DRN-4822333

The complaint

Mr T complains that he was provided with inaccurate information by PlanHappy Investment Management Limited trading as Joslin Rhodes Pension & Retirement Planning ('JR') in relation to his group personal pension plan ('GPP'). He also complains that JR pressured him into making a decision about what to do with his pension and that it is still demanding that he pay its fee for the advice and financial planning it provided despite him not proceeding with the recommended transfer of his pension.

What happened

After suffering some significant health issues, it was recommended to Mr T that he seek advice about his pensions. Mr T had a GPP with a provider I shall call 'S' as well having a defined benefit pension with a former employer.

In November 2021 Mr T contacted JR as he wanted to explore his options. JR carried out a full financial planning service with Mr T, gathering information about his circumstances and objectives. JR recorded that Mr T had taken redundancy due to ill health, was living off his savings and benefits combined with his wife's income but didn't wish to return to work. Mr T wanted to know if he could maintain his current lifestyle and pay his mortgage off without having to work. He also wanted financial security for him and his family and said that he had a preference for flexi-access drawdown. Mr T also told JR that he was keen to put a will in place for him and his wife.

JR explained that the advice would cost Mr T £1,995 plus VAT.

As part of its process, JR approached S for information. At that point Mr T's GPP was valued at £258,201.39. In November 2021, S confirmed to JR that Mr T's GPP was a product that didn't offer flexi-access drawdown. However, S also confirmed to JR that one of the retirement options open to Mr T was to switch his plan to one of its other pension products that did offer the option of a flexi-access drawdown.

In January 2022 Mr and Mrs T completed a health questionnaire which recorded that Mr T suffered with short-term memory loss and visual impairment as a result of his health condition.

Later in January 2022, JR went on to recommend to Mr T that he switch his pension with S (which had a fund value at that point of £254,027.25) to a wrapper offered by a provider I shall refer to as 'R' and from there into a portfolio managed by JR. The recommended plan permitted flexi-access drawdown. The recommendation report, along with a separate document provided by JR to Mr T, said the full adviser fee comprised 4% of the transfer value (approximately £10,000) as well as a plan fee of £1,194 (in addition to the financial planning advice fee of £1,995 + VAT). The report also showed the projected fund value of Mr T's GPP with S at age 65 (based on the regulator's then annual assumed growth rates of 2%, 5% and 8%) was greater than the projected value of the plan JR was recommending.

Later in January 2022, Mr T informed JR that he didn't want to continue with the transfer because he was anxious about moving his pension and the last meeting he had had with JR

had frightened him. Furthermore he said that when he was working, his union had fought hard to replace his employer's existing GPP provider with S and felt that it would not have done so had S not been a reputable company. In March 2022, Mr T confirmed to JR his decision not to proceed with the transfer and also said he was upset about the charges he would incur if he did. JR invoiced Mr T £1,995 plus VAT for the advice he had been given; Mr T paid the invoice.

In July 2022, Mr T contacted S directly himself as he wanted to find out if what JR had told him about it not offering income drawdown was true; former colleagues had told him that they had obtained flexi-access drawdown from S. During the call, S told Mr T that it could offer him an income drawdown plan; Mr T asked S to confirm the information in writing. S sent Mr T a letter dated 2 August 2022 in which it explained the options available to him in relation to accessing his GPP. One of the options mentioned in the letter was flexi-access drawdown. The letter went on to say that S might not be able to offer all of the options to every customer but also said that if Mr T had any more questions, or had decided which option he wanted to proceed with, then he should contact it on the telephone number provided. Mr T gave JR a copy of the letter a few days after he received it.

In December 2022, JR contacted Mr T by telephone to ask if there was anything else it could do for him and to tell him about an upcoming estate planning workshop it was running. Mr T said he was still waiting to hear about the will he had mentioned to JR earlier in the year (and which he thought he'd paid for within the £1,995 invoice he had settled). During the call, Mr T told JR what he had been told by S about it being able to offer him income drawdown. A meeting was arranged for 5 January 2023.

The note relating to the 5 January 2023 meeting recorded that Mr T had concerns both about the now decreased value of his GPP and with the fact he could not access the pension through flexi-access drawdown. Mr T also said he wished he had done something about his pension when he was previously in contact with JR. JR again disclosed its charges stating that 4% of the fund value would still be payable even if Mr T changed his mind about the transfer. Mr T signed JR's terms of agreement on the same day which stated what JR's charges were for the planning and advice work in relation to the transfer of his GPP and that they could be deducted from any new product taken out.

JR revisited and updated its previous advice and provided Mr T with a recommendation report detailing its advice and the applicable charges. After reviewing the market, JR again recommended that Mr T transfer his personal pension to a wrapper provided by R and a portfolio managed by JR. It also re-confirmed to Mr T that his existing pension with S didn't offer flexi-access drawdown. The report also set out that the first year's service charges against the plan value would be £15,319.77 (this included the 4% transfer fee). Thereafter JR would charge 1.49% of the fund value annually and R would charge 0.26% of the fund value annually.

Mr T asked JR to proceed with its recommendation.

On 9 February 2023 Mr T called JR to say that he had been in contact with S again. He said to JR that S had told him that his GPP did not permit flexi-access drawdown but that it had offered him the option of switching, at no cost, to a pension product it offered that did. Later in February 2023, Mr T told JR he wanted to cancel the transfer without incurring any penalty or charge because it had transpired that he could have flexi-access drawdown if he remained with S. Mr T said he had only considered switching providers because he had been told his GPP didn't have flexi-access drawdown but as it did, he said he wanted to leave his pension with S.

On 22 February 2023 a further meeting between Mr T and JR took place as a result of Mr T being told by S it could provide him with a flexi-access drawdown plan; Mr T told JR that what S had told him was contrary to the information JR had given him. Mr T also said the differing information had caused him frustration and that he could not understand why JR would tell him something contrary. Furthermore, Mr T said he felt that he would be paying a significant sum to JR in fees for no reason. JR showed Mr T the statement at the top of the August 2022 letter S had sent him where it said that flexi-access drawdown may not be an option for everybody. It also told Mr T the letter was a generic one and not specific to his own pension plan. JR showed Mr T the document it had received from S (in November 2021) which it said clearly showed that Mr T's policy didn't offer drawdown.

On 1 March 2023, JR called Mr T to say that it still thought that it was in his best interests to transfer his pension. JR also reminded Mr T that he had signed its client agreement. JR then wrote to Mr T a week later explaining that its analysis showed that its products outperformed S's investments.

Mr T remained unhappy with JR's high fees and the fact it had told him that S didn't provide flexi-access drawdown when clearly it did. Mr T confirmed he didn't want to transfer and wouldn't be paying JR's invoice for the 4% charge (£9,097.23).

In April 2023, JR raised an invoice for £9,097.23 which it sent to Mr T. On 9 May 2023, JR contacted Mr T to ask if he was any further along with making his decision about transferring his pension. Having received the invoice, Mr T complained to JR. He said he didn't know what the invoice was for and that he had already paid over £2,000 to JR (in 2022). Mr T also said that JR had told him he couldn't get flexi-access drawdown from S but having made enquiries himself this clearly wasn't the case so he would not be proceeding with the transfer to R. Mr T also told JR that the situation was affecting his health and that he felt he had been put under repeated pressure by JR. Mr T also asked for recordings of the telephone between them.

JR looked into Mr T's complaint but didn't think it had done anything wrong. In its final response letter to Mr T's complaint dated 4 July 2023, JR said it had considered the whole of the market, including products offered by S, before making its recommendation to Mr T. It also said that Mr T had signed its terms of agreement agreeing to its charges for the financial planning advice (£1,995 + VAT) and for the transfer advice (4% of the transferred fund). JR said it was made clear to Mr T that the charges were for the advice work it had undertaken separate to the product itself. Furthermore it said that whilst Mr T was entitled to switch to a new product offered by S, its fees for the transfer advice and planning work it had undertaken remained due.

JR went on to say it had found no evidence that it had pressured or coerced Mr T and it said he had not made it aware that he was suffering from a mental illness until 22 February 2023. It said previous conversations about health pertained to Mr T's physical health, aside from in January 2022 when he had mentioned he was anxious about moving his pension. JR said it could find no documentary evidence to suggest that Mr T was placed under any pressure to switch his pension.

On 6 July 2023, Mr T complained to the Financial Ombudsman Service. Our Investigator looked into Mr T's complaint and recommended that it was upheld in part. During the course of her investigation she asked JR for copy recordings of the calls it had had with Mr T but it said there were none and that the content of all its contact with Mr T was noted in its meeting notes.

Our Investigator said that she thought JR had explained its fees to Mr T and that by signing its terms of agreement he had agreed to pay them. She also thought that whilst JR hadn't

treated Mr T fairly by failing to explain that S offered the option of flexi-access drawdown if he switched his pension to another one of its products, Mr T knew from August 2022 onwards that that option was available to him. Our Investigator said this was five months before Mr T signed JR's terms of agreement so Mr T knew, or ought reasonably have known, that he had other options available to him with S prior to agreeing to pay JR's fee for the transfer. Finally our Investigator said she had found no evidence that JR had pressured Mr T into signing the agreement or that it was aware he had mental health issues.

For not treating Mr T fairly by failing to explain to him that he had the option of internally transferring his GPP with S, our Investigator recommended that JR pay him £300 for the distress and inconvenience he had been caused.

JR responded to say it accepted our Investigator's findings.

Mr T responded to say that it was JR that instigated contact in late 2022 asking if it could be of any more assistance. Mr T said he asked if it was able to draw up a will for him and a meeting was arranged for 5 January 2023. At the meeting Mr T said JR focussed on his GPP. It had said that his pension's value had dropped significantly and that he needed to act quickly which led to him feeling pressurised, panicking and signing the terms of agreement so he could leave. Mr T went on to say that after complaining to JR it offered him the option to remain with S but only if he agreed it could manage his pension for him. Further, Mr T said that JR had failed to mention in its recommendation report that he could move products without transferring his pension away from S. Finally Mr T said that he had cancelled the transfer of his pension on several occasions but was still required to pay the fee. He said he didn't think he should be made to pay it when JR wrongly advised him that his GPP with S didn't have drawdown when it did.

Our Investigator thought about what Mr T had said but wasn't persuaded to change her mind.

The complaint was passed to me and I issued a provisional decision in early May 2024 where I explained why I thought Mr T's complaint should be upheld.

The complaint has now been passed back to me for 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.

In my provisional jurisdiction decision I gave reasons why I thought Mr T's complaint was one that I thought should be upheld. I made the following provisional findings: -

"*I am minded to depart from the findings of our Investigator and uphold Mr T's complaint. I'll explain why.*

Mr T makes three complaints:

- *That JR mislead him by saying that S did not provide flexi-access drawdown when it did.*
- *That he should not be required to pay JR's invoice for circa £10,000 given it had provided him with misleading information.*
- *That JR pressured him into making the transfer.*

I'll look at each of Mr T's complaints in turn.

Misleading advice

It is clear to me that Mr T told JR at the outset that he had a preference for flexi-access drawdown. It is also clear to me that S told JR in November 2021 that Mr T's GPP was a product that didn't offer flexi-access drawdown but that one of the retirement options open to Mr T was a transfer to another of its pension products that did offer flexi-access drawdown (without the need to first obtain advice).

Despite being in possession of this information, and knowing that Mr T's preference in retirement was flexi-access drawdown, JR told Mr T on 18 January 2022 that his GPP with S did not allow flexi-access drawdown. It also told him that to access his tax-free cash allowance from the GPP he would have to first purchase an annuity which, in so doing, would not provide him with the financial flexibility he required in retirement. JR then went on to recommend that Mr T move his pension under JR's management and crystallise 50% of it as soon as he turned 55 (in March 2022).

JR says that during the course of advising Mr T it considered drawdown plans available from all providers, including those offered by S; I've seen no documentary evidence that it did or that it communicated any such comparison to Mr T. In fact there is no evidence it compared its recommended drawdown product (under its own portfolio management) with any other drawdown product at all. JR's recommendation report only compared its recommended product with Mr T's existing GPP; it also stated that the only other option it had considered for him was a stakeholder pension.

JR is regulated by the FCA and, as such has to abide by its rules and regulations applicable at the time of the advice. These include, but are not limited to:

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).

It also has to comply to the provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

Whilst Mr T's GPP product didn't offer flexi-access drawdown the fact is that JR knew that S, as a provider, had other products in its range (with a low annual management charge) that did and to which it was prepared to transfer Mr T's GPP at no charge. So JR's omission of this option from its recommendation report/advice meant Mr T was without all the information he needed to allow him to make a fully informed decision about what to do with his pension. And in omitting to communicate this information to Mr T in late 2021/early 2022, JR failed to have regard to its regulatory obligations to act fairly, honestly and professionally in accordance with Mr T's best interests and to have due regard to his information needs. That JR argues it correctly conveyed to Mr T's that his GPP product didn't offer flexi-access drawdown is, in my view, semantics.

And I think JR's response to Mr T's comments of 22 February 2023 (after S told him again that it could provide him with a flexi-access drawdown plan, contrary to the information JR had given him) was disappointing. Mr T told JR how it had caused him frustration, that he could not understand why it would tell him something contrary to what S was saying and that he was frustrated at being asked to pay so much for something it transpired he didn't need.

Rather than take the opportunity to confirm Mr T's understanding of the situation JR chose to state that S's August 2022 letter was a generic one and to reiterate that his pension product didn't offer income drawdown. I can't see at any point during the multiple meetings that JR had with Mr T over a period of 18 months that it said to him – at any point – that despite his GPP with S not offering income drawdown, S could transfer his plan to another of its products that did.

I think that Mr T was clear in his objectives from the outset – that he wanted flexi-access drawdown – and I think he made it clear that he held S in high regard and that he found the whole process of sorting his pension plans out an anxious one. And, for the reasons I've given here, I don't think that JR had due regard to Mr T's information needs or acted in his best interests given his circumstances. JR provided Mr T with information that was incomplete, and therefore misleading, such that he was unable to base his decision on all the facts. Consequently, it is not unreasonable to think that – given the views Mr T held and the subsequent decision he has taken – had JR provided him with the information it had been given by S in November 2021, then he would have availed himself of the chance to switch to another of its products.

I appreciate that JR has said that S wasn't offering Mr T any advice regarding the switch between its own products. It also says that such a significant financial decision required analysis and investment choices to be made for which, in its view, professional advice was necessary. But the choice about whether to take advice was Mr T's to make. If JR had informed Mr T about what S had said about switching to another product in its range and then he had chosen to proceed with full transfer advice, I would likely be reaching a different conclusion about Mr T's complaint. Then I would have seen that JR had had full regard to Mr T's information needs and treated him fairly and honestly. Mr T would have proceeded to whichever decision he chose to make on a fully informed basis. But JR didn't do that. It withheld that information from Mr T. And, as can be seen from Mr T's ultimate decision to remain with S, that information was of considerable significance to him.

I am afraid I don't accept JR's point that it didn't mention an internal transfer with S to Mr T because he wasn't yet aged 55 so such a transfer would not have been possible at that point. Mr T turned 55 in March 2022 – a matter of a weeks after it commenced its advice process. It was JR's obligation to put the possibility before Mr T (including any short-lived age limitations) and let him decide for himself.

So I think JR should have provided Mr T with the information about the option to transfer to another product offered by S. Alongside that it could have pointed out the benefits of receiving its full transfer advice and recommendation and then Mr T could have decided for himself whether he preferred to pay c£10,000 for receiving that advice for implementing the transfer or whether he preferred to switch products with S. But by failing to fully inform Mr T about the available options, I don't think that JR was acting in Mr Ts best interests or treating him fairly.

I can see that in March 2023, in an attempt to persuade Mr T to proceed with the transfer of his pension, JR wrote to Mr T to say that its analysis showed that its products outperformed S's investments. Having reviewed the analysis however, I am unable to agree that this was the case. All the analysis I have seen shows the GPP with S outperforming the plan recommended by JR. Of particular significance is JR's own 'Pensions Switch Considerations' form which poses a series of questions with boxes alongside for the answers. One question asked is; 'Historic returns of proposed investments compared to existing?' and the answer provided is 'Less returns'. Further it asks, 'Additional growth required potentially achievable?' to which the answer given is 'No'.

Thus by its own analysis JR recommended that Mr T transfer to a product that had not, in fact, outperformed his GPP with S and was unlikely to achieve the additional growth it needed to do so. Yet JR told Mr T otherwise. In my view this was misleading. It certainly meant JR was not adhering to its regulatory obligations to treat Mr T fairly and honestly.

I have of course noted what JR said to our Investigator in response to her question on this very point – that its analysis had shown its portfolios had outperformed S's portfolio. JR referred our Investigator to a report it had produced in January 2022 where it had conducted a like-for-like comparison between the portfolios Mr T's GPP was invested in and one of its own portfolios with a similar risk categorisation and equity content. It said, on average, its portfolio had exceeded the growth achieved by S's portfolio by an annualised average of 1.5% over the previous five years.

This is of course one measure and it is one that does indeed demonstrate outperformance. But what can't be ignored was that JR wasn't advising Mr T to transfer to that particular portfolio – it was recommending one with a lower risk categorisation which, as its own analysis showed, had not nor was not, likely to outperform Mr T's GPP. Thus I don't find the analysis JR directed our Investigator towards to be a particularly useful measure. And in any event, as JR knows, past investment performance is no reliable indicator of future investment performance.

I've thought about JR's comments that the transfer advice it gave Mr T was suitable because his GPP was invested in completely the wrong portfolios given his appetite for risk and his desired investment strategy. Mr T's GPP invested in two of S's portfolios both categorised as 'progressive'. But I can't accept that transferring wasn't the only way Mr T could realign his pension investment strategy with his attitude to risk if that was something he wanted to do. S offered a wide range of different funds/portfolios with different risk categorisations that Mr T could have moved to. I think to suggest otherwise is misleading.

So for the reasons I've given here it follows that I think JR mislead Mr T when it was advising him. It is worth mentioning that our Investigator also thought the same and that JR accepted our Investigator's findings.

The advice fees

As I think that JR provided Mr T with incomplete and therefore misleading information in relation to his GPP with S, I now have to consider whether Mr T should pay JR's invoice for the transfer advice it gave.

From the evidence I've seen, I think that the fees were clearly conveyed to Mr T and reinforced in subsequent meetings and the recommendation report. So I have no issue with the fact JR made Mr T aware of its charges.

Despite JR's transparency about its fees, it doesn't automatically follow that it has treated Mr T fairly by invoicing him and requiring he pay them. I have to consider what would have happened had things proceeded as they should have done. If JR had had due regard to Mr T's information needs and best interests and treated him honestly and fairly.

The justification for the additional cost associated with transferring was cited by JR in the recommendation report as the benefit of accessing drawdown. It said this benefit outweighed the increase in charges Mr T would see. But if it was treating Mr T fairly and acting in his best interests, JR would have mentioned the option to switch to a different product offered by S and highlighted the difference in fees. Mr T could then have decided for himself what he wanted to do.

In its final response letter, JR said to Mr T that whilst it had considered other pension providers it had discounted them and one of the reasons it gave were their charges. Unfortunately for JR, this analysis doesn't appear to bear closer scrutiny. I say this because S's annual management charge ('AMC') was 0.29% of the pension value. In contrast, by transferring, Mr T would incur JR's AMC of 1.49%, the wrapper provider's AMC of 0.26% and the investment manager's AMC of 0.3%. In total, by transferring Mr T was to incur total AMCs of 2.05% whereas by remaining with S, he would only be charged 0.29% annually.

I can't ignore either the one-off fees for making the transfer – these totalled £10,677.42 and were to come from Mr T's pension fund on transfer. In contrast, S said it would switch Mr T's pension free of charge. Thus, given the additional cost associated with the transfer (in comparison to remaining with S), I don't fully understand why the option to switch to another product offered by S wasn't communicated to Mr T. Nor do I understand why S was discounted as a provider on the grounds of cost when its charges were significantly lower and especially if, as JR itself states, cost was a significant influencing factor in the advice it was giving.

I think given Mr T's comments about S being reputable, the union's negotiations and him being anxious about transferring his pension, Mr T would have elected to remain with S and switch to another of its products in March 2022 had JR had regard to Mr T's information needs and treated him fairly. If it had, JR would have told Mr T about the option to internally switch products with S (free of charge) and it would have clearly explained the associated charges. Mr T could then have made an informed decision about what he wanted to do. Instead Mr T was basing his decision on incomplete information.

I also think it's likely that Mr T would have chosen to switch products with S because that is what he has consistently said he wanted to do. Similarly, if JR hadn't given misleading advice to Mr T about the performance of its recommended product versus the performance of his GPP, it is reasonable to think that this, along with the fact that he could switch to a different product with S free of charge, makes it even more reasonably likely that this is what he would have elected to do. And if that was the course of action he chose to take it follows he would have had no need to discuss his pension with JR again in late 2022. Thus he would not have gone on to sign its terms of agreement thereby agreeing to pay c£10,000 in fees for a service he did not require.

I've thought too about the letter Mr T received from S in August 2022 and whether it put him on notice at that point – and crucially five months before he signed the client agreement – that S could offer him flexi-access drawdown if he transferred his GPP to another of its products. Mr T told our Investigator that he had contacted S in the summer of 2022 to enquire about accessing his pension on a drawdown basis after being told by JR earlier in the year that it wasn't possible. He has also said he had heard from former colleagues that they had managed to obtain flexi-access drawdown without transferring away from S. Mr T said S told him during a phone call in early August 2022 that it was possible to move to a flexi-access drawdown product. He also said he asked S to put that information in writing. S did so in a letter dated 2 August 2022 which Mr T hand delivered to JR's offices a few days later.

The letter from S included a section entitled 'Your Pension Options' under which S said: "[S] may not be able to offer all of the options to every customer". One of the options was 'Flexible access to your pension savings'. Mr T said he understood from the telephone call and the letter that S could offer him flexi-access drawdown.

Mr S and JR were next in contact in early December 2022 when JR contacted him to let him know about an estate planning workshop it was running and to ask Mr T if he needed

anything further. Mr S has said he told JR he needed a will drawn up and that a meeting was then arranged for 5 January 2023. At the meeting Mr T says JR only wanted to talk about his GPP and not a will. He also said he felt placed under pressure because JR told him his fund value had fallen and he needed to act quickly. Mr T said he became emotional, panicked and signed the terms of agreement.

I asked our Investigator to ask Mr T why he signed JR's agreement when he knew by that point that S could offer him flexi-access drawdown. Mr T told our Investigator that he can't explain why he did sign but he just wanted the meeting to end because he felt pressured and vulnerable so he did it so that he could leave. Despite Mr T saying he can't explain why he signed JR's terms of agreement five months after it was confirmed to him that S could provide him with a flexi-access drawdown product, I can't reasonably ignore the fact that he did.

And I cannot know for sure what was said and why, or what took place at the meeting on 5 January 2023. But if JR had been clearer with Mr T, and treated him fairly in late 2021/early 2022, I think it is reasonable to assume that he would have switched products with S then (as he turned 55) and would thus have had no need for the advice he received from JR in late 2022/early 2023 about transferring. And if he had no need to take advice about transferring his GPP away from S just to obtain flexi-access drawdown it follows he would not have signed JR's terms of agreement.

I don't think it is fair or reasonable to require Mr T to pay for advice that was misleading and which wasn't provided – for the reasons I've set out above – in accordance with the FCA's rules. If JR had had regard to Mr T's information needs, engaged with him fairly, honestly and professionally and in his best interests, I don't think Mr T would have met with JR in January 2023 to discuss his pension. I think the meeting would have been solely confined to a discussion about Mr T's will which is what he thought the purpose of the meeting was for in any event. Had things gone as they should have done so I don't think Mr T would have signed the terms of agreement and thus made himself liable for a fee c£10,000. I think by that point, he would have transferred his GPP to one of S's drawdown plans.

So it follows that I don't think it is fair and reasonable in the circumstances for JR to charge Mr T for transfer advice he never needed.

Pressure

I won't repeat again why and when Mr T said he felt pressured by JR but I have set out above why he felt that to be the case. JR says it at no point coerced or pressured Mr T. Without being present at the meetings between Mr T and JR however, I cannot know what was or wasn't said. That said, I can see from JR's file that after Mr T said in March 2023 that he didn't want to proceed with the transfer because he felt mislead, it contacted him again in May 2023 to ask him if he was any further along with his transfer decision. Given that Mr T had already conveyed his position and explained his mental health to JR, I am not sure why it thought contacting him was a reasonable thing to do. And I'm also conscious, as I've already explained, that JR omitted to provide Mr T with information that it should have, throughout the process. And by mis-leading him in this way, I think it could be argued that JR was attempting to lead Mr T to a specific outcome.

Summary

If JR had been transparent with Mr T and had due regard to his best interests and information needs it would have conveyed to him the information it had received from S in late 2021; that his GPP didn't offer flexi-access drawdown but that it had other products that did and which it would transfer him free of charge. Given Mr T's expressed desire to remain

with S, his nervousness about transferring away from a company he considered to be reputable and the stress he expressed he was feeling, it is reasonable to assume that if JR had treated Mr T fairly and provided him with all the information he needed to make a fully informed decision then he would have chosen to switch to another product offered by S. That he would have done so is further reinforced by his subsequent actions. He remains with S to this day.

Had Mr T been in possession of all the information he needed to make a fully informed decision in early 2022 about what was best for him, he would have had no need to return to JR in late 2022 or to proceed to full transfer advice. He would not have signed its terms of agreement and, in the process, made himself liable for the associated fee. I don't think that it is fair for Mr T to have to pay an invoice for advice he was mis-lead into believing he needed. It is clear to me, from the available documentary information, that Mr T would not have chosen to move his pension to JR if he thought he could have switched to another of S's products. By withholding the information it received from S from Mr T, JR failed to act in his best interests. It follows that I don't think its transfer advice was reasonably needed or its fee fairly charged in the circumstances.

In reaching this provisional decision, I take into account too JR's misleading comments to Mr T about its own portfolio outperforming S's when in reality the analysis it provided doesn't support such a conclusion.

Mr T was in poor health when he approached JR and I think, for the reasons I have given here, its failure to treat him fairly when he was already unwell (and facing the uncertainty of not being able to return to work and wondering how to fund his future) has caused him un-necessary distress and inconvenience.

Of course, sorting out a pension and making sure there is adequate income in place for the rest of your life comes with a certain degree of stress attached to it; that I accept. But where a financial business, through its words or deeds makes an already stressful situation worse, the Financial Ombudsman Service can require it to compensate a consumer for the distress and inconvenience they are caused above and beyond that which is normally associated with a transaction of this nature. I've thought carefully about what compensation award to make for Mr T and, in so doing, I've taken into account awards this Service has made in complaints with similar circumstances. I am requiring JR to pay Mr T compensation of £500 for the trouble and upset its misleading advice has caused him."

Mr T responded to my provisional decision to say that he accepted my findings.

JR replied to my provisional decision to say it accepted the redress I had set out provisionally, namely to waive its fee and to pay Mr T compensation of £500, and had no further comments to make.

As neither party has made any substantive comment in response to my provisional decision, my provisional findings therefore now form part of this, my final decision.

Putting things right

For the reasons I have given here in my final decision (along with the reasons I gave in my provisional decision), I require JR to withdraw the invoice for £9,097.23 it sent to Mr T for the un-necessary transfer advice it gave him in late 2022/early 2023. I also require it to pay Mr T compensation of £500 for the trouble and upset its misleading advice has caused him.

My final decision

My final decision is that I uphold this complaint and I require PlanHappy Investment Management Limited trading as Joslin Rhodes Pension & Retirement Planning to take the steps I have set out in the *'Putting things right'* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 June 2024.

Claire Woollerson
Ombudsman