DRN-4784537

The complaint

Mr B has complained that the advice provided by JLT Wealth Management Limited ('JLT') to transfer his deferred occupational defined benefit ('DB') pension to a personal pension held with Standard Life was unsuitable and has caused financial loss.

Mr B is being represented in this complaint however for ease of reference I have referred only to Mr B throughout the decision below.

The advice was originally provided by Alexander Forbes Financial Services Ltd ('AFFS') who are now part of JLT.

What happened

Mr B received a letter from the trustees of his deferred DB scheme on 12 February 2010. This stated that he was being offered an enhancement to the transfer value of his pension, should he decide to transfer the benefits away to a personal scheme. The additional sum being offered was around £7,700 gross, or around £6,000 if paid directly to Mr B.

This letter explained that the offer was being made as the trustees believed that reducing the number of scheme members would *"reduce the volatility of the costs of providing benefits in the Scheme and will also help reduce the administrative burden and cost."*

It was also explained that the trustees had appointed, and would be paying for, AFFS to provide advice to scheme members.

Mr B completed a Personal Priorities Questionnaire in February 2010. Within this Mr B confirmed:

- He was aged 42, co-habiting, with dependent children and had an income of £30,000 per year.
- He was in good health with no expected changes to personal or financial circumstances.

Regarding pensions, Mr B confirmed that he would want benefits upon his death to be paid as a lump-sum and that a high tax-free lump sum at retirement would be nice but was not a priority. It was also documented that the existing DB scheme was Mr B's only private pension provision and would be a major source of income in retirement.

The questionnaire confirmed Mr B had selected the option to take the available incentive as a cash payment, with the monies to be used to pay for home improvements and a holiday.

Regarding risk, Mr B answered various questions and confirmed he wanted to split his investments 50% low risk, 25% medium risk, 25% high risk.

AFFS documented their advice in a letter to Mr B dated 15 April 2010. This stated that:

"Our recommendation 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. This recommendation is to the Normal Retirement Age of the Scheme (please note that the age of 65 has been used for the purposes of this report)."

The report explained the potential impact of transferring on death benefits, early retirement and tax-free cash at retirement, and stated that the calculated critical yield of 6.6% (assuming the enhancement was paid directly to Mr B) *"could be achievable with the right mix of funds."*

Mr B's attitude to risk ('ATR') was confirmed as "balanced" with AFFS recommending the Greater Than 20 Years Medium Risk Lifestyle Fund to match this.

In addition to the DB transfer, the suitability letter also explained that Mr B had accrued around £1,600 in additional voluntary contributions ('AVC') that were held with Clerical Medical. These would have to be transferred in addition to the DB scheme.

The letter confirmed that there were no guarantees applicable to these AVC's and whilst there was a small transfer penalty, this was not deemed sufficient to alter the overall advice.

Mr B signed the transfer form and Standard Life application form on 24 April 2010. This re-confirmed that Mr B wanted the enhancement to be paid directly to him, rather than be added to the pension.

Following this both the DB scheme and AVC's were transferred into the Standard Life pension.

Having been made aware that the advice may have been unsuitable, Mr B registered his complaint with JLT in March 2023.

JLT issued its complaint response on 14 April 2023. This rejected the complaint stating that the transfer met Mr B objectives at the time of advice, and that the recommendation to transfer, the new pension, and the underlying investments recommended were considered suitable.

Unhappy with JLT's response Mr B referred his complaint to this service on 26 April 2023.

Our investigator looked into things and upheld the complaint, stating that the advice was unlikely to lead to Mr B being better off in retirement, with there being no other objectives that would support the advice to transfer.

JLT did not agree and as such the case was passed to me for a final decision.

I issued a provisional decision which stated:

"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 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 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.

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

Principle 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.

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, AFFS / 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

JLT carried out a transfer value analysis report calculating the critical yield. This shows how much Mr B's pension fund would need to grow by each year to provide the same benefits as his DB scheme.

From a financial comparison perspective, the JLT adviser ought to have recognised that the benefits of Mr B transferring away from his DB scheme were, at best, marginal. And given that uncertainty, the advice to transfer is considered unsuitable.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return (critical yield) required to match the occupational pension at retirement was quoted as 6.6% per year based on Mr B's chosen option of receiving the incentive as a cash payment.

This compares with the discount rate of 6.7% per year for 22 years to retirement at the date of the advice in this case.

For further comparison, the regulator's projection rates at the time were 5%, 7% and 9% for lower, middle and upper growth rates.

I've taken this into account, along with the composition of assets in the discount rate, Mr B's attitude to risk and the term to retirement.

I think the similarity between the critical yield calculated by AFFS, the discount rate published on our website, and the regulators projection rates show that the transfer was not likely to lead to Mr B being materially better off in retirement by transferring his DB scheme.

It is key here to note that the critical yield is the amount the transferred fund needed to grow by each year for it to be able to match the benefits provided by the DB scheme. As such, even if this growth rate were to be achieved, Mr B would be no better off. He would however bear all the downside risk. The transfer exposed Mr B to investment risk and annuity rate risk that were not present in his DB scheme, with limited possibility for increased benefits in retirement.

The suitability letter produced by AFFS confirmed that the transfer was being recommended "exclusively" on whether the critical yield figure was achievable and as set out by the investigator, the regulatory guidance (detailed above) was that AFFS needed to clearly demonstrate that the transfer would be in Mr B's best interests.

As such, my view is that the transfer cannot be justified from a financial perspective, especially given the pension represented the bulk of Mr B's private pension provision and the valuable guarantees which would be lost.

Whilst the transfer was recommended based "exclusively" on the financial impact, I have gone on to consider the other comparisons made within the suitability letter.

Death benefits

Mr B was recorded as co-habiting with a partner and as having three young children at the time of advice. The advice file also notes that Mr B would prefer his beneficiaries to receive death benefits in the form of a lump sum.

The recommended Standard Life pension would provide a lump sum to Mr B's chosen beneficiaries upon his death, with this being equal to the fund value at that time.

If left in situ, the DB scheme would provide a return of contributions (around £17,000). Additionally, as Mr B was not married but was co-habiting, the pension trustees had the option to pay a dependents pension up to the equivalent of a full spouses pension (around £4,200 per year).

No analysis was conducted of the value of such a potential lifelong benefit to Mr B's partner.

Additionally, given Mr B was relatively young and was recorded as being in good health, if providing a lump sum upon death was important, I would expect the option of a life insurance policy to have been considered, as this would have provided the required lump sum and allowed the DB pension (with its valuable guarantees) to be retained.

Overall, I do not consider the difference in death benefits to be a strong argument in support of a transfer.

Tax-free cash

Mr B noted that a high tax-free lump sum at retirement would be nice but was not a priority, and at no point has stated he has any specific requirements or plans for such a lump sum at retirement.

The suitability letter notes that the DB scheme could provide a cash lump sum at retirement of around £71,000 if left in place, with around £87,000 potentially being provided if the benefits were transferred. This figure was however based on investment return assumptions over a 20+ year timeframe.

Overall, as Mr B did not have a specific requirement for his tax-free cash and noted that a high lump sum was not a priority, I do not consider the difference in potential tax-free lump sums to be key, especially given both quoted figures are based on several assumptions over an extended timeframe.

Early retirement

Mr B did not express ay desire to retire early, with the advice being based on his retirement at the DB scheme's normal retirement age of 65. As such any differences in the way the DB scheme and the Standard Life scheme could facilitate early retirement are not considered relevant.

Cash incentive

The cash incentive of £6,000 (after tax) was paid directly to Mr B. The file notes that this was to be used for a holiday and for home improvements. In communication with this service Mr B has confirmed the funds were used for a family holiday.

The advice file contains no information about Mr B's existing savings levels so I can't say if the £6,000 represented a significant boost to Mr B's cash savings.

As part of the evidence provided JLT have provided recorded calls from the time of advice, and during these it is clear that Mr B is eager to receive the cash lump sum, however I don't believe such a lump sum, or the holiday it was to be spent on, were important enough to Mr B to state that he would have insisted on a transfer if JLT had advised him to retain the DB scheme.

Would Mr B have transferred anyway?

As above, it is clear from the evidence on file that Mr B was keen to receive the lump sum incentive and did call AFFS numerous times to ask about the progress of his transfer, however I do not believe this is sufficient evidence to state that he would have rejected any advice to retain the DB scheme, had it been given.

AVC scheme

In addition to the DB scheme, the benefits Mr B had accrued in AVC's were transferred as part of this advice. No assessment of the suitability of these was carried out as they had to be transferred if the DB scheme was.

Had suitable advice been given on the DB scheme, with this being retained by Mr B, I can see no reason why the AVC's would not also have remained in situ with Clerical Medical.

Given this, I have included additional redress instructions below to reflect this.

Summary

Overall, I do not believe the advice to transfer Mr B's DB pension was suitable. The critical yield figure was materially the same as the discount rate. Whilst it may have been the case that the critical yield figure was achievable, this would only leave Mr B with benefits the same as those given up, with all the risks (such as investment and annuity rate risk) moved from the DB pension trustees onto Mr B himself.

I do not consider this increased risk, for what in all likelihood would be broadly similar benefits, to have been in Mr B's best interests.

Had this been explained at the time of advice I have concluded Mr B would have accepted any advice to retain both the DB scheme his AVC scheme."

In addition, I asked both parties to provide any additional evidence or commentary they wanted taken into consideration by 1 May 2024.

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.

JLT provided no response to the provisional decision issued, with Mr B simply confirming he had nothing further to add.

Given no further information or commentary has been provided I see no reason to make any amendments to the provisional decision issued. I remain of the opinion that this represents a fair and reasonable outcome to Mr B's complaint.

The redress instructions below are unchanged from those included in the provisional decision.

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 DB and AVC schemes if suitable advice had been given.

The DB and AVC elements need to be calculated separately. If there is a gain on either side of the calculation, it should be offset against any loss on the other side to ascertain the overall loss or gain.

DB scheme

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 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 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.

AVC scheme

To compensate Mr B fairly, JLT must:

- Compare the performance of Mr B's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- JLT should also add any interest set out below to the compensation payable.

- If there is a loss, JLT should pay into Mr B's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If JLT is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- If either JLT or Mr B dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified, and Mr B receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

Income tax may be payable on any interest paid. If JLT deducts income tax from the interest, it should tell Mr B how much has been taken off. JLT should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Standard Life pension	Still in force	Notional value from previous provider	Date of transfer	Date of my final decision	n/a

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr B's investment had it remained with the previous provider until the end date. JLT should request that the previous provider calculate this value.

Any additional sum paid into the Standard Life pension should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Standard Life pension should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I'll accept if JLT totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, JLT will need to determine a fair value for Mr B's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr B wanted Capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr B's circumstances and risk attitude.

Where I uphold a complaint, I can award fair compensation of up to £190,000, 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 £190,000, I may recommend that the business pays the balance.

<u>Determination and money award</u>: 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 £190,000.

<u>Recommendation</u>: If the compensation amount exceeds £190,000, 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.

My final decision

In line with the rationale above I am upholding this complaint against JLT Wealth Management Limited and require them to calculate and pay redress in line with the methodology outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 June 2024.

John Rogowski
Ombudsman