DRN-5344933

The complaint

Mr P complained about advice he was given to transfer the benefits of a deferred defined-benefit (DB) pension scheme to a personal pension plan, in 2012. He says the advice was unsuitable for him and believes this has caused him a financial loss.

JLT Wealth Management Limited is responsible for answering this complaint. To keep things simple, I'll refer mainly to "JLT".

What happened

The pension concerned related to three separate periods of service with a company Mr P had worked for in the past. The three periods were between 1992-93; 1995-97; and 1999-2001. I'll refer to these periods as P1, P2 and P3 respectively.

In late 2011, the trustees of the DB scheme in question wrote out to deferred members like Mr P explaining that the company this pension related to was looking at ways to manage its long-term pension commitments. The company had decided to offer enhanced terms to members who chose to transfer their benefits to a personal pension scheme. Members of the DB scheme were also being offered regulated financial advice, the cost of which was being met by the employer. JLT was contracted to provide that advice, so no adviser's fees were incurred by Mr P.

Mr P was ultimately offered a cash equivalent transfer value (CETV) of £40,633 for P1, £28,790 for P2 and £25,074 for P3. The normal retirement age (NRA) in each case was 60. A total combined cash enhancement of around £4,693 on top of the CETVs above was being offered if he transferred away.

Information gathered about Mr P's circumstances were broadly as follows:

- Mr P was 47 years old, divorced and with financially dependent children. He was in good health. He was self-employed and did not disclose his earnings.

- He had outstanding loans of £20,000 and an £80,000 mortgage. Mr P himself has since said he was in financial difficulties.

- Mr P had one other (unconnected) personal pension with around £35,000 invested.

- Mr P's options were to keep the DB pension where it was and effectively do nothing. Alternatively, he could transfer away to a new personal pension arrangement and invest both the CETV *and* the enhancement in the new personal plan. He could also transfer away, but take the enhancement in 'cash', subject to tax and national insurance.

It was a requirement to first get regulated financial advice if seeking to transfer away from a DB scheme. JLT set out its advice in a suitability report in January 2012. It advised Mr P to transfer out of his DB scheme and into a personal plan. JLT said this was based upon the assumption that he could either invest the full transfer value, including the enhancement. Or he could take the enhancement as a cash payment. Mr P followed JLT's advice, transferred out and took the enhancement as cash.

Mr P says he's since realised he might have been poorly advised to transfer this pension. He first raised a complaint to JLT about its advice, saying he shouldn't have been advised to transfer out of his DB scheme at all. In response, JLT said it was acting on the financial objectives Mr P had at the time and that transferring was likely to produce higher pension benefits for him in the longer-term.

Disagreeing with JLT, Mr P then referred his case to the Financial Ombudsman Service in February 2024. One of our investigators looked into the complaint and said it should be upheld. JLT didn't agree with this and so it falls to me to make a Final Decision.

I issued a Provisional Decision (PD) about this case on 6 February 2025. That PD should be read in conjunction with this Final Decision. However, I comprehensively set out in the PD why I was minded to not uphold Mr P's complaint. I then gave the parties until now to send in any more information or evidence they wanted me to consider. JLT hasn't sent anything in, but Mr P has. I'm very grateful to Mr P for the time he's taken to reply to my PD, and I do understand that he's disappointed to learn of my thinking on these matters. I've considered everything he's said, and the further supporting information he's provided, with great care.

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 also 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 Business (PRIN) and the Conduct of Business Sourcebook (COBS). 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

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of JLT's actions here.

- 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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 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 that the transfer was in Mr P's best interests.

I've used all the information we have to consider whether transferring away from the DB scheme to a personal pension arrangement was in Mr P's best interests.

Overall, whilst I acknowledge there were some shortcomings in JLT's processes, I think the advice to transfer was probably in Mr P's interests. I also think he would have still wanted to transfer away from his DB schemes even if the advice had said he shouldn't.

Having considered everything, including the responses to my PD, I'm not upholding this complaint. I'm very sorry to disappoint Mr P.

<u>*Financial viability*</u>

JLT referred in its transfer recommendation to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. The critical yield is part of a range of different things which help show how likely it is that a transferred personal pension fund could achieve the necessary investment growth for a transfer-out to become financially viable.

I fully explained in my PD the analysis from the time which showed that the critical yield to match the benefits of Mr P's DB schemes was between 4.1% and 4.8%. There were very slight differences in the critical yields (within this range) for P1, P2 and P3 and slight differences whether or not reinvesting the CETV and the enhanced offer together. Given the starting stance taken by the regulator, there would seem little point in recommending transferring unless the pension-holder could expect that year-on-year growth rates in a personal pension would exceed these figures.

As I explained in my PD, our investigator didn't think this was achievable over the longer-term. But whilst I do understand that Mr P still had some time left until he retired, I don't think achieving these types of year-on-year growth would have seemed unachievable when viewed from that time. I've also noted that the CETVs I've set out above were based on initial valuations which subsequently went on to be marginally increased. So, the critical yields in the above analysis were a little out of date by the time the transfer went ahead. It doesn't look like any new and updated critical yield analysis was carried out (or the relevant documents haven't survived this long) but I think that in reality this would have meant the critical yields came modestly downwards in all three cases. I have therefore assumed it's reasonable that the critical yield rate in this case - if transferring and 'keeping' his enhancement of £4,693 - would be in the range of around 4½%

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 relevant discount rate here was 5.9% per year for around 12 years to the NRA (age 60), which is above the critical yield figures I've mentioned. I've allowed for modest fees that would no doubt be incurred if transferring to a personal type of pension and which aren't normally found in schemes like Mr P's existing one. And so, by using this comparison, one could reasonably say that exceeding the critical yield - every year for the next 12 years - was probably achievable when using a long-term average.

I’ve also kept in mind that the regulator's upper growth projection rate at the time was 9%, the middle projection rate was 7%, and the lower projection rate was 5%. Mr P identified himself as a “balanced” investor on a form (with descriptions) provided to him by JLT. So, I think it’s fair to apply the regulator’s middle growth projection of around 5 -to- 7% per year as being appropriate in his case. This too was above the critical yields, with a reasonable margin left.

However, there’s one further point which I consider to be relevant in this case. I’ve seen evidence that Mr P was someone who had been employed in the financial services industry for many years. He says his roles were limited to ‘administration and ‘complaint’ type roles and he has since elaborated on this, saying his roles were limited to mortgages. I’ve also seen persuasive publicly available information where Mr P describes his career history as a “Financial / Mortgage Adviser” and with experience in compliance. I’ve seen separate evidence of Mr P holding at one time an FCA ‘CF21’ permission (investment adviser function). I think it’s also relevant that the DB scheme in relation to P1, P2 and P3 was the scheme of a major financial services company, which of course, shows that Mr P had spent three separate periods at.

I should strongly say that none of this implies in any way that Mr P’s complaint shouldn’t be duly considered. I also accept that he probably wasn’t a pensions expert. However, I think there’s reliable evidence that Mr P was a sufficiently experienced financial professional who would have understood the advice process and the information JLT was giving him.

When issuing their ‘view’ our investigator had been under the impression Mr P was an inexperienced investor who didn’t have a great deal of financial knowledge. But I’m afraid the evidence I’ve now seen paints a different picture. So, when Mr P says he was “bribed” to transfer, I think this is a somewhat unfair analogy. I think it’s more likely that he fully understood the advice and was, specifically, able to determine that the critical yields could be exceeded – and it would therefore be to his advantage to transfer.

I’ve considered the way all this was explained to Mr P. I think JLT set out that his existing DB entitlement was guaranteed and would be index-linked (although I think Mr P would have known this himself). I also think the prospect the adviser saw in exceeding the critical yields was reasonable, if not certain, and I think Mr P likely understood this too.

To be clear then, I think there was a reasonably good chance of Mr P transferring from the DB scheme to a personal pension and it then growing to a position whereupon in retirement, the financial benefits could be moderately better, without exceeding the risk level that Mr P was comfortable with. In my view, this was a reasonable starting point to recommend that transferring was in Mr P’s interests, although as I explain below, there were other factors too.

<u>*Other reasons given for the transfer advice*</u>

I’ve used the documentation from JLT at the time to help list some of the other themes the recommended transfer-away was based on. Mr P alleges he received very little contact from JLT and I do accept the suitability report was in some respects generic, and it failed to capture Mr P’s wider financial situation and personal circumstances. This might have included, but was not limited to, his income, any child maintenance issues, his outgoings and more details about his debts.

The following themes were listed as being further reasons for him to transfer from the DB scheme to a personal pension.

- *The cash enhancement*

The cash enhancement in this case wasn't particularly large and represented only around a 5% uplift. In most circumstances I'd consider this on its own to be a relatively minor reason to transfer. But as I've shown above, we know there was probably some financial merit in transferring which could mean that a higher pension overall at the age of 60 was possible. Of course, there was a caveat that needed to be borne in mind with this, which was that this higher pension certainly wasn't guaranteed, and the difference was probably only marginally better. However, I think the enhancement in Mr P's circumstances was a further supporting reason to recommend the transfer.

I say this because Mr P himself describes this period in his life as being difficult. He said, *"at that time I was absolutely skint, having been through a divorce and trying to support* [x] *young children. At that time I would have probably done anything to get extra money. Therefore, I regrettably agreed to transfer it"*. I do completely understand and sympathise that Mr P was no doubt facing a challenging situation. But to me, this demonstrates two things. Firstly, that he was desperate for money – this is supported by information he provided at the time of the 'fact-find' and much later, when submitting his complaint. It also shows he had properly considered and understood the enhancement offer to be in his best interests because it was money that he needed.

When replying to my PD, Mr P also added that we hadn't captured all his debts and that, in fact, he had another secured loan on his house at the time of £30,000. The point being made by him is that his debts were even greater. This wasn't recorded at the time (I assume because the adviser wasn't told this by Mr P). However, if I take Mr P at his word, I'm afraid this just accentuates my point that he was in such a financially challenging situation as to make transferring away and accessing the enhancement even more necessary for him at that time.

As I mentioned in my PD, I do think the adviser should have explored what the issues really were and whether Mr P could have sorted them out without resorting to this enhancement money. But I think the reassuring aspect of transferring would have been the opportunity to get cash he otherwise might not receive, whilst still having a good opportunity to maintain or exceed what he was due when he eventually retired.

I've thought carefully about Mr P's understanding of these things and I believe he would have considered the strengths to outweigh the weaknesses. I also note that Mr P says he didn't understand the suitability report. But because of what I've said above about his knowledge and experience, I'm afraid I find this to be implausible and I think the suitability report laid out clearly enough what the enhancement in each case[1] would be and that it would be subject to income tax and national insurance in the usual way.

With all this information to hand, I think Mr P was given enough information. I also think Mr P used what would have been a sufficient and reasonable amount of broad financial knowledge and experience to determine that taking the cash enhancement offered him some respite from the challenges he faced. I think he considered transferring in this regard as a low-risk option and one which addressed his needs of that time.

- *flexibility and personal control*

In my view, it can often be the case that recommending to a consumer that they should transfer away from a DB scheme, so they have more flexibility and control over their pension, is no more than a 'stock' objective. Flexibility is often overused and ill-defined and, in many cases, we see large numbers of UK consumers who either lack the financial knowledge or the capacity to manage their own pension funds.

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[1] P1, P2 and P3.

However, in this case Mr P had already been advised that his transferred funds might grow to a position where he'd get a higher pension eventually. And because of his own financial experience, I think he would have both understood this and thought it was a reasonable judgment.

Mr P was told that he had no further call on the company if he transferred his pension and that he would never be able to rejoin the DB scheme. I also think the fund recommendation broadly suited a "balanced" risk attitude. This part of JLT's advice was based on Mr P transferring and investing in funds which were professionally managed and therefore required only a very limited input from him. JLT said a "Balanced Lifetime Investment Programme" suited his needs which was automatically invested 90% in a UK Equity Index Fund and 10% in a 15 Year Gilt Index Fund.

I think this was appropriate.

- *tax-free cash at retirement*

It was implied on the suitability report that transferring may eventually provide a higher level of tax-free cash at retirement. In my view, this was a somewhat generic objective and of reduced relevance due to the relatively young age Mr P was at the time. It was true that Mr P would likely be able to access 25% of his pension as a lump-sum at some point (at the time this had been recently changed to the age of 55). And it's usually the case that more tax-free cash can often be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. Mr P was shown an analysis of this which I think was easy for him to understand.

JLT should have been telling Mr P at the time that any extra tax-free lump sums being removed from a personal pension, potentially from his late fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease. But again, even if this was a failing of sorts, I still think Mr P's knowledge and experience would have meant he fully understood this.

- *Death benefits*

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. In this case it's not entirely clear how much the death benefits found in the DB scheme were a prominent feature in the advice. But JLT did include this issue in the suitability report.

I can't say whether, or to what extent, the death benefits issue influenced Mr P's decision to transfer away. But he was no longer married and so the spousal element of his DB pension benefits would have ceased to be relevant. My understanding is that at the point of transferring Mr P still had teenage children who may have been able to see some benefits from the DB scheme if Mr P died in the short-term[2].

I do also accept that at 47 years old Mr P might have one day re-married. But I think JLT was right to at least bring this apparent reason to consider moving to a different type of pension scheme to Mr P's knowledge. In my view, it was therefore relevant, although should have probably been a less prominent feature of his overall considerations.

<u>*Summary*</u>

[2] Child benefits in a DB scheme differ, but usually cease after full-time education is exited.

I've explained why, in this particular case, there were reasons for Mr P to transfer away from his DB scheme to a personal pension arrangement. Having considered all the circumstances, I do think transferring was in Mr P's interests.

I began by considering the financial comparisons. These showed that by transferring, Mr P would have a realistic and credible path to growing his pension to a position that would eventually provide moderately higher financial benefits at the point of his retirement.

This alone was not everything the adviser needed to consider. I've taken account, for example, that Mr P was still only 47 years of age as of 2012. This was still comparatively young by the standards of pensions, and there are always risks in transferring, as opposed to waiting to much nearer one's retirement and in the meantime maintaining the DB scheme guarantees. I considered whether this could have been the safer option. But as I've explained, the DB scheme was offering a financial enhancement which would have been lost had Mr P not transferred. This wasn't a huge amount, but it did assist in making transferring a more attractive prospect given Mr P's difficulties at the time. The evidence from Mr P himself is that he was facing real and onerous financial challenges which meant the enhancement offered was of use.

Even if the advice had been to remain in the DB scheme, I think Mr P would have wanted to transfer, faced as he was by some difficult choices. I think that many comments Mr P himself has made about his very challenging financial situation, speak to this.

I also considered Mr P's allegations that he wasn't given enough information at the time and was effectively coerced into accepting the transfer. Whilst I'm sure he may genuinely feel this now, I don't think this is fair. These events relate to some 13 years ago and I think it's possible the passage of time will have affected Mr P's recollections of what he was told and shown. I think the information he was given was clear enough in telling him what he was giving up, what his options were, and what both the advantages and disadvantages were in transferring to a different type of pension. I also think Mr P's understanding of the process would have been substantially assisted by his financial background and experience.

For these reasons, I'm not upholding this complaint.

My final decision

I do not uphold this complaint.

I do not require JLT Wealth Management Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 March 2025.

Michael Campbell
Ombudsman