DRN-5516082

## The complaint

Mr J complained about advice he was given to transfer the benefits of a defined-benefit (DB) occupational pension scheme to a personal pension plan, in 2010. 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

In February 2010, the trustees of the DB scheme in question wrote to members like Mr J 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.

Information gathered about Mr J's circumstances at the time was broadly as follows:

- Mr J was 41 years old and earning around £42,000 per year.
- Under the terms of the above offer, he was being presented a cash equivalent transfer value (CETV) of £62,905 and the normal retirement age (NRA) of his DB pension scheme was 65.
- A cash enhancement of around £6,290 on top of the CETV was being offered if he transferred away.
- Mr J could leave his pension where it was and do nothing. Alternatively, he could transfer the CETV and invest into a new personal pension plan together with the enhancement. Or he could transfer away and take the enhancement as a cash lump sum (which would be subject to income tax and national insurance).
- Mr J evidently had three other pensions relating to previous and current employments. These aren't being complained about here.

It was a requirement to first get regulated financial advice if seeking to transfer away from this DB scheme. JLT set out its advice in a suitability report on 26 March 2010. JLT recommended that Mr J *shouldn't* transfer his pension as it said this would probably see him less well off in retirement. But JLT later processed the transfer to a new personal pension plan on an 'insistent client' basis, a term used in the financial industry where a client wishes to proceed against the recommendation made by their adviser.

The CETV was transferred to a new pension plan with a company I'll call "Firm S". Mr J took the financial enhancement of £6,290 (and he apparently paid the tax I've mentioned above as a result). I've calculated that Mr J probably received a net sum of around £4,900. He told JLT he wanted to obtain this cash enhancement to buy a car.

It seems Mr J has since contracted a claims management company to bring forward a complaint about this on his behalf. Mr J now says he was badly advised by JLT. Amongst other things, he says JLT failed to ensure he was made aware of the benefits he was giving up with his DB scheme and that it failed to follow the insistent client process correctly. He now thinks transferring has caused him a financial loss for which he should be compensated.

He complained in 2024 and in response JLT didn't agree that it had done anything wrong. It said it had first advised Mr J not to transfer away and that the transfer only happened when Mr J became an insistent client. JLT says that only when Mr J insisted, did it then go on to proceed with the transfer process and also make a second recommendation about where the remaining transferred pension funds should be invested. This was with the new personal pension platform operated by "Firm S". JLT later recommended that the transferred monies should be invested in certain funds consistent with Mr J's investment risk attitude.

Dissatisfied with JLT's response, Mr J still thought he should never have been allowed to transfer from his DB scheme in the first place and maintains that the insistent client process JLT followed wasn't fair. As such, he referred his case to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld in his favour. The investigator said that JLT hadn't done enough to explore the reasons why Mr J wanted to take the cash enhancement and it hadn't done enough to treat him fairly as an insistent client. However, JLT disagreed with this.

I issued a provisional decision (PD) about this complaint on 10 April 2025 setting out why I was minded not to uphold Mr J's complaint. I explained that despite being advised not to transfer several times, and also being warned he could be worse off by transferring, Mr J nevertheless rejected the advice and warnings. I explained how, in my view, Mr J went ahead as an insistent client. On this basis I wasn't intending that we should uphold his complaint. However, I gave all the parties some time to consider what I'd said.

## 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 guidance, 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 (that the starting assumption for a transfer from a DB scheme is that it is unsuitable).

However, at the time of the JLT recommendation there was no regulatory advice or guidance in place in respect of insistent clients. But the client's best interests' rule (COBS 2.1.1R) and PRIN 7 are particularly important when considering treating a client as insistent. I have considered these matters accordingly. And overall, I think JLT's recommendation had to be clear, and Mr J had to have understood the consequences of going against any recommendation.

I've therefore considered all these areas with care and thought about the actions and inactions of JLT in the context of the above. I have also reconsidered Mr J's actions and considered his responses to my PD.

However, although I'm grateful for Mr J's responses to my PD, I'm afraid he hasn't added anything new and mainly repeats issues and perspectives I had already considered in detail when issuing my PD. Whilst I can still see that JLT didn't do everything right, I think Mr J was fully aware of the consequences of his actions when he decided to go against the advice he received, which had been *not* to transfer. He was told not to transfer several times and also provided with a number of warnings about doing so. I also think he had all the information he needed to make that decision. In any event, I still think Mr J's determination at the time was such that he was always going to opt to transfer and take the cash enhancement. So, I think it's more likely that transferring was the option he would have chosen even if the circumstances had evolved differently. I therefore don't think it's right that Mr J should be compensated for what happened, if indeed a loss has even occurred.

I'm sorry to disappoint him, but I am not upholding Mr J's complaint.

*Introduction and Mr J's circumstances*

As I've said, Mr J received details of the offer from his DB trustees in February 2010. He then filled out some paperwork which included outlining his personal details, his financial circumstances and his attitude to his retirement which was still some years away in his case.

I understand there was some initial communications between the parties to obtain these details, but it was the suitability report, which was issued by JLT on 26 March 2010 which was the first really significant document. Given the importance of this document, I think it's reasonable to say that this should have been something Mr J would have wanted to read very carefully.

JLT referred in this 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. JLT's suitability report set out that the critical yields were too high to be achieved by reinvesting the DB funds in a personal pension. It said for this reason it didn't recommend that Mr J should transfer out of his DB scheme. I agree with JLT's analysis. That is, it was more likely than not that Mr J would be worse off in retirement by transferring away from his DB scheme. And as this isn't disputed by either party to the complaint, I see no reason to further analyse the financial viability of the transfer when it clearly wasn't viable.

One major point of complaint being brought on Mr J's behalf is that he was never really given enough information by JLT about the benefits and guarantees he would be giving up if he transferred away from his DB scheme. The implication here is that even though Mr J ultimately disagreed with the JLT adviser's recommendation, he only did so because he wasn't provided with information about his DB pension scheme in a comprehensive fashion.

However, I don't agree with this because I can see that the suitability report did, in my view, provide clear information about his existing pension scheme and so I think Mr J would have easily been able to see what he could lose by transferring away. For example, in a section headed *"Summary of Scheme Benefits"* I can see that Mr J was told what his projected DB entitlements were and that his NRA was the age of 65. At that age, he was told he could expect an annual pension of *"£17,520 or, alternatively, a pension of £11,246 and a tax-free cash lump sum of £74,973".* I have also noted that another specific point of complaint is that Mr J wasn't told of the protections offered by the Pension Protection Fund (PPF). But I'm afraid I don't think this is right either because the suitability report contained an Appendix wholly related to explaining what this was.

In my view, the suitability report was also very clear that leaving his DB scheme to access the cash enhancement was not recommended. The report said, *"our overall recommendation is that you* ***do not*** *move your pension out of the scheme to a personal pension arrangement"*. The report went on to explain how Mr J's pension outside the DB scheme would be highly unlikely to grow enough to make transferring financially worthwhile – which was explained by reference to the annual critical yield rate. However, I've noted that the DB scheme's death benefits and some early retirement matters were also explained in the report. For good order, all these issues were summarised towards the end of the report where Mr J was once again told that transferring was not recommended. The report said, *"our recommendation is that you should not move your pension out of the scheme as this is likely to have a detrimental effect on your income in retirement"*.

With all these observations in mind, I think it was clear enough that transferring away from Mr J's DB pension was most definitely not being recommended.

<u>*The insistent client issues*</u>

I've noted that in the following days Mr J twice telephoned JLT. The first of these appears to have been on 1 April 2010, which Mr J said was the same day he'd received the written advice not to transfer. Mr J told the JLT call-handler that he understood why the enhancement offer was being made but he still wanted to transfer and take the offer. Mr J was told by the call-handler that he'd be *"substantially worse off"* by transferring. Mr J then explained that this was only one of four such pensions he had and therefore had to be considered in that 'whole picture'.

Around a week later, Mr J rang through to the JLT helpline again and when he said he wanted to disregard the 'do not transfer' advice he was told he shouldn't. I believe the following recorded quotes give a sense of where the conversation went:

- JLT call-handler - *"we would strongly recommend that you follow our advice…"*
- Mr J - *"I appreciate that…"*
- JLT call-handler – *"it would be the case that you would be significantly worse off in retirement if you choose not to* [follow the advice]*"*.

I think it's fair to say that the remainder of this conversation showed Mr J accepted the risks of transferring from a guaranteed DB pension scheme to a market-based pension and he even mentioned that he still had some 24 working years left to acquire some investment growth. At this point, Mr J had been told both in writing and also verbally that he ought not to transfer. I also think the conversation proved he had given some thought to the future and the growth opportunities he observed might result from still being a long way from retiring. I've heard from the call recording that Mr J was then read out a number of risk statements to which he agreed. And I therefore think it's reasonable to conclude that he knew what he was doing and accepted those risks.

Mr J was then sent an insistent client letter on 15 April 2010 which said, *"As you are aware, our Focused Advice Recommendation Report informed you that it was not in your best interest to transfer your benefits away from the* [DB] *Pension Scheme. However, you have informed us that you wish to transfer your benefits out of the* [DB] *Pension Scheme against our advice. If you decide not to follow our advice and you transfer away … your retirement benefits may be dramatically reduced. As such we strongly advise you to seek further advice before proceeding with this transfer*".

Mr J then went onto sign a declaration form in which he confirmed his understanding that he was going against the advice he had received, which had been *not* to transfer. The declarations Mr J signed included (although were not restricted to) that:

- The benefits provided by the new personal pension arrangement would be on a different basis and that *"I accept the transfer of risk from the scheme to me…"*

- Transferring in these circumstances was irreversible.

- Transferring meant he could be worse off in retirement.

On 7 May 2010 Mr J was sent another letter which basically repeated the same themes that he had now been previously told twice in writing and also at least twice verbally. It said, ***"Having decided not to follow our advice, and transfer away from the* [DB] *Pension Scheme, your retirement benefits may be dramatically reduced"***[1].

<u>*Could or should JLT have done anything more?*</u>

I think that what all the above actions show is that Mr J was determined to transfer in order to get the cash enhancement which was on offer. Our investigator said he thought that when treating him as an insistent client, JLT could have gone further into exploring Mr J's reasoning for wanting to transfer, as this seemed to be focussed on the cash enhancement he was being offered. I've also considered whether JLT's advice not to transfer was focussed too heavily on the critical yield issue, when there might have been other good reasons not to transfer too.

However, I don't think any of these things would have fundamentally changed what happened. I agree that it would have probably been somewhat helpful to re-visit these issues after Mr J had expressed his insistence on disregarding the advice. JLT could have asked him how he intended to fund his retirement and it could have challenged his thoughts about the commercial future of the company to which this scheme related; Mr J thought it basically 'wasn't the company it used to be'. These things might have generated further discussions,

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[1] Their emphasis in bold.

for example, about what we know were fairly trivial reasons to generate cash – and cash which he might have been able to raise elsewhere instead of involving his pension.

But I've considered what is fair and reasonable here. This was still Mr J's own money and I think he'd been told repeatedly – and in no uncertain terms – that transferring was going to probably leave him worse off in retirement. In my view, that's a powerful and clear explanation which most consumers would find understandable and a reason to pause for thought. We know that the enhancement money was to purchase a car and that this was already known to both parties. So, I think it's reasonable to assume that JLT didn't consider it was necessary to go back over something which was already known, especially when its overall message was not to transfer because he'd be worse off.

I also think that whilst JLT really could have pointed out that a loan to buy a car would be more sensible in these circumstances, the evidence shows that Mr J already knew that transferring away from his DB scheme was irreversible. I think it would also have been obvious to almost all reasonable people that a common and established method of financing a car purchase is by obtaining a loan, rather than involving one's pension. But I've got no information which implies that Mr J lacked the capacity to understand this. The evidence I've seen is that he was a skilled professional and so would have easily been able to make such an obvious calculation for himself.

*Mr J's response to my PD*

As I've said, I have considered the response to my PD which was made on Mr J's behalf by his representatives. I've noted the response merely repeats Mr J's circumstances of that time and the circumstances in which the transfer advice came about. However, I had covered these issues in considerable detail in the PD.

In my view, Mr J's representative's comments that he *"acted on the belief that JLT's recommendations were sound"* somewhat mis-interprets what happened here, since Mr J did *not* follow JLT's advice. Instead, as I've explained, he insisted on disagreeing with it in the face of numerous warnings that he'd be worse off.

*Summary*

I do accept that JLT could have done slightly more in certain areas to show that it's advice not to transfer really did require a serious reconsideration. But in my view, the points that could have been raised by JLT when reiterating it's 'do not transfer' advice are relatively minor observations which I don't think would have changed anything.

The rules and guidance about treating insistent clients were tightened in the subsequent years. But in 2010, these were more generalised rules and I've taken this into account.

Mr J was provided with a suitability report on 26 March 2010 which was unambiguous in its recommendation that he should *not* transfer. He was told this again verbally on or around 1 April when he himself contacted JLT to say he'd read and understood the report but still wanted to transfer away. At this point he was reminded, and indeed warned, that transferring could lose him money. There was then a further call with largely the same warning messages about why he should *not* transfer. On 15 April he was again 'strongly advised' to reconsider. And again, on 7 May he was clearly told his retirement benefits could be *"dramatically reduced"* by disregarding JLT's advice.

Mr J's representative points out that he was not a financial or investment expert; I accept this. But in my view, this is all the more reason that the recommendation to transfer ought to have been clear enough for him to understand he shouldn't do it. I think that being told he would be worse off by transferring and that he should seek further advice if maintaining his intended approach, was a simple and understandable message that almost most people would comprehend. I think such repeated warnings should have given Mr J a very clear indication indeed that he should pause for thought.

The fact that Mr J continued to insist on transferring speaks to his view that this was his money and he wanted to take up the enhancement offer to buy a car. I think he knew there was an obvious trade off in getting some money now, whilst potentially accepting a less guaranteed pension later. The evidence shows Mr J had given this some thought, commenting as he did, that he still had other pensions.

I disagree that Mr J wasn't told about what he was giving up and I think he was very clearly told about his existing DB scheme's death benefits, his pension's early retirement options, and the PPF.

Overall, Mr J was entitled to take the action he did. I think he understood the consequences and even if JLT had done more, I think the result would have been the same. The evidence is very persuasive that Mr J was insistent on transferring.

For these reasons, I'm not upholding Mr J's complaint.

## My final decision

I do not uphold this complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 May 2025.

Michael Campbell
**Ombudsman**