DRN-5154357

The complaint

Mr F complains about the advice given by JLT Wealth Management Limited ('JLT') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr F was a deferred member of his former employer's DB scheme. In early 2011 the trustees of Mr F's former employer made the DB scheme members an offer. The trustees offered the scheme members an enhanced cash equivalent transfer value ('CETV') of their scheme benefits if they transferred their benefits out of the DB scheme. The offer was available until 28 April 2011.

In addition to the financial incentive offer made to the DB scheme members, the trustees of the DB scheme also engaged the services of JLT to provide them with advice on remaining a member of the DB scheme or transferring out of the scheme to another arrangement. The cost of the advice was met by Mr F's former employer. The advice didn't include a full review of members' wider financial planning needs – JLT's recommendations were confined only to the suitability of transferring individual DB scheme benefits.

Soon after, Mr F received information from his DB scheme which showed that his CETV (guaranteed until 28 April 2011) was worth £113,844.41. The information also showed that if Mr F chose to transfer his benefits away from the scheme, his CETV would be enhanced to a value of £125,228.85 from which he could choose to take £5,692.22 as an immediate cash payment.

Mr F took up the scheme's offer of funded transfer advice from JLT and in early April 2011, JLT completed a fact-find with him. The fact-find recorded information about Mr F's circumstances and objectives. It showed:

- Mr F was aged 55, married and in good health with no dependents.
- That Mr F was unemployed. His normal pension age was 65 and he did not want to take his pension benefits before then.
- Aside from his deferred DB scheme, Mr F's only other pension (aside from any state pension entitlement) was a personal pension valued at £4,000.
- Mr F owned a property valued at £300,000 on which there was an outstanding mortgage of £45,000. Mr F had credit card debt of £4,000 and a bank overdraft of £1,500. No savings or investments were noted.
- Mr F ticked a box on the form to say he would like a cash sum now at the cost of sacrificing future pension benefits. Mr F also ticked a box to say the DB scheme was a major proportion of his retirement funding.
- Mr F ticked another box to say that his health worries meant he may have difficulty arranging life insurance so the additional death benefits offered by a personal pension plan were of interest to him.

- Mr F ticked another box to say he preferred not to move his pension to a personal pension plan under his control. He also ticked ‘yes’ to say that tax-free cash (‘TFC’) at retirement was important to him.

The fact-find also included a section for the assessment of Mr F’s attitude to risk (‘ATR’). The options (with descriptors) were ‘very cautious’, ‘cautious’, ‘balanced’, ‘adventurous’ and ‘speculative’. None of the boxes were ticked by Mr F however he did provide percentages for which risks he would like his pension to be invested in. Mr F said he wanted his personal pension invested 60% in cautious investments, 20% in adventurous investments and 20% in speculative investments.

On 13 April 2011, JLT provided Mr F with a pension transfer analysis (‘TVAS’) report which explained the annual investment return (also known as the ‘critical yield’) the personal pension would need to achieve in order to be able to match the benefits offered by Mr F’s DB scheme. In Mr F’s case, in order to be able to match the DB scheme’s benefits at the scheme’s normal retirement date (‘NRD’) of age 65 the critical yield was 5.3%. That was assuming Mr F took the cash incentive payment now and the maximum possible TFC of 25% at retirement. The TVAS also set out the DB scheme benefits that Mr F would be giving up at his NRD namely TFC of £41,791.77 and an annual pension of £6,268.77.

Also on 13 April 2011 JLT produced a suitability report in which it advised and recommended that Mr F transfer his DB pension benefits into a personal pension and invest the proceeds with a provider I shall call ‘A’ in four of its funds as follows;

- 30% in a gilt index fund
- 30% in a UK equity index tracker fund
- 20% in a global equity index tracker fund
- 20% in an overseas equity consensus index tracker fund

The suitability report said the reasons for this recommendation were:

- So Mr F could immediately access a cash payment of £5,692.22 which he wanted for undisclosed reasons.
- That the critical yield of 5.3%, taking Mr F’s particular risk profile into account, was within JLT’s recommendation range (the upper limit of the range cited as being 6.4%).
- That transferring could provide a higher level of TFC than that offered by the DB scheme.
- The reasons Mr F had for transferring conflicted with his preference not to have an individual pension that was under his control.

The suitability report also set out the options Mr F currently had before him, namely to remain a deferred member of the DB scheme, to transfer his DB benefits to a personal pension plan, a stakeholder pension or a Section 32 buy-out policy or to take his DB pension benefits now (as he was aged over 55). The suitability report explained the advantages and disadvantages of each option.

The suitability report also listed Mr F’s objectives for wanting to transfer. These were:

- To obtain a cash sum now (for reasons undisclosed).
- Because the DB scheme represented a major portion of his retirement funding
- That because of his health worries he may have difficulty arranging life cover so the death benefits available through a personal pension were of interest to him.
- Because he didn’t want to move his DB scheme to a plan under his control.

- Because taking TFC at his NRD was important to him.
- Because inflation protection wasn't important to him.

On 22 April 2011, Mr F completed the option form confirming that he had received independent advice from JLT and had chosen to take the enhanced transfer and to take the cash payment now. Mr F also completed an application form for the personal pension plan with A. He returned the forms to JLT. A few days later, JLT called Mr F to discuss the potential advantages, disadvantages and risks associated with its advice to transfer. During the call Mr F told JLT he had no real health concerns and hoped to be back at work soon.

The transfer went ahead shortly after. JLT's advice was paid for by Mr F's former employer; his new personal pension with A was subject to a 0.32% annual management charge.

In March 2024, Mr F complained to JLT about the suitability of the transfer advice it had given him. He said JLT owed him a duty of care which it had failed to extend to him. Mr F also said that JLT had failed to inform him about the advantages and disadvantages of transferring his DB benefits and had provided him with negligent advice. Mr F said his DB scheme was one he could not afford to lose and that the transfer had exposed him to investment risk. Finally, Mr F said he had suffered a loss as result of the negligent advice he had received from JLT.

JLT looked into Mr F's complaint but didn't think it had done anything wrong. It said that:

- It had made Mr F fully aware of the different options available to him.
- Its advice had been limited to the transfer.
- It had recently reviewed the advice it had given Mr F and was satisfied that the growth rate cited in the suitability report was reasonably achievable in his circumstances.
- The investment split was appropriate for Mr F's ATR.

Unhappy with the outcome of his complaint to JLT, Mr F complained to the Financial Ombudsman Service. One of our Investigators looked into Mr F's complaint and recommended that it was upheld. She said that the advice given by JLT to Mr F to transfer was unsuitable and that there were no other compelling reasons to justify Mr F's risk-free benefits being given up. Our Investigator required JLT to compensate Mr F in line with the regulator's guidance.

JLT disagreed with our Investigator's findings. It provided no further comment but asked for the complaint to be referred for an ombudsman's 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'). 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 applicable rules, regulations and requirements

What follows 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.

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. 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 for largely the same reasons given by our Investigator.

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, JLT should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr F's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

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 critical yield required for the personal pension to be able to match the benefits offered by the DB scheme at NRD was 5.3% if Mr F took the TFC (which he had indicated he intended to do). This compares with the discount rate of 5.8% per year for 9 years to retirement in this case. For further comparison the regulator's upper projection rate at the time was 9%, the middle projection rate was 7%, and the lower projection rate 5%. So in order to achieve benefits that were better than those offered by the DB scheme he was giving up, Mr F's personal pension fund had to provide a greater annual return than 5.3% each year. This figure is slightly lower than the discount rate of 5.8% but slightly higher than the regulator's lower growth rate.

I've taken this into account, along with the composition of assets in the discount rate, Mr F's cautious ATR risk and also the term to retirement. Based on these factors it appears that transferring could have been financially viable in Mr F's case and that there was the potential for the recommended plan to be able to offer increased benefits at retirement. Indeed, I note from the suitability report that financial viability was one of the principal reasons JLT gave for recommending that Mr F's transfer.

But I can't ignore the fact that, based on the evidence of his financial circumstances gathered by JLT at the point of advice, Mr F had no real capacity for loss. He had no savings or investments and, by his own admission, the safeguarded benefits of his DB scheme represented a major portion of his retirement funding. And while he apparently held another personal pension elsewhere, it appeared to be quite low in value. But in any event, Mr F's DB scheme gave him a guaranteed, index linked and increasing pension for life. As such it could have acted as a safeguarded base upon which Mr F could build any additional retirement provision he may accrue through any future employment (Mr F having told JLT during the phone call that he hoped to return to employment very soon). And his small personal pension plan – likely together with any future occupational pension provision he may accrue – meant he was already exposed to investment risk, management charges and costs.

Just because the critical yield fell within JLT's limit of tolerance didn't make the advice to transfer suitable. So whilst the transfer itself was potentially financially viable I can't agree that Mr F had any capacity for loss nor do I think it was in his best interests to expose all his retirement saving to investment risk. Of course financial viability isn't the only consideration when giving transfer advice, as JLT has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Attitude to risk

As I've already stated, at the time of the advice Mr F had no savings and investments, had unsecured debt and was unemployed. In the circumstances, I think that JLT's assessment in the suitability report that Mr F's actual ATR was 'cautious' was an accurate reflection of his ATR at that point in time. That being the case, I would have expected JLT's investment recommendation to reflect Mr F's ATR. So it is unclear to me why JLT didn't challenge or interrogate Mr F's view, as someone with a cautious ATR, that he wanted to invest 40% of his pension in high-risk funds. Nothing in Mr F's circumstances or profile support the decision to invest a significant portion of his pension in speculative funds. I would expect someone who wanted to invest in such funds to display some evidence of previous investment experience.

As noted by JLT in the suitability report, Mr F's DB scheme constituted the majority of his retirement funding so it wasn't something he was in a position to gamble with. As the 'cautious' descriptor in the suitability report states, *"As a 'cautious investor' if you proceed with the transfer, the monies will be placed in a fund/funds broadly invested in 50% shares with the balance in gilts and bonds. The riskier shares component will, 10 years prior to retirement, begin to be gradually switched to less riskier gilts/bonds and cash."* And at the point JLT was advising Mr F, he was only nine years from his NRD.

If JLT was acting in Mr F's best interests, I think that it should have assessed his ATR in greater depth than it did. As I've mentioned above, the ATR section on the fact-find was not completed so it is not readily apparent to what extent Mr F's ATR was discussed with him nor how he decided the risk percentages he wanted his personal pension invested in. Given JLT's overall assessment of Mr F's ATR as stated in the suitability report was 'cautious', I think that if it was treating Mr F fairly, and having due regard to his information needs, then his stated desire to invest 40% of his pension in high-risk funds warranted exploration by JLT. I think that, had it done so, it would have likely discovered that Mr F was not in a position to risk 40% of his pension in high-risk investments. So I can't agree with JLT that the investment split it advised for Mr F was appropriate for his ATR.

The cash incentive

The cash incentive of £5,692.22 which Mr F initially told JLT he wanted for undisclosed reasons before stating during the phone call that post-dated the suitability report that it would help tide him over until he found another job was more of a 'nice to have' rather than a financial need (Mr F told JLT during the phone call that he anticipated returning to work in the near future). Mr F's objective of obtaining the cash incentive did not displace the need for JLT to provide him with suitable advice that was in his best interests, even if that advice challenged any pre-conceived intentions Mr F may have had. The strength of any such intentions must be considered alongside his lack of experience in making serious investment decisions such as to transfer his DB scheme. Mr F couldn't know whether his intentions were in his best interests – he was relying on JLT's expertise to assist him.

I can't see that JLT explored with Mr F whether there was any other way of him continuing to manage without an income until he returned to work, without the need to make an irreversible decision that involved him giving up the guarantees associated with his DB scheme. I think that if JLT had had more regard to the FCA's starting premise that the transfer of a DB scheme is unsuitable it should have advised Mr F that transferring to obtain £5,692 (before tax and NI deductions) wasn't in his best interests. Mr F was being advised to transfer to obtain a very short-term benefit whilst simultaneously putting its long term needs at un-necessary risk.

And I can't ignore that Mr F made it clear during the phone call that he understood that he would only receive about £4,500 after tax and national insurance deductions. This meant that Mr F would not get the full amount. I accept that during the phone call JLT advised Mr F about the risks associated with both DB schemes and personal pensions, but JLT was there to advise Mr F about what was in his best interests. And I can't agree that, whilst the offer of instant money was no doubt attractive to Mr F, it was not in his best interests to have transferred his DB scheme in order to obtain it.

So I don't think that the cash incentive was a sufficiently strong enough reason on which to base a transfer recommendation. It wasn't suitable to advise Mr F to transfer his DB scheme in order to access such a relatively small sum of money for which there potentially existed other means, unexplored by JLT, to raise it. That's especially the case given the guarantees he would be giving up in order to access it.

Flexibility and income needs

Mr F was only 55 at the time of the advice and based on what I've seen he had no concrete retirement plans, indeed he was planning to return to work having been out of work for a year due to a physical injury. According to the fact-find, Mr F expected to work until he was age 65.

As Mr F had 9 years before he thought he would retire, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr F to give up his guaranteed benefits in 2011 when he didn't know what his needs in retirement would be. If Mr F later had reason to transfer out of his DB scheme then that could have been done closer to retirement.

Another of the objectives identified by JLT was that it was important to Mr F that the transfer could potentially provide him with more TFC at retirement than the DB scheme. But in transferring from the DB scheme, Mr F was giving up guaranteed TFC at retirement for TFC that was dependent on investment performance. And I don't think that JLT fully explained this to Mr F. I can see that JLT advised that it was easier to calculate the TFC due under a personal pension but I don't consider any simplicity of calculation justifies the suitability of the transfer.

Death benefits

One of the objectives cited by JLT in the suitability report for Mr F wanting to transfer was that his health worries meant he may have difficulty arranging life cover so the death benefits available through a personal pension were of interest to him.

However, when JLT asked Mr F about this during the phone call (which post dated the recommendation to transfer in the suitability report), Mr F said he had no health issues. He explained about a physical injury he had had (that led to him leaving his job) but that other than that he was in good health. Mr F also told JLT that he had a combined life and critical illness policy.

Despite receiving clarification that Mr F had no health worries, and that he had existing life cover, JLT did not take the opportunity to reconsider whether the objective of securing the different death benefit offered by a personal pension was still valid in Mr F's circumstances. If it was acting in Mr F's best interests and having regard to his information needs, given that its recommendation was at least in part based on the objective of securing different death benefits available under a personal pension plan because his ill-health meant he may have difficulty securing life cover, I think that JLT should have taken the opportunity to reassess this particular objective.

So given Mr F had no health issues and that he had life cover I am not persuaded that advising him to transfer his DB scheme to secure the potentially more advantageous death benefits available under a personal pension was in Mr F's best interests.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr F. But whilst I appreciate death benefits are important to consumers, and Mr F might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr F about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think JLT explored to what extent Mr F was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr F was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr F predeceased her. I don't think JLT made the value of this benefit clear enough to Mr F. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. JLT should not have encouraged Mr F to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Control over the pension

One of Mr F's other objectives was that he *didn't* want to move his DB scheme to a plan under his control. That being the case, it is unclear to me why JLT used this objective to help underpin its recommendation to transfer. In doing so it advised against Mr F's objective without explanation or justification. I don't think JLT was acting in Mr F's best interests in this respect.

And as a consequence of transferring his pension, Mr F has had to take control of it despite not wanting to do so, without having any investment experience or there being any evidence that he had any interest in, or the knowledge to be able to manage his pension funds on his own.

Inflation protection

In the suitability report, one of the reasons cited by JLT for Mr F wanting to transfer was because when he retired he *didn't* want his pension to increase in order to provide some protection against inflation. But I can't see that this objective was interrogated by JLT in any meaningful way. Mr F's DB scheme was index-linked and so provided him with some protection in retirement against inflation. This benefit was lost on transferring and I can't see that it was in Mr F's best interests to transfer for this reason.

JLT should have tried to really understand why Mr F thought he didn't want his pension to have some protection from inflation but I can't see that it attempted to do so. I don't think it was acting in Mr F's best interests by taking this objective at face value and not seeking to understand the reasons that underpinned it. So I am not persuaded that JLT had full regard to Mr F's information needs here. It should have explained the significant benefit afforded by inflation protection and sought to understand why Mr F seemed content to discard it.

Suitability of investments

As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr F, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr F should have been advised to remain in the DB scheme and so the funds he invested in wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the ability to receive a small amount of cash immediately and the potential to increase his pension benefits would have sounded like attractive features to Mr F in 2011. But JLT wasn't there to just transact what Mr F might have thought he wanted. The adviser's role was to really understand what Mr F needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr F was suitable. Despite the potential to obtain increased benefits at retirement, doing so meant Mr F was giving up a guaranteed, risk-free, and increasing income and exposing a major portion of his retirement funding to investment risk and management charges. And as JLT itself acknowledged in its suitability report, *"Whilst the Critical Yield may be considered to be the prime factor influencing a potential transfer of benefits from a defined benefit pension scheme, other factors need to be taken into account which may make transferring less suitable for you".*

The fact remains that Mr F's circumstances were such that he had no capacity to sustain a loss should his transferred pension not perform as well as anticipated and so was at risk of obtaining lower retirement benefits. In my view, for the reasons I've given above, there were no other compelling reasons which would justify the transfer and outweigh the risk Mr F was un-necessarily exposing himself to. Mr F shouldn't have been advised to transfer out of the scheme just to access the small amount of enhancement cash he was being offered.

So, I think JLT should've advised Mr F to remain in his DB scheme.

Of course, I have to consider whether Mr F would've gone ahead anyway, against JLT's advice. I've considered this carefully, but I'm not persuaded that Mr F would've insisted on transferring out of the DB scheme, against JLT's advice. I say this because Mr F was an inexperienced investor with a cautious attitude to risk and, as far as I can see, this pension accounted for the majority of Mr F's retirement provision. So, if JLT had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice. And I don't think the small amount of cash on offer to transfer out would’ve been enough of an incentive for him to go against that advice.

In light of the above, I think JLT should compensate Mr F for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr F, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr F would have most likely remained in the occupational pension scheme if suitable advice had been given.

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 F semi-retired in April 2023 at the age of 66 which was later than the DB scheme’s NRD. So, compensation should be based on him taking benefits at the scheme’s NRD of age 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 F’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 F redress as a cash lump sum payment,
- explain to Mr F before starting the redress calculation that:
    - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr F receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr F accepts JLT’s offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr F for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr F’s end of year tax position.

Redress paid directly to Mr F 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), JLT may make a notional deduction to allow for income tax that would otherwise have been paid. Mr F’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.

My final decision

Where I uphold a complaint, I can award fair compensation of up to £195,000, 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 £195,000, I may recommend that the business pays the balance.

Determination and money award: I uphold this complaint and require JLT Wealth Management Limited to pay Mr F the compensation amount as set out in the steps above, up to a maximum of £195,000.

Recommendation: If the compensation amount exceeds £195,000, I also recommend that JLT Wealth Management Limited pays Mr F the balance.

If Mr F 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 F can accept my decision and go to court to ask for the balance. Mr F may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 February 2025.

Claire Woollerson
Ombudsman