The complaint

Miss J held two occupational pensions with previous employers. One was a defined benefit ("DB") pension and the other was a defined contribution ("DC") pension. She's complained about the advice given to her by GSI Wealth Management Limited to transfer the DB pension and to switch the DC pension to a personal pension. She's also complained about ongoing fees she paid for a period of time when she didn't receive any advice.

What happened

Miss J approached GSI to discuss her pension and retirement needs. GSI completed a *Fact Find* on 12 January 2010 to gather information about Miss J's circumstances and objectives. This recorded that:

- Miss J wasn't working due to permanent disability
- she wanted to retire at age 60
- her attitude to risk was 'Realistic' – which was described as being prepared to accept a moderate risk to the capital to enhance potential returns but accepting that capital volatility was likely
- she wanted to utilise two pensions she held with previous employers.

A *Pension Performance Review* was signed by Miss J on 4 March 2010. This asked several questions about her risk tolerance and pension requirements. It said:

- consolidating the pensions to a single provider would be highly beneficial, all other things being equal
- it was important to Miss J that she move her funds to a pension that gave her full control over the investment strategy
- her top four (out of 10 listed) priorities were investment choice and fund flexibility, retirement age flexibility, personal control and consolidation of her pensions.

'Moderate Aggressive' was handwritten on the front page of the form, which was GSI's assessment of Miss J's attitude to risk based on the answers she'd given.

On 23 March 2010 GSI recommended a personal pension as a suitable plan for Miss J's circumstances. It also recommended that her pension be invested in the GSI Moderate Aggressive Fund. The suitability report said:

- Miss J wanted to transfer the DB pension
- the employer wanted to transfer the DC pension to a Section 32 plan
- Miss J wanted to transfer her pensions to a system which offered the opportunity to obtain a better return over the longer term
- the advisor said he compared the charges of the previous DC pension and the new personal pension but still recommended the transfer.

Miss J signed an Online Submission Declaration for a Collective Retirement Account (which was the product later recommended by GSI) the same day.

GSI obtained a transfer analysis ("TVAS") report. This said:

- Miss J's expected pension from the DB pension at aged 60 was £7,381.98
- the cash equivalent transfer value of the DB pension was £35,696.83
- the critical yield (the amount the new pension needed to grow by to match the benefits of the DB pension) was 12.1%
- the prospective benefit that might be provided by the new pension with 9% growth each year was £7,350.

On 16 April 2010 GSI recommended that Miss J transfer the DB pension and switch the DC pension to a personal pension with a fully integrated income drawdown facility. The recommendation report summarised GSI's recent discussions with Miss J and said:

- another report dated the same day (I'll refer to this as 'the other report') recommended that Miss J not transfer the DB pension; but she'd rejected that advice as her overriding objective was to consolidate her pensions and gain control of her investments
- so she'd asked GSI to investigate the options available and to advise on the most appropriate course of action
- Miss J's attitude to investment risk was 'Moderately Aggressive'
- the cost of the advice was £ 1,657.05 – which covered the initial advice and recommendation, a regular review of Miss J's income, investment advice (including rebalancing the investments and regularly reviewing their performance and suitability) and an ongoing review of Miss J's circumstances to ensure the product remains suitable for her.

Miss J signed a declaration on 28 April 2010 confirming:

- she understood the recommendations and risk warnings in the report
- if she transferred [the DB pension] a growth rate of 12.1% was needed to match the benefits of the existing pension
- she had a moderate level of investment knowledge and a moderate aggressive attitude to investment risk
- her overriding need prompting her to transfer was to consolidate her pensions and to have control over the investments.

Miss J followed the advice and the pensions were transferred in June 2010.

Miss J complained in 2023 to GSI about the suitability of the advice. She said she wasn't told about the ongoing costs and that she'd not received any ongoing advice until she'd recently contacted GSI.

GSI partially upheld Miss J's complaint. It said its recommendation was that Miss J not transfer her pensions but she insisted on going against the advice so the resulting recommendation was the next best solution. It also said a fee agreement Miss J signed in October 2012 set out the service she would receive and the fee she would pay. GSI nevertheless noted that from 2013 to 2021 Miss J hadn't had any contact with it or received any annual review – something it said it shouldn't have allowed to happen. It therefore offered Miss J £4,300.55, which was 50% of the fees she'd paid during that time. This offer was later increased to £6,750.

Miss J remained unhappy so she referred to matter to us. She denied receiving advice to not transfer her pension – on the contrary, the advice was to amalgamate them. She also said the advisor never explained the charges to her.

One of our investigators upheld the complaint and felt GSI should pay compensation. In summary, she felt GSI had given Miss J unsuitable advice and it hadn't provided her with sufficient information in order to make a fully informed decision. Our investigator noted there was no dispute that GSI hadn't provided the service it had agreed to provide.

GSI disagreed, saying:

- although it hasn't been able to provide a copy of the report recommending that Miss J not transfer her pensions the report it has provided referred to that advice
- Miss J had a clear wish to combine her pensions and she'd already decided to go against the advice before the report had been issued
- Miss J was aware how much the new pension needed to grow by in order to match the previous one.

Our investigator wasn't persuaded to change her opinion so the complaint was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I've reached my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below isn't a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of GSI's actions here:

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly*
- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*
- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)*
- the provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability
- 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 other report

One of GSI's main arguments is that Miss J was an *insistent client* – essentially, that she wanted to proceed with the transaction against the advice she'd been given. Miss J has denied being advised to not transfer her pensions. On the other hand, as GSI has pointed out, the report dated 16 April 2010 that I've seen does refer to the other report and the advice to not transfer.

However, in my view, GSI not being able to provide a copy of the other report seriously undermines its position. GSI was required to act honestly, fairly and professionally in Miss J's best interests and to provide her with information that was clear, fair and not misleading. So, its recommendation to not transfer had to be clear and Miss J had to have understood the consequences of going against the recommendation. As I haven't seen the report I don't know what GSI actually said or how it said it ie how clear its explanation was. There's also no evidence that the report was actually sent to Miss J.

Further, I think it was good industry practice for businesses to ensure that customers who wanted to go ahead with a transaction against an advisor's recommendation should have it clearly documented that they were acting against the recommendation, and that they wanted to proceed in any event. I'm not persuaded the report I have seen sufficiently documents this.

I also think the two reports being dated the same day undermines any recommendation to not transfer and confuses the message as to what GSI's recommendation actually is. It also didn't give Miss J sufficient time to digest the content of the other report.

Finally, it's not clear to me why Miss J needed to sign the Online Submission Declaration on 23 March 2010 when at that point (a) GSI hadn't conducted any analysis as to whether transferring the DB pension would be in Miss J's best interests, (b) it hadn't made any recommendation to transfer the DB pension, and (c) it hadn't even recommended the Collective Retirement Account.

In any event, despite the above reservations I don't think the other report or the fact GSI might have originally recommended that Miss J not transfer her pensions has any material relevance to the outcome of the complaint. That's because the fact remains that GSI did ultimately advise Miss J to transfer her DB pension and switch her DC pension to a personal pension. In effect, this advice in my view superseded any advice to not transfer. So, irrespective of the other report and its content, my role is to assess whether the ultimate advice to transfer the DB pension and to switch the DC pension was suitable.

There were two separate pensions in the transaction and I think the critical issues are different for each one. I'll therefore address the transfer of the DB pension first before moving on to the switch of the DC pension.

DB pension transfer

The regulator states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, GSI should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Miss J's best interests. Having looked at all the evidence available I'm not satisfied it was in her best interests.

The financial viability of the transfer is an important point I consider in any complaint like this. There are two things I normally look at – the likelihood of the consumer being better off by transferring and the consumer's capacity to absorb the loss of their pension if things go wrong.

The TVAS shows the critical yield as 12.1%. 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.

Businesses weren't required to refer to these rates when giving advice on pension transfers, but 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.

Miss J was 42 at the time of the advice and she wanted to retire at 60. The critical yield of 12.1% compares with the discount rate of 6.5% per year for 18 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7% and the lower projection rate 5%. I've taken this into account, along with the composition of assets in the discount rate, Miss J's moderate aggressive attitude to risk and the term to retirement. I think Miss J was likely to receive benefits of a materially lower overall value than the DB pension at retirement as a result of investing in line with her attitude to risk.

GSI has pointed to the TVAS report containing details of the comparative benefits for the DB pension and to a declaration Miss J signed confirming the growth needed to match the DB pension benefits. I don't think this makes any difference to the outcome of the complaint. That's because GSI providing Miss J with information so that she could make an informed choice was only part of its responsibility. It still had to treat her fairly and make a suitable recommendation in her best interests. And no matter how clear the information is, giving it to Miss J doesn't make an unsuitable recommendation suitable.

Miss J's DB pension would have provided a guaranteed income in retirement whereas the income from the personal pension isn't guaranteed as it depends on the performance of the underlying investments. Miss J held the two pensions at the heart of this complaint and she would also be entitled to any State pension. The *Fact Find* doesn't mention any other pensions or any other significant investments. The DB pension therefore made up a significant proportion of Miss J's retirement income and I don't think she had sufficient capacity to absorb the loss of the pension income should the investments under the personal pension fail or not perform as expected.

So on a financial viability basis alone a transfer out of the DB scheme wasn't in Miss J's best interests – the new pension was unlikely to grow by enough to provide the same benefits as the DB pension; and Miss J didn't have sufficient capacity to absorb the loss of this pension income should things go wrong.

Financial viability isn't the only consideration when giving transfer advice – there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. But I'm not aware of any in this case.

Based on what I've seen Miss J didn't have concrete retirement plans. As she had 13 years before she could even think about accessing her pension (ie at age 55) I think it was too soon to make any kind of (irreversible) decision about transferring the DB pension. So, I don't think it was a suitable recommendation for Miss J to give up her guaranteed benefits in 2010 when she didn't know what her needs in retirement would be. If Miss J later had reason to transfer out of her DB pension she could have done so closer to retirement.

I think Miss J's stated desire for control over her investments was taken at face value by GSI without any further interrogation and was overstated. From what I've seen she wasn't an experienced investor and I can't see that she had an interest in or the knowledge to be able to manage her investments on her own. So, I don't think this was a genuine objective for Miss J – it was simply a consequence of transferring away from her DB pension.

The only reason I can see for why GSI recommended that Miss J transfer her DB pension is so that she could consolidate it with the DC pension. This does appear to have been Miss J's preference. But GSI wasn't there to just transact what Miss J might have thought she wanted. Its role was to really understand what she needed and recommend what was in her best interests. I think GSI's comment that as Miss J had gone against the advice to not transfer the resulting recommendation was the next best solution is telling. The *next best* solution doesn't mean it was a *suitable* solution.

Ultimately, I don't think the advice given to Miss J in respect of the DB pension was suitable and GSI hasn't sufficiently demonstrated that the transfer was in Miss J's best interests. She was giving up a guaranteed, risk-free and increasing income. And by transferring, she was very likely to obtain lower retirement benefits and in my view there were no other particular reasons which would justify a transfer and outweigh this. Miss J shouldn't have been advised to transfer out of the DB pension just so that she could consolidate it with the DC pension. Accordingly, I think GSI should have advised Miss J to remain in the DB pension.

DC pension switch

In 2009 the regulator published a report and checklist for DC pension switches that is still applicable. The checklist identified four main areas where consumers had lost out:

- they'd been switched to a more expensive pension without good reason
- they'd lost benefits due to the switch without good reason
- they'd switched to a pension that didn't match their recorded attitude to risk and personal circumstances
- they'd switched to a pension where there was a need for ongoing investment reviews but this wasn't explained, offered or put in place.

When recommending a pension switch I expect an advisor to show that a comparison was made between the old pension and the new one. And the reasons for switching need to be sound – the potential to be better off had to be enough to more than compensate for the risk that the consumer might end up worse off.

Like the DB pension, the main reason behind GSI's recommendation appears to be Miss J's desire to consolidate the pension. But as GSI should have advised Miss J to remain in the DB pension there wouldn't have been a need to consolidate the DC pension with the DB pension.

Reference was made in the March 2010 report to Miss J having a more adventurous attitude to risk than what was offered by her existing pensions. There was a brief comment in the report about the advisor researching the funds available from the existing pension provider and them not having funds suitable for Miss J's requirements. But there was no commentary on why that was eg what funds were available and why they weren't suitable. And it's unclear whether the advisor researched the existing provider or the proposed new Section 32 plan provider. I think it's unlikely that the proposed arrangement wouldn't have provided an investment option for a 'more adventurous' investor – which calls into question the reason behind the recommendation.

There was also no comparison of the benefits likely to be provided by the Section 32 plan Miss J's previous employer was planning on moving the pension to and the personal pension recommended by GSI in either of the recommendation reports. The only comparison is in respect of costs (in the March 2010 report) where the advisor essentially says that despite the new pension being more expensive the advisor still recommended the switch. But, as outlined above, the regulator had highlighted switches to a more expensive pension without good reason as being an issue they'd identified where consumers were losing out. And given my conclusions on the consolidation of the pensions and the lack of information about the investments in the existing arrangements I don't think GSI has shown there was a 'good reason' for recommending the switch.

In summary, for the advice to be suitable there had to be reasonable potential for Miss J to be better off by switching. As there's no comparison between the two pensions I don't think GSI has shown that Miss J had the potential to be better off. And I'm not persuaded that its two main reasons for recommending the transfer – consolidation and investment fund choice – were sound.

Accordingly, I don't think the advice given to Miss J in respect of the DC pension was suitable. In my opinion, she was advised to switch to a more expensive pension without good reason. Miss J shouldn't have been advised to switch the DC pension to a more expensive one just so she could consolidate it with the DB pension or so she could have a different choice of investment funds. I think GSI should have advised her to remain in the DC pension.

Would Miss J have transferred regardless?

I've considered whether Miss J would have gone ahead anyway and insisted on transferring the DB pension and switching the DC pension against GSI's advice – something GSI has alluded to. I'm not persuaded that she would have done so. I say this because she was an inexperienced investor and her pensions (particularly the DB one) accounted for the majority of her retirement provision outside of the State pension. I'm not persuaded that her wish to consolidate the pensions was so great that she would have insisted on transferring/switching knowing that a professional advisor, whose expertise she had sought out and was paying for, didn't think it was suitable or in her best interests.

So, if GSI had provided Miss J with clear advice against transferring/switching the pensions, with clear explanations as to why transferring/switching wasn't in her best interests, I think it's most likely that advice would have carried significant weight and she would have accepted it. So I don't think Miss J would have insisted on transferring the DB pension or switching the DC pension.

In light of the above, I think GSI should compensate Miss J for the unsuitable advice.

Ongoing charges

There isn't a dispute here in respect of whether or not GSI treated Miss J fairly or not as GSI has already accepted (in response to Miss J's initial complaint) that it hadn't "done its best" as the death of the previous adviser left her without contact which was something it shouldn't have allowed to happen and has agreed (in response to our investigator) there was no dispute that GSI failed to provide the service it had agreed to.

I don't think I need to comment specifically on what GSI now needs to do to put this issue right because the redress I outline below automatically takes account of the fees and ongoing charges Miss J was charged.

Distress and inconvenience

Our investigator concluded that GSI should pay Miss J £500 compensation for the distress and inconvenience she suffered by discovering that she could be worse off in retirement as a result of GSI's actions when advising her on her retirement plans.

Although the advice dates back to 2010 it was only in the last year or so that Miss J discovered there might have been a problem with it – so she didn't suffer distress or inconvenience as a result of the advice over a number of years. Similarly, I don't think GSI not contacting Miss J between 2013 and 2021 was at the forefront of her mind or caused her any significant issues at the time – she would have been aware that there hadn't been any contact and if there was a problem I think it's likely she would have contacted GSI herself. So again, she didn't suffer distress or inconvenience as a result of the 'non contact' over a number of years.

I usually consider making a business pay compensation when I think its error caused a consumer more than a basic level of frustration and annoyance that might reasonably be expected in day-to-day life and the impact has been more than just minimal. I usually consider an award between £300 and £750 fair where I think the impact of a business's mistake caused the consumer considerable distress, upset and worry and/or significant inconvenience and disruption that needed a lot of extra effort to sort out.

However, I do think it's likely that Miss J suffered considerable distress as a result of discovering that her main pension income was likely to be reduced as a result of GSI's advice. And I think she was put to some inconvenience in trying to sort the problem out. Our investigator's suggestion is in the region of what I would normally award in this situation so I agree that £500 is fair and reasonable.

Putting things right

DB pension transfer

A fair and reasonable outcome is for GSI to put Miss J, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Miss J would have most likely remained in the DB pension scheme if suitable advice had been given.

GSI 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, compensation should be based on the scheme's normal retirement age of 60, 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 Miss J'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, GSI should:

- calculate and offer Miss J redress as a cash lump sum payment
- explain to Miss J before starting the redress calculation that:
    - the 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 the redress prudently is to use it to augment her DC pension
- offer to calculate how much of any redress Miss J receives could be augmented rather than receiving it all as a cash lump sum
- if Miss J accepts GSI's offer to calculate how much of her redress could be augmented, request the necessary information and not charge Miss J for the calculation, even if she

ultimately decides not to have any of her redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Miss J's end of year tax position.

Redress paid directly to Miss J as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), GSI may make a notional deduction to allow for income tax that would otherwise have been paid. Miss J's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

DC pension transfer

My aim is that Miss J should be put as closely as possible into the position she would probably now be in if she had been given suitable advice. I take the view that Miss J would have remained with her previous provider initially and then switched to the proposed Section 32 plan. However, I can't be certain that a value will be obtainable for what the Section 32 plan would have been worth. I'm satisfied what I have set out below is fair and reasonable, taking this into account and given Miss J's circumstances and objectives when she invested.

To compensate Miss J fairly, GSI must:

- Compare the performance of Miss J'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.

- Add any interest set out below to the compensation payable.

- If there is a loss, pay into Miss J's pension plan to increase its value by the total 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 GSI is unable to pay the total amount into Miss J's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount 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 Miss J won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Miss J's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume that Miss J is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Ms J 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%.

- Provide the details of the calculation to Miss J in a clear, simple format.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Skandia pension	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving Miss J's acceptance)

The *actual value* is the actual amount payable from the investment at the end date. The *notional value* is the value of Miss J's investment had it remained with the previous provider and moved to the Section 32 plan until the end date. GSI should request that the previous provider calculate this value.

Any withdrawal from the Skandia 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 is a large number of regular payments, to keep calculations simpler, I'll accept if GSI 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, GSI will need to determine a fair value for Miss J's investment instead, using this benchmark: for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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.

I've decided on this method of compensation because:

- Miss J wanted Capital growth with a small risk to her capital
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate
    - the average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital
    - 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.
    - I consider that Miss J's risk profile was in between, in the sense that she was prepared to take some level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Miss J into that position. It does not mean that Miss J would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return she could have obtained from investments suited to her objective and risk attitude.

Distress and inconvenience

For the reasons outlined above, GSI should pay Miss J £500 for the distress and inconvenience caused.

My final decision

I uphold the complaint. I require GSI Wealth Management Limited to pay compensation as outlined under the ‘Putting things right’ heading above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss J to accept or reject my decision before 26 September 2024.

Paul Daniel
Ombudsman