the majority of which would have increased by up to 5% each year. Alternatively he would have been able to receive an annual pension of £8,757 (the majority of which would also have increased by up to 5% per year) and TFC of £54,377. But without gathering enough information about why Mr B needed the TFC and an annuity at that point I can't agree that JLT – despite providing Mr B with these figures – demonstrated to Mr B that transferring was in his best interests and was the only way to achieve his objective.

Rather JLT recommended that Mr B transfer his DB scheme and take an annuity with J on the basis that it would provide greater benefits than if he were to take immediate benefits from the scheme – specifically a higher level of TFC (£54,858.89 as opposed to £34,435.56). But as I've said above, there was no need immediate need for Mr B to access any cash. And whilst the income provided by the annuity was higher than that which would have been paid by the scheme at NRD (had TFC also been taken) the fact remains that the annuity and the DB scheme weren't like for like because the latter included dependent's death benefits and index linking whereas the former didn't.

In fact, only two of the four annuity quotes I've seen included provision for a dependent's pension. The first of which was for a level annuity, payable monthly in advance with a 50% spouse's pension and a lifetime guarantee period. In this quote the annual income was £7,302 together with TFC of £53,699.02. The second quotation was indexed linked, included a 50% spouse's pension and was for an annuity payable monthly in advance. In this quote the annual income was £3,938.76 together with TFC of £53,669.02. Thus the second quote more closely mirrors the benefits of the DB scheme and is more of a like-for-like comparison.

Whilst the pension payable in the second quotation is considerably lower than it would have been had Mr S taken his scheme benefits at NRD age 60 (where he would have received a pension of £5,165.33 each year), the TFC available under the IVPP was indeed greater at that point. But, as I've explained above, there was no immediate need for him access it so I don't think it was in Mr B's best interests that JLT dismissed remaining in the DB scheme as an option. And had JLT recommended that he defer any decision about transferring, then the TFC available to him under his DB scheme would have increased over the passage of time until the point it almost matched the TFC he received under the IVPP. And when he reached age 66 he'd have the additional benefit, by that point, of having a greater income that was index linked.

And as JLT has said, Mr B hoped he and his wife would reconcile so it was premature to advise him to give up the dependent's benefits available under the DB scheme as he may have actually needed them. So, for this reason as well, I'm unable to agree with JLT that the transfer was in Mr B's best interests.

In addition, JLT's recommendation provided Mr B with an additional potentially taxable income of £7,325.16 that he didn't appear to need. And the pension of £7,325.16 he received was lower than what he would have received had he remained in the scheme and taken his pension at his chosen retirement age. And I can't ignore that the guaranteed annuity was fixed – namely that it wouldn't increase over time – whereas a significant majority of the DB scheme pension was linked to RPI and would be subject to an annual increase of up to 5%. And whilst JLT has argued that it arranged an annuity for Mr B that had a 100% value protection and was guaranteed for life, the fact remains that he had exchanged an income with a degree of inflation protection for one where his buying power would slowly be eroded over time. So whilst I accept that the amount of annuity in payment wouldn't decrease over time, I can't on the other hand ignore the fact that it wouldn't increase and that, as time passed, it's worth would in fact decrease.

So whilst JLT discussed various options with Mr B and he liked the one where he had a guaranteed lifetime annuity so he knew what he would be receiving each month, the fact remains that he had the very same arrangement – but with the valuable benefit of being index linked – in his DB scheme. And whilst JLT has said that Mr B was comfortable about taking on both a level annuity and a loss in buying power because his state pension would help him financially when he did eventually retire at age 66 I can't see that it explained to him that it wasn't a case of his state pension 'helping him' or plugging a hole in his buying power. By leaving his DB scheme where it was (because there was no pressing need to transfer) it would mean he could enjoy a larger retirement income that would increase each year. So, in these circumstances I don't think that advising Mr B to exchange an index linked pension for one that would never increase demonstrates that JLT discharged its obligation to act in Mr B's best interests.

JLT said in the suitability report that it would take 33 years before the total income received from the DB scheme was more than that received from the IVPP. This was based on assumption that the RPI would increase by 2.5% per year and CPI would increase by 2% per year. But as JLT itself noted in the report, there was a risk that if inflation was higher than the rates assumed for the purposes of its calculation then the time taken to reach the 'breakeven point' (the point at which the total income received from the DB scheme was more than that from the IVPP) would be reduced. This in turn would have an impact on Mr B's ability to maintain his standard of living. But had JLT advised Mr B that it was in his best interests to remain in his DB scheme then he need never be concerned about there being a drop in his standard of living or when that may occur.

I've seen no evidence that JLT meaningfully explored Mr B's retirement objectives with him or determined what income he thought he would require in retirement. If JLT had acted in Mr B's best interests it should have established what his retirement income needs and plans were. I can see that in one advice phone call Mr B told JLT he would need a retirement income of £20,000 per year and in a subsequent call he thought that £15,000 per year would be enough to live on. Why Mr B changed his mind though and what his actual retirement income needs were, however, doesn't seem to have been analysed by JLT.

And whilst Mr B was noted as still working, the exact nature of his employment and income stream was unclear. Similarly there was a brief mention on the suitability report only (not on the fact-find) of a further pension plan Mr B had with his current employer where it was noted as having a minimal value having commenced only a year ago. If it was acting in Mr B's best interests then JLT should have interrogated Mr B's retirement needs and objectives fully and understood how they were to be met.

So whilst I note the section on the fact-find which asks, 'What do you want to achieve with your pension?', the questions it contains have barely merited an answer. There are three sub-questions the first of which asks if the intention is to access the pension fund before NRD why that is; Mr B answered '*I need some cash to do certain projects*'. There then follows two more questions the first of which relates to taking TFC and asks how important that is to Mr B. There are three boxes which can be ticked – '*not important*', '*desirable*' and '*very important'*; none were ticked. The question below that says, '*if you opt for the TFC what is the main reason for taking it?'* – but the only comment written there is '*To discuss*'. The next question asks how important it is that the pension increases each year. The same three boxes are available for ticking and none of them were. Again the box below inviting reasons includes only the comment, '*to discuss'*.

Having listened to the phone calls between Mr B and JLT I note that JLT asked Mr B how important inflation proofing his pension was to him but the other question weren't really addressed or, if they were, not in sufficient detail. If JLT had had full regard to Mr B's information and communication needs I think it should have explored how his retirement objectives were to be funded once he had retired and also what was important to him. Ascertaining such information is key to the advice being provided and goes to show JLT sufficiently knew its customer. But there's no evidence that it sought to obtain this information.

In summary, I've seen no evidence that Mr B needed to transfer his guaranteed DB benefits to achieve his sole objective (subsequently withdrawn in any event) of having the flexibility to access a TFC lump sum so he could give some capital to his wife in order to assist with their separation. Nor can I agree that he immediately needed the additional income that the guaranteed annuity would provide. JLT should have explored with Mr B if he really needed capital at that point and gone on to explain to Mr B how it wasn't in his best interests to transfer at that point in time. It should also have documented his outgoings and advised if his objective could be achieved without transferring and giving up his scheme benefits. Without any realistic insight into what Mr B's actual retirement needs were I'm unable to agree with JLT that the transfer was in his best interests. And whilst JLT has said that Mr B was solely focussed on obtaining the TFC and would have proceeded regardless of the advice it gave him, in those circumstances, if it wasn't comfortable with its own recommendation then it should have treated Mr B as an insistent client – but I can't see that it did so. So I'm satisfied that JLT didn't provide Mr B with suitable advice for his circumstances

Death benefits

There appears to me to be some inconsistency around Mr B's attitude to death benefits. On the one hand he appears to be certain that he doesn't want the IVPP to include any spouse's pension whilst on the other (as stated in the suitability report) Mr B preferred for his 'spouse to receive a lump sum rather than an income should [he] predecease her'. Further down it is noted that Mr B wished to 'provide a lump sum legacy for [his] wife should [he] predecease her and this is important to [him]'. It was also noted on the suitability report that his grown-up children didn't need any lump sum death benefit payment.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through the IVPP were likely an attractive feature to Mr B. But whilst I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think JLT explored to what extent Mr B was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed given that, at the point of the advice, Mr B was hopeful he and Mrs B would be reconciled. So I think that the spouse's pension provided by the DB scheme would've been useful to Mr B's spouse if he predeceased her and whilst they remained married. I don't think JLT made the value of this benefit clear enough to Mr B.

Furthermore, if Mr B genuinely wanted to leave a legacy for Mrs B, which didn't depend on how much of his pension fund remained on his death, I think JLT should've instead explored life insurance.

I acknowledge that Mr B appears to have had concerns about his life expectancy. But Mr B not reaching his life expectancy was only a possibility and it was also possible that he would exceed this. By transferring out of the DB scheme Mr B was relying on some of the IVPP's 'value protection amount' remaining on his death in order to provide the death benefits, whereas the spouse's pension in the DB scheme was guaranteed and escalated.

Overall, I don't think different death benefits available through a transfer to the IVPP justified the likely decrease of retirement benefits for Mr P. Nor do I think that JLT should have encouraged Mr B to prioritise the potential for higher death benefits through the IVPP over his security in retirement.

Summary

I don't doubt that the attractiveness of obtaining more TFC at age 60 than offered by his DB scheme along with the opportunity to have an additional income would have sounded like attractive features to Mr B. But JLT wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr B should not to have been advised to transfer out of his DB scheme just to have the flexibility to access a TFC lump sum for which he had no genuine need at that point in time. Nor can I see that accessing TFC and an income he didn't yet need was worth giving up the guarantees associated with his DB scheme for.

So, I think JLT should've advised Mr B to remain in his DB scheme.

Of course, I have to consider whether Mr B would've gone ahead anyway, against JLT's advice. JLT argues that this is the case, saying that even after explaining the options to Mr B it was clear that he fundamentally wanted to access the TFC element of his pension and would have sought to do so even had he been advised not to transfer.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the DB scheme, against JLT's advice. I say this because Mr B was an inexperienced investor with zero attitude to risk who had, in 2011 accepted JLT's advice that transferring his DB scheme benefits wasn't in his best interests. In addition Mr B's DB scheme accounted for the majority of his retirement provision. So, if JLT had provided him with clear advice against transferring out of the DB scheme (just as it had done in 2011), explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr B's concerns about obtaining TFC so he had access to capital for which he had no genuine need were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. If JLT had explained that Mr B could meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr B would have insisted on transferring out of the DB scheme.

In light of the above, I think JLT should compensate Mr B for the unsuitable advice, 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 B**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr B 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, Mr B has not yet retired, and he has no plans to do so at present. So, compensation should be based on a retirement age of as this was Mr B's intention at the time of the advice and, had he not transferred, this was the age he would have retired.

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 B'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 B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
    - their 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 B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts JLT's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid to Mr B as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. 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 B'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 B 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 B the balance.

If Mr B 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 B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 6 October 2023.

Claire Woollerson
Ombudsman