

The complaint

Mr and Mrs H have complained because Jamieson Christie Wealth Management Limited's advisor didn't advise Mr H to transfer his defined benefit ("DB") pension to a personal pension. They've also raised concerns over the general level of service they received.

Both Mr and Mrs H have complained. However, it's Mr H's DB pension at the centre of the complaint so I've only referred to Mr H.

What happened

Mr H held a DB pension with a previous employer. In 2017 he met with the advisor to discuss his pension savings and retirement income. The information available to me shows he wanted to make up a shortfall in his income until his DB and State pensions became payable. The advisor recommended that Mr H transfer part of the DB pension and leave the other part where it was. The advice meant Mr H could take income from the DB scheme at the normal retirement age and in the meantime take some of the transferred amount as a lump sum tax-free payment and use the remainder to drawdown a monthly income until retirement (to be topped up each month from savings).

In April 2020 the transfer value of the remaining part of the DB pension was approximately £425,000. Mr H was keen to transfer the pension so he passed the transfer value to the advisor. On 8 July 2020 (the day the transfer value expired) the advisor wrote to Mr H saying he suspected the transfer value was more now than it was in April. He proposed a meeting to discuss a possible transfer and to then request another transfer value if needed. Mr H replied asking, amongst other things, that the advisor tell him as soon as he felt the time was right to request another transfer value.

Mr H next met with the advisor in February 2021. He says the advisor said a good transfer value for the DB pension would be around £500,000. In April 2021 the transfer value of the DB pension was approximately £400,000. Mr H sent it to the advisor and said that as it was lower than the previous year he assumed the recommendation would be that he do nothing ie not transfer. Mr H says he didn't receive any reply from the advisor.

Mr H met with the advisor in February 2022. He says the advisor felt the 2021 transfer value wasn't good and told him of other options eg taking partial lump sum payment with a reduced pension. In May 2022 the transfer value of the DB pension was approximately £365,000. Mr H sent it to the advisor and said he assumed it wasn't the right time to transfer. He asked the advisor for his thoughts. He chased him for a response in July but says he never received a reply.

Mr H met with the advisor in February 2023. He says at this point he was becoming increasingly concerned that his pension arrangements were insufficient to carry him over until he started receiving his other pension income eg the DB and State pension. So he wanted the advisor to find a solution to his financial position.

Mr H had a further meeting with the advisor in May 2023. At this point the transfer value of the DB pension was approximately £280,000. Mr H presented the advisor with his

calculations, which showed a comparison between where he stood (a shortfall in his proposed income and expenditure of £100,000) and where he would have stood (a surplus in his proposed income and expenditure of £100,000 at age 90) if he'd transferred the DB pension in 2020. Mr H felt the best route forward would be to take a lump sum tax-free payment and an annual income from the DB pension now.

On 28 June 2023 Jamieson Christie wrote to Mr H confirming the advisor's opinion on the most suitable option moving forward. In summary, he recommended that Mr H draw tax-free cash from the DB pension and start receiving the annual pension immediately.

Mr H complained to Jamieson Christie in July 2023. The nub of the complaint was that if he'd transferred the DB pension in 2020 as he wanted to he would be having a comfortable retirement rather than having a deficit of funds. He felt the current situation could have been avoided if the advisor had contacted him in 2020 to say he needed to get a further transfer value as the pension wasn't moving in the direction he'd predicted.

On 13 September 2023 Jamieson Christie answered Mr H's complaint. In summary, it didn't feel the situation Mr H found himself in with the deficit (or, in other words, a reduced pension pot) was due to any advice it had given. Rather, it felt it was due to Mr H withdrawing more from his pension than was originally planned. It calculated that if Mr H had kept to the planned withdrawal amounts there wouldn't currently be a deficit and the projected shortfall when he receives the DB and State pensions would be minimal. Regarding a potential transfer in 2020, Jamieson Christie said it was likely that the outcome of any advice, had it been provided, would have been to not transfer the remaining DB pension as it wouldn't have been considered suitable for Mr H's circumstances.

Jamieson Christie did however recognise that in 2020 and 2022 there was a reduction in communication between it and Mr H which fell short of the level of service it usually provided. It didn't feel this disadvantaged Mr H financially but it offered him £300 compensation for any stress, inconvenience and worry caused.

Our investigator didn't think the complaint should be upheld. In summary, he didn't think Jamieson Christie acted unreasonably by not giving Mr H advice to transfer the DB pension in 2020. He also felt Jamieson Christie not recommending a transfer wasn't the cause of the shortfall Mr H now faces. And he felt the £300 compensation offered was fair amount. Mr H disagreed with our investigator. He said in summary that if he'd transferred the DB pension in 2020 he wouldn't have any of the financial issues he now has. He felt there was a case that Jamieson Christie didn't follow the regulator's guidelines as it didn't recommend transferring when it was in his best interests to do so.

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.

The majority of Jamieson Christie's response to Mr H's complaint concerned the suitability of the advice in 2017 and Mr H's actions (ie his pension withdrawals) since then. But Mr H's complaint concerns the advisor's actions in 2020 ie not advising him to transfer his pension. So I'm not judging, and I haven't considered, whether the advice in 2017 was suitable. Similarly, I'm not judging how Mr H chose to use his pension funds once they became available to him.

In my view, the two overarching issues in this complaint are:

1. whether the advisor gave Mr H any formal advice about transferring or remaining in the DB pension and, if so, whether that advice was suitable; and
2. whether the advisor should have given Mr H formal advice about transferring or remaining in the DB pension.

Did the advisor give Mr H any formal advice?

Mr H has told us that in 2020 both he and the advisor agreed to transfer out of his DB pension because Mr H had moved on/away from the original income and expenditure plan from 2017 – which meant there would be a shortfall in the future. He also said the advisor agreed to contact him when the time was right for him to request another transfer value.

In my view, the evidence I've seen doesn't support this. I haven't seen anything which shows that the advisor agreed in 2020 (or at any later point) that Mr H should transfer out of the DB pension. Similarly, although Mr H asked the advisor to tell him as soon as he felt the time was right to request another transfer value I haven't seen anything which shows that the advisor actually agreed to do so. The advisor's email responding to Mr H was silent on this request – it concentrated on other things Mr H had asked for.

Mr H has also argued that the advisor essentially said he should pay for another transfer value at a time designated by him – hence his response asking to be told when that time was. I disagree with Mr H's interpretation of what the advisor said. The advisor simply said the transfer value expired that day and it would cost £500 to request another one within a 12 month period. The only thing he said about getting another transfer value was proposing a meeting to discuss all aspects of a possible transfer and *if relevant* to then request another transfer value. No such meeting took place.

Mr H feels – and I agree with him – that his actions in 2020 show that he was keen to, and wanted to, transfer the remaining DB pension. I haven't listed all his actions above but I particularly note him sending the completed transfer forms direct to the DB scheme as he wasn't getting a reply from the advisor to his queries. The essence of Mr H's complaint is that the current shortfall in his pension fund (ie his pension pot being insufficient to support his desired expenditure) stems from the advisor's advice in 2020 to not transfer the DB pension. I'm not persuaded that the advisor gave Mr H any such advice.

Unless the transfer value of a DB pension is less than £30,000 it's not possible for a consumer to transfer it to a personal pension without having received formal full advice from a financial advisor on whether transferring is suitable for them. The advice doesn't have to be to transfer (a consumer can still transfer even if the advice is to not transfer) but it must be formal advice.

Formal advice is more than a financial advisor saying something along the lines of “*you should transfer*” or “*transferring won't be suitable for you*” in a general discussion or an email – it's an extensive process. For the advisor to have given Mr H formal advice on whether transferring the DB pension was suitable and/or in his best interests he would have had to carry out in-depth enquiries, including (but not limited to):

- conducting a full analysis of Mr H's financial position, objectives etc
- considering the benefits provided by the DB pension and the potential benefits provided by an alternate pension
- determining how much an alternate pension would need to grow by in order to match the guaranteed benefits provided by the existing DB pension
- considering how else Mr H's objectives could have been met (which might include telling him that they simply can't be met as he doesn't have sufficient pension provisions).

The advisor would also have had to provide Mr H with a full report outlining the advice given and explaining the reasons behind it. Mr H would have also had to pay for the advice.

From what Mr H and Jamieson Christie have said I have no doubt that the transfer values and the option of transferring the DB pension were part of the ongoing discussions between Mr H and the advisor. But, as alluded to above, these discussions aren't formal advice – in my view, it's more akin to general information being given to Mr H. I haven't seen anything which shows or persuades me that the advisor carried out any of the necessary enquiries in order to provide Mr H with formal DB transfer advice. I also haven't seen anything which shows or persuades me that he issued Mr H with a fully reasoned report outlining the advice. And, to my knowledge, Mr H didn't pay Jamieson Christie for specific DB transfer advice.

Accordingly, I conclude that the advisor didn't give Mr H formal advice in 2020 (or at any time afterwards) on whether transferring the DB pension was in his best interests or not. More specifically, I conclude that the advisor didn't formally advise Mr H in 2020 (or at any time afterwards) to not transfer the DB pension.

As I've reached this conclusion it's not necessary for me to consider whether the advice was suitable or not.

Should the advisor have given Mr H any formal advice?

The issue now moves to whether as part of the overall service the advisor was providing to Mr H he *should have* given him formal advice on whether or not transferring the DB pension was in his best interests.

In my view it ought to have been clear to the advisor from Mr H's emails in 2020, 2021 and 2022 that he was keen to transfer the DB pension and he was looking for guidance on doing so (including in respect of the transfer values). The advisor also knew (or ought to have known) that Mr H would need formal advice in order to transfer and he knew when the transfer values were due to expire. Accordingly, rather than just sending Mr H an email in 2020 on the day the transfer value expired and ignoring Mr H's emails in 2021 and 2022 I think he ought to have promptly started discussing the process of providing formal advice on the suitability of the transfer with him. I think the advisor treated Mr H unfairly by essentially ignoring his request for guidance.

It's impossible to know for sure what the end result would have been had the advisor started that discussion. However, in deciding the complaint I don't need to *know exactly* what would have happened; I only need to consider what in my opinion would *most likely* have happened.

The first issue is whether having had initial discussions Mr H would have instructed the advisor to give him formal advice. I say that because Mr H would have had to pay for this advice. I don't know how much Jamieson Christie would have charged but based on other cases I've seen it was likely to have been around 3-4% of the transfer value ie around £15,000 in 2020, less as the transfer value decreased over the years (although we've seen some businesses charge upwards of 10% of the transfer value). So the cost of formal advice would probably have been significant and Mr H might not have been inclined to pay it.

The second issue is, if Mr H had instructed the advisor, what the advice would have been. This is impossible to know. However, the regulator makes it clear that for most people transferring a DB pension to a private pension is unsuitable – this is often referred to as *the presumption of unsuitability*. So the advisor's starting position should have been that transferring wasn't suitable for Mr H; and he should only have recommended transferring if it

could *clearly be shown* that transferring was in Mr H's best interests. And as I've alluded to above it's not in Mr H's best interests simply because it was what he wanted to do.

Mr H has told us that to all intents and purposes the advisor thought it was suitable for him to transfer the DB pension and that his clear intention was to recommend a transfer. As I've said above, there is a distinct difference between a general discussion on the subject and a formal recommendation. To my knowledge the advisor didn't carry out any of the necessary investigations, considerations, comparison etc. So I don't think it can be said he had formally concluded that it was suitable for Mr H to transfer – he can't have reached (or shouldn't have) that conclusion just from a discussion with Mr H.

In the vast majority of complaints I see about DB pension transfer advice transferring isn't in the consumer's best interests. In a sense, that ties in with the regulator's presumption of unsuitability. That doesn't of course mean that all advisors in those complaints advised the consumer to not transfer – some advisors advised to transfer even though it was unsuitable. Nevertheless, I think it's fair to conclude here that it's more likely than not (a) that transferring wouldn't have been in Mr H's best interests and (b) therefore, that the advice would have been to not transfer. There's no persuasive evidence to say the advisor would have most likely recommended a transfer or that it would have been suitable to do so – particularly in the latter years when the transfer value was lower.

The final issue is, if the advisor's advice had been to not transfer, whether Mr H would have followed that advice. Mr H had actively sought advice from a professional advisor and he would have paid a significant fee for that advice. Accordingly, I think it's unlikely that if the advisor had clearly explained why transferring the DB pension wasn't in his best interests Mr H would have ignored that advice and insisted on transferring the pension regardless. Further, if Jamieson Christie advise a client to not transfer their DB pension it doesn't offer the service to facilitate the transfer if the client insists on transferring. So even if Mr H decided to ignore the advice to not transfer he would have had to either find another advisor to facilitate the transfer (at further cost) or he would have had to arrange the transfer himself. That presents a further problems as many advisors now adopt a similar approach to Jamieson Christie in not facilitating a transfer if a consumer had been advised to not transfer.

In my view, the above paragraphs highlight potential barriers to the end result being Mr H transferring the DB pension had he received formal advice. I accept the reality on any (or all) of the above issues *might* have been different. But, as I explained, in making my decision I need to consider what *most likely* would have happened – not what *might* have happened. And given the doubt as to whether Mr H would have instructed the advisor given the cost, the likelihood that the advice would have been to not transfer and the likelihood that Mr H would have followed that advice I conclude that if the advisor had promptly discussed the process of providing formal advice with Mr H the most likely outcome would have been that Mr H kept the DB pension ie no different to what actually happened. Accordingly, I conclude that Mr H wasn't disadvantaged by the advisor's lack of engagement following his requests for guidance.

Mr H has questioned the relevance of the presumption of unsuitability to his complaint given that both he and the advisor agreed the correct decision was to transfer the DB pension. I firstly refer back to what I said about there being no evidence that the advisor agreed or formally advised Mr H to transfer the DB pension. Secondly, the presumption of suitability is relevant to my consideration of what the most likely scenario would have been had the advisor replied to Mr H's requests for guidance and whether he would ultimately have been in a different position to the one he now finds himself in.

Mr H has also argued that as the advisor knew the financial 'income and expenditure' plan he was one wasn't working he should have acted. I think the considerations here are the same I've already discussed about the advisor ignoring Mr H's requests for guidance on the transfer values and transferring the pension ie if the advisor did act what would the end result be. And for the same reasons, I think it likely that Mr H would have ended up remaining in the DB pension.

The situation in 2023 is different to the previous years because Mr H and the advisor were actively in contact with each other and Mr H did transfer the DB pension. I haven't seen any evidence showing that the advisor conducted the necessary investigation in 2023 into whether transferring the DB pension was in Mr H's best interests. For the avoidance of doubt, I haven't looked into this as Mr H has complained about that advice.

General service

I don't have the power to punish or fine businesses simply because they acted unfairly or unreasonably. Rather, compensation I award in this respect is to make up for the unnecessary distress and inconvenience caused to the consumer.

In this case there are several instances between 2020 and 2022 where I think Jamieson Christie treated Mr H unfairly – mainly in it not responding to his various emails. I don't think this impacted the position in respect of Mr H's pension because I think the end result was likely to have been that Mr H remained in the DB pension. But I do think not receiving a response caused him some irritation and frustration. I'm not persuaded it was any more than that as Mr H appeared to be reassured by the regular February meetings – describing them as being very upbeat, that he always felt he was 'in a safe pair of hands' and that he thought everything was proceeding as it should be.

The situation changed in 2023 as this was when Mr H started to dig a little deeper into his pension arrangements and whether they could cover his expected expenditure and he discovered what he describes as a shortfall. The lack of service here was less about not being emailed back – it was more a dispute over figures Mr H had calculated compared to what was being presented to him by the advisor. According to Mr H his figures were more accurate. I don't think the discrepancy in the figures impacted the position in respect of Mr H's pension. But I think they inconvenienced Mr H as he had to spend time calculating the figures himself.

Mr H has referred to suffering greater anxiety during 2023 due to his increased knowledge about a shortfall in his pension provisions. I can only make Jamieson Christie pay compensation if I think it acting unfairly was the root cause of Mr H's distress, inconvenience etc. That's important here because while I don't dispute Mr H's increased anxiety I think that mainly stemmed from his belief that he was wrongly advised in 2020, 2021 and 2022. I don't agree that he was wrongly advised as he didn't receive any formal advice. So I can't make Jamieson Christie pay compensation for 'wrong' advice that was never given.

Mr H also referred to incorrect figures quoted by the advisor in 2023 in respect of what he'd receive from the DB pension. He said the advisor told him he'd receive a tax-free lump sum payment of £72,133 and an annual pension of £10,818 when what he actually received was a tax-free lump sum payment of £69,284 and an annual pension of £10,393. It's not my role here to decide whether the amount Mr H received from the DB pension was correct or not – that would be for another complaints body should Mr H complain about the DB scheme. I don't know why the amount Mr H received was different from what the advisor quoted eg did the advisor make a mistake or was the information the financial advisor received incorrect and he simply passed that on unknowingly. Whatever the reason, I don't think the figures being different led to Mr H suffering an actual financial loss. That's because the advisor's

advice would still have been for Mr H to start taking benefits from the DB pension and the amount he received from the DB pension would always have been what he ended up receiving. What Mr H suffered was a loss of expectation in respect of what he would receive.

I typically make compensation awards upwards of £300 if a business's error caused the consumer more than the levels of frustration and annoyance they might reasonably expect from day-to-day life and the impact has been more than just minimal. This is usually where there have been repeated errors requiring a reasonable effort to sort out and there's been some distress, inconvenience and loss of expectation. In my view, what Mr H suffered falls into this category. And as Jamieson Christie has already offered him £300 I don't consider there to be any grounds to make it pay more.

My final decision

Jamieson Christie Wealth Management Limited has already made an offer to pay £300 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that Jamieson Christie Wealth Management Limited should pay Mr and Mrs H £300 if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 8 October 2024.

Paul Daniel
Ombudsman