

## **The complaint**

Mr P complained that Johnston Campbell Ltd trading as Amber River NI (JCL) took too long to advise him on the transfer of the value of benefits in a former employer's defined benefit (DB) pension scheme and too long to arrange the transfer to Mr P's self-invested personal pension (SIPP).

## **What happened**

Mr P met with JCL in November 2021. He'd recently developed some health issues and was on sick leave from work. He'd been referred to JCL by his accountant. Mr P was a deferred member of two former employer's DB pension schemes. He was also an active member of his current employer's Group Stakeholder Pension Scheme and he had a SIPP. He completed letters of authority (LOA) so that JCL could get information about his two DB schemes.

Mr P had already got a CETV (cash equivalent transfer value) for the more valuable of the two DB schemes. Mr P got a new CETV for that DB scheme dated 27 January 2022 for £523,415 and guaranteed until 19 April 2022. He met with JCL again in January and February 2022. The note of the meeting in January 2022 records that Mr P wanted to discuss transferring the less valuable DB scheme. On 3 February 2022 Mr P signed JCL's supplementary client agreement and terms of business for DB pension transfer advice. Later in February 2022 JCL issued a suitability report advising Mr P to transfer the smaller of his DB schemes. Mr P accepted the recommendation, signed the paperwork and that transfer went ahead.

Mr P's complaint is about the larger DB scheme. JCL says it had concerns about the CETV and whether it was correct which JCL raised with the scheme administrator (Capita). But JCL says its queries (which I understand centred on the figures given for early retirement) weren't dealt with promptly. JCL says it did complete a partial analysis based on the quoted CETV although JCL was concerned it was incorrect and could be reduced. JCL produced a TVAS (transfer value analysis) and TVC (transfer value comparator) on 1 March 2022. I've seen that Mr P signed the member discharge form on 7 March 2022.

JCL posted the transfer documentation to Mr P's SIPP provider (the receiving scheme) on 13 April 2022. JCL can't say which postal service was used – first or second class or guaranteed next day delivery. JCL pointed out to the SIPP provider that the CETV guarantee date was 19 April 2022 and said, in view of the urgency, JCL had already sent the member declaration to Capita. JCL asked the SIPP provider to complete and return the receiving scheme documents as soon as possible and email them to Capita at the email address JCL set out. The SIPP provider's offices were closed on Friday 15 April 2022 (Good Friday) and Monday 18 April 2022 (Easter Monday). It says it has no record of receiving any paperwork for the transfer of this DB scheme in April 2022.

On 19 April 2022 JCL wrote to Capita enclosing Mr P's completed member discharge form, proof of identity and age, confirmation that regulated financial advice had been given and the receiving scheme information. The documents were also emailed to Capita on 20 April 2022.

Capita wrote to Mr P and JCL on 25 April 2022. Capita said it had received Mr P's member discharge form, ID and JCL's confirmation that regulated financial advice had been given on 20 April 2022. But the CETV had expired on 19 April 2022 and no documentation from the proposed receiving scheme had been received. The transfer pack made it clear that completed transfer discharge forms (from Mr P and the receiving scheme) had to be received before 19 April 2022 and confirmation of regulated advice before 20 April 2022. As that wasn't the case then Capita couldn't confirm the CETV was secured or progress the transfer. If a new CETV was required there'd be a charge of £78 plus VAT.

I've seen a note of a meeting on 4 May 2022. But some of the details appear incorrect. There's reference to Mr P having received a transfer pack with a 'soon to expire' date of 22 May 2022. Whereas the CETV had already expired – on 19 April 2022. And the new CETV hadn't by then been issued. The meeting note records the DB scheme had confirmed that, as at Mr P's 60th birthday (November 2021), he'd be entitled to a pension of £12,692.54 pa or a tax free lump sum of £66,794.31 and a reduced pension of £10,019.15 pa. Those figures didn't tally with the deferred pension given in the transfer pack – an estimated deferred pension of less than £11,000 pa. And the early retirement factor for drawing benefits five years early was 20%. So the immediately available pension quoted looked wrong or the CETV was. JCL said it had asked Capita for more information and once that was to hand what was the most suitable advice would be reviewed.

Mr P says he met with JCL on 6 May 2022 to discuss the missed deadline. So it's possible that the note related to that meeting, even if some details were wrong. And I've seen an email dated 6 May 2022 from JCL to Mr P referring to a meeting. JCL said there'd been '*an error somewhere in the chain that has led to the required paperwork not getting to Capita in time.*' JCL said, once the revised calculation was received, they'd know if there'd been a gain or a loss. If there was a loss, the process would be reviewed to see where the error had occurred and the party at fault would be responsible for putting Mr P back in the position he'd have been in, if the error hadn't occurred.

Mr P requested and paid for a new CETV. It was for £435,972 dated 30 June 2022, guaranteed until 30 September 2022. It seems JCL had similar concerns as previously about whether the CETV was correct which were raised with Capita on 19 August 2022. Capita replied on 30 August 2022 saying the information given was correct. By then JCL had issued a recommendation report dated 28 August 2022 recommending the transfer. Mr P accepted the advice and this time the transfer went ahead.

Mr P emailed details of his complaint to JCL on 24 March 2023. JCL acknowledged the complaint on 27 March 2023. I've seen that Mr P sent several emails chasing JCL's response. Mr P referred to the anxiety being caused which wasn't good for his health. JCL said in an email on 30 May 2023 it was seeking to uphold Mr P's complaint but JCL's advisers were still considering things. JCL said Mr P could refer his complaint to us.

## **Our investigation**

On his complaint form Mr P said he'd signed papers in February 2022 for his pension to be transferred. JCL had failed to send the signed papers on time to effect the transfer. Mr P got a new CETV but the value had fallen. He said JCL was responsible for the loss of £88,000. Mr P also said the matter (including JCL's delay in issuing a final response) had caused enormous stress which had aggravated his poor health which was the reason he was seeking a transfer.

JCL's position was that the original CETV deadline was missed because of JCL's concerns about if the CETV was incorrect. JCL's queries weren't dealt with promptly. That was outside

JCL's control but affected JCL's ability to provide timely, correct and comprehensive advice. And had caused a delay in forwarding the transfer documents to Mr P's SIPP provider.

Our investigator upheld the complaint. He said JCL should've advised Mr P not to go ahead with the transfer if there were concerns about the information JCL had been given. On the other hand, if JCL didn't have serious concerns, JCL should've arranged the transfer promptly and well before the first CETV expired, including sending information to the SIPP provider in good time. But JCL did neither. JCL had queried the information about the DB scheme, which had affected the speed of its actions in the transfer process, but JCL hadn't explained if and how its queries were resolved before giving advice on the transfer. The investigator said JCL's actions and inactions had caused Mr P to miss the deadline for the first CETV. And he'd been caused an enormous amount of stress.

The investigator set out how JCL needed to put things right for Mr P: JCL should pay Mr P £300 for the stress he'd been caused, reimburse him for the cost of the second CETV and calculate, using the methodology the investigator set out, any financial loss based on Mr P having been unable to secure the first, higher CETV.

In response Mr P said, amongst other things, that £300 for the enormous stress over 18 months was totally inadequate. He provided details of the effect on his health. After speaking to Mr P and considering the matter further, the investigator told JCL that, for the reasons he set out, he thought the award for distress and inconvenience should be revised to £600.

JCL responded to say it was unable to make any offer to Mr P until the correct loss figures had been validated. JCL wanted to liaise with Capita and seek confirmation that the original CETV would've been honoured, had the documentation been submitted in time. JCL added that we'd said we'd agree to Mr P assigning any rights to pursue Capita subject to acceptance of an offer. JCL sought confirmation that was still the case. If so, JCL would need Mr P's written consent. JCL could then obtain and validate the redress calculations which JCL's PI (Professional Indemnity) insurers would review and consider making an offer to Mr P. JCL agreed to the increased payment of £600 for stress and inconvenience.

There were further exchanges. Including discussions with Mr P about assigning any rights to pursue Capita to JCL. The investigator explained that would mean Mr P wouldn't be able to take future action to recover any loss from Capita. In an email dated 7 November 2023 Mr P confirmed he'd assign any future rights to pursue Capita to JCL, subject to an acceptable offer **now** [Mr P's emphasis] being made by JCL. Mr P added that he expected things to be concluded by 30 November 2023. The investigator forwarded what Mr P had said to JCL.

JCL responded, having consulted with its PI insurers: In summary JCL said:

- JCL would pay immediately £600 to Mr P and reimburse the cost of the second CETV (£93.60).
- Although Mr P had provided in an email dated 7 November 2023 an assignment of any future rights to pursue Capita subject to an acceptable offer being made, JCL needed Mr P's signed authority and asked if we'd forward the LOA JCL attached to Mr P and ask him to sign and return it to JCL.
- JCL maintained it wouldn't be fair and unreasonable to conduct redress calculations based on the current figures as those values may be incorrect which would lead to an incorrect level of redress being paid. JCL asked us to clarify why we'd object to the correct values being used.
- JCL had no objection to conducting the redress calculations in accordance with the redress methodology once the values had been confirmed by Capita.

The investigator didn't think what JCL was proposing was fair. Amongst other things he said the DB scheme had confirmed both CETVs were correct at the time in 2022. JCL had, since Mr P had complained in March 2023, to validate the figures but hadn't done so. Even if JCL asked again about the CETV calculations, JCL might again conclude the DB scheme hadn't given a full response to its concerns or fully validated the figures. This would leave JCL deadlocked with the DB scheme and Mr P without redress. Our approach, to avoid further delay and detriment to the consumer, especially given his illness, is to say the redress calculation should be done, assuming the CETV figures are correct and the consumer paid any redress owed. JCL could then validate the figures later on, perhaps using an expert at its own expense, and then seek to recover any loss from any error by the DB scheme.

We asked Mr P if he'd sign the LOA JCL had provided and post it back to JCL. We also set out what JCL had offered to do. Mr P told us he'd decided to contact Capita himself to try to speed things up. A letter was sent to him on 24 November 2023 with a detailed timeline of the DB scheme's/Capita's contact with Mr P and JCL. A further email was sent on 5 December 2023 about the reduction in the transfer values and confirming both CETVs were correct. And that, provided all the completed and correct transfer paperwork (including the receiving scheme forms) were received prior to 19 April 2022 (20 April 2022 for JCL's confirmation of FCA regulated advice), Capita would've proceeded in initiating further checks for a transfer using the CETV calculated as at 19 January 2022.

Mr P signed the LOA on 15 December 2023 and sent it to JCL. He also sent the letter from Capita saying the CETVs were both correct and guaranteed for three months from the date of the calculation. The first CETV was guaranteed provided Capita received all the correct paperwork by 19 April 2022.

JCL's position remained that the original CETV wasn't accurate and it wouldn't be fair and reasonable for JCL to pay redress on the basis of the DB scheme's mistaken calculations. JCL said, although the DB scheme had again claimed the figures were accurate, it hadn't elaborated in sufficient detail around how the higher CETV had been arrived at. JCL also referred to press reports (an article from a financial publication was attached) about DB transfer values having been incorrectly calculated, following which schemes and their administrators, including Capita, had then sought to recoup overpayments through the courts, causing financial detriment and stress to affected clients. It was in Mr P's best interests to challenge the original CETV figure and get the mistake corrected to avoid the consequences for Mr P if a higher, incorrect figure was paid.

As agreement couldn't be reached the case has been referred to me to decide.

### **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.

Having done so, I agree with what the investigator said and the reasons he gave as to why Mr P's complaint should be upheld. JCL says it had serious doubts about the accuracy of the CETV dated 19 January 2022 and which expired on 19 April 2022. But JCL appears to have advised Mr P to transfer and JCL facilitated the transfer although, in the end, it didn't proceed because the CETV guarantee date wasn't met. I agree with the investigator, if JCL had serious doubts about if the CETV was correct, JCL should've told Mr P that advice couldn't be given as to whether Mr P should transfer until the position had been clarified. But, although JCL says its queries weren't resolved, a transfer was requested.

I haven't seen any formal recommendation report from JCL (aside from the report that was completed in September 2022 in respect of the reduced CETV). But JCL says it did

undertake what it terms a partial analysis and a TVAS and TVC were prepared. JCL sent the confirmation of regulated advice form to Capita on 19/20 April 2022 and so it's clear JCL did provide advice. I don't think we've seen the form but in any event it wouldn't say what the advice was – whether a transfer had been recommended or not – just that regulated advice had been given. But there's no suggestion that JCL's advice was that Mr P shouldn't transfer. So JCL advised in favour of transferring.

Once it had been decided that Mr P was going to transfer, JCL needed to do all it could to ensure the deadline for accepting the CETV was met. It seems JCL sent the discharge forms to the SIPP provider on 13 April 2022. Given that time was tight, I'd have expected JCL to have managed things appropriately – by ensuring that the SIPP provider got the documents the same/next day (and before the Easter holidays intervened) and that the documents were completed and emailed back to Capita immediately.

And it wasn't until 19 April 2022 that JCL wrote to the DB scheme administrator enclosing various documents – completed member's transfer form, proof of identity and age, confirmation of regulated advice having been given and receiving scheme details. I think the documents were also emailed by JCL on 20 April 2022. I'm not sure why those documents couldn't have been emailed on 19 April 2022. Or sent earlier, given that JCL was in a position to forward the discharge form to the SIPP provider on 13 April 2022. And when it seems Mr P had signed the relevant documentation much earlier.

I agree with the investigator that JCL's actions and inactions caused Mr P to miss the deadline for the first CETV. I also agree with the investigator that Mr P has been caused considerable stress.

To some extent JCL agrees. There's no argument about JCL paying for the new CETV, an expense which Mr P wouldn't have incurred if the deadline for the original CETV had been met. And JCL had also agreed to pay £600 for distress and inconvenience. I've taken into account all Mr P has said about the effect this matter has had on his health, evidence of which he's provided, and the stress it's caused and the impact (which is ongoing) on Mr P's daily life. £600 is in line with the sort of award I'd expect to see.

I think JCL accepts that it is responsible for any losses Mr P has suffered in consequence of the deadline for the CETV not being met. But the issue is what that financial loss is. On the face of it, the starting point is the difference between the higher and the lower CETV, so £89,000. But JCL is concerned as to the accuracy or otherwise of the CETVs given. JCL says it wouldn't be fair and reasonable to base redress on the apparent reduction in the CETV Mr P suffered if the CETV values aren't accurate.

I've considered JCL's position carefully. But I'm not persuaded by what's been said about there having been issues with CETVs provided by some pension administrators, including Capita, as reported in the financial press article JCL has provided. What's happened is of concern, and the implications, including the possibility of legal action, are serious for affected former members. But my understanding is that Capita administers a large number of DB schemes. I don't think any indications that there have been problems with some schemes – and I note Mr P's DB scheme isn't specifically mentioned as being one in respect of which any issues have arisen – means the accuracy of every CETV provided by Capita is called into question.

The CETV is a highly complex calculation but, in broad terms, represents the expected cost of providing the member's scheme benefits, based on various actuarial assumptions as to what might happen in the future. My understanding is that DB transfer values generally fell during 2022, mainly as a result of significant rises in gilt yields and which mean a smaller fund is needed to generate the same level of income, so the CETV offered will reduce.

Lower long term inflation expectations are a factor too, albeit the impact isn't so significant. I don't think the reduction in Mr P's CETV – some 17% – is out of line with what was happening with DB transfer values generally.

That said, I'm not an expert. But the Fund Actuary is. Because of the type of benefits Mr P had in the DB scheme and which included service credits, the CETV had to be manually calculated by the Fund Actuary. Capita has, more than once, confirmed that both CETVs (calculated as at 19 January 2022 and 23 June 2022) were correct. And, as I've said above, Mr P has more recently raised directly with Capita the issue of whether both CETVs were correct. I understand the matter was referred to the Fund Actuary and an explanation has been provided as to the decrease in the CETV. The significant increase in bond (or fixed interest gilt) yields was specifically mentioned. Capita also pointed out that the transfer value is subject to factors which are updated each month and the transfer value amount can vary from month to month as the assumptions used change.

I know JCL's concerns centre on the early retirement factors and figures. But the fact remains that the Fund Actuary has confirmed the CETVs were correct. I know that, before actually paying the transfer value, further checks would've been undertaken. But, given what the Fund Actuary has said, I don't see any reason to say that any error in the CETV would've been found. I also bear in mind, as the investigator pointed out, that JCL has had some time to try to validate the CETVs given. I don't think it would be fair for Mr P to have to wait any longer when it's clear that JCL didn't deal with things as it should've done. And, from what I've seen, the CETVs have been checked and found to be accurate.

JCL holds the LOA from Mr P which he signed on 15 December 2023. It enables JCL to obtain information from the DB scheme about Mr P's (former) pension arrangement. It's a matter for JCL if it wishes to seek any further information from Capita/the DB scheme, including pursuing any arguments about why JCL considers the CETVs issued to Mr P may not have been correct. If Capita's position changes and there's some suggestion Capita has made an error and JCL considers it has been disadvantaged because it paid redress to Mr P on the basis of a higher incorrect CETV, that's primarily a matter for JCL to pursue with Capita.

An assignment of rights has also been discussed. Mr P seems to have given that in his email of 7 November 2023 which we forwarded to JCL. But that seems to have been conditional – dependent on JCL making an immediate settlement offer and things being resolved by 30 November 2023, which didn't happen. So, as things stand, there's no assignment of rights from Mr P. I'd assume that, if in the future any need arose, Mr P wouldn't object and providing he'd been fully redressed by JCL.

As things stand, and from what I've seen, the CETVs were correct as confirmed by the Fund Actuary. So Mr P has lost out because JCL didn't act in a way which meant Mr P was able to secure the higher CETV before the guarantee period expired.

I agree with the redress suggested by the investigator and which aims to put Mr P in the position he'd be in now, if JCL had acted as it should've done and in time to secure the CETV of £523,415. I've largely repeated that redress below. For clarity, A below is the number of working days for the transfer to take place and the fund invested from the expiry date of the later CETV. B is the date the transfer should've taken place and the pension fund invested using the first CETV. It is the expiry date of the first CETV plus A.

I'm not sure if JCL has seen the timeline prepared by the DB scheme in response to Mr P's enquiries but, if not, we'll share it. It doesn't add to what we know about what happened with the original CETV. But it sets out the timing of payment of the transfer value once the

paperwork in respect of the second CETV was received. So it should help with calculating redress due on the basis the same time would've been taken.

JCL will then need to work out what Mr P's pension fund would be worth now, had it been transferred on the basis of the first CETV (dated 19 January 2022) and which will take into account market movements after the transfer and up to date. I've said redress should be calculated as at the date of my final decision. I've included an interest award if redress (or any part of it) remains unpaid after 28 days following notification to JCL of Mr P's acceptance of my final decision. And I've said that JCL will need to provide details of its calculations to Mr P in a clear and simple format.

### **Putting things right**

To redress Mr P Johnston Campbell Ltd trading as Amber River NI should:

- Pay Mr P £600 for distress and inconvenience (if not paid already).
- Reimburse Mr P for the cost of the second CETV (if not paid already).
- Ascertain when Mr P's DB scheme benefits would've been transferred to his SIPP on the first attempt based on what happened during the second, successful, attempt. That took A working days. Where A is the difference between the expiry of the second CETV and the date his CETV was first invested in his SIPP. Assuming it would've taken the same time as on the first attempt, Mr P's DB pension would've been invested with the first, higher, CETV A working days after it expired on date B. Johnston Campbell Ltd trading as Amber River NI will need to calculate A and B.
- Any loss Mr P has suffered should be determined by Johnston Campbell Ltd trading as Amber River NI obtaining the notional value of Mr P's SIPP as at the date of my final decision, had the transfer with the higher CETV taken place on date B on the basis that it had been invested in the same fund/s (in the same proportions). The actual value of Mr P's SIPP should then be subtracted from the notional value, taking into account any additions and withdrawals. If the answer is negative, there's a gain and no redress is payable.
- The compensation amount should if possible be paid into one of Mr P's pension plans. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into a pension plan if it would conflict with any existing protection or allowance. If a payment into a pension plan isn't possible or has protection or allowance implications, it should be paid directly to Mr P as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Mr P has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.
- Details of the calculations should be supplied to Mr P in a clear and simple format.
- Interest at 8% pa simple is payable from the date of my final decision to the date of payment on any redress which is due and which remains unpaid after 28 days of notification to Johnston Campbell Ltd trading as Amber River NI of Mr P's acceptance of the final decision.

### **My final decision**

I uphold the complaint. Johnston Campbell Ltd trading as Amber River NI must redress Mr P as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 February 2024.

Lesley Stead  
**Ombudsman**