DRN-5939414

The complaint

Mr R complains about advice he received from Alexander Forbes Financial Services (AFFS) to transfer his defined benefit occupational pension (DB) scheme into a personal pension. Mr R believes the advice to transfer wasn't in their best interests and has caused a financial loss.

JLT Wealth Management Limited (JLT) are now responsible for the complaint but, as the advising firm was AFFS, I'll refer to AFFS when discussing what happened at the time of the advice.

What happened

The investigator set out the background to the complaint in his view. Both parties have seen that and, as I don't think there's any dispute as to what happened, I've largely adopted the investigator's summary here.

Mr R had deferred benefits in a former employer's DB scheme. In 2010 he was contacted by the DB scheme with an offer of an enhanced transfer value. He didn't have to transfer – the letter said, if he took no action, he'd continued to be entitled to receive a pension from the DB scheme on retirement. But if he did transfer, he'd get around an extra £6,504 added to the transfer value or £5,066 paid directly to him. AFFS had been appointed by the scheme to give advice to members if they wanted it and the cost of such advice would be met by the scheme.

A fact find analysis established that Mr R was 40 years old and divorced. Mr R indicated that he'd rely on his other/state pension in retirement. He wanted to take tax-free cash when he retired. His attitude to risk (ATR) was recorded as medium to high.

Mr R's DB scheme had a normal retirement age (NRA) of 65. This scheme would pay him a guaranteed income in retirement. A transfer value analysis (TVAS) estimated that, at NRA, the scheme could pay an annual income of £14,952 or £9,726 with £64,836 tax-free cash. At the time of advice, Mr R had 18 years of membership, having left the scheme in 2008.

Mr R indicated that he'd want the enhancement paid directly to him and he was going to use it to pay debts.

AFFS issued a suitability report dated 31 March 2010. AFFS recommended Mr R transfer his DB scheme benefits to a Standard Life personal pension and to invest in the '*Greater than 20 years Medium/High Lifestyle*' fund. AFFS recommended this '*Based exclusively on whether your Critical Yield is achievable on a year-by-year basis.*' In the report AFFS explained that, although Mr R could pay off debts, he should consider using the enhancement to increase the transfer value to benefit his retirement. AFFS calculated that the recommended plan would need to grow by 6.5% to match the benefits of the DB scheme, based on Mr R having the enhancement paid directly to him and taking tax-free cash when he retired. AFFS also calculated this would reduce to 6.1% if Mr R chose to enhance the transfer value instead.

Mr R accepted AFFS's recommendation. The transfer went ahead and Mr R was paid the cash incentive.

Mr R complained to JLT in April 2025, via his representative, that the advice had been unsuitable for several reasons. There was reference to sections of COBS (Conduct of Business Sourcebook) and it was alleged that AFFS had failed to apply these rules. Mr R said he didn't need the cash enhancement to pay off debts and that AFFS didn't consider his full circumstances when giving the advice.

JLT didn't agree that the advice to transfer had been unsuitable. It said the evidence showed Mr R's circumstances were considered and it was satisfied with the information he was given. But it identified the investment funds selected were outside the level of investment risk Mr R was prepared to accept. JLT said it would complete a loss assessment and the results of this would be sent separately – although it doesn't seem as if this was completed. JLT confirmed that it believed Mr R should've been considered a medium risk investor.

The investigator upheld the complaint in part. He said the advice to transfer wasn't unsuitable although there'd been some failings on AFFS's part. In particular, AFFS didn't consider things in as much detail as they should've. But Mr R had received a cash incentive and had a use for the funds. JLT had acknowledged that Mr R's ATR should've been assessed as medium, not medium high. And JLT had agreed that he'd have invested differently and had offered to check if he'd lost out. The investigator set out how JLT needed to do that.

Mr R's representative disagreed and maintained the transfer was fundamentally unsuitable given Mr R's age (said to be 38 although I think he was in fact 40 at the time of the advice); objectives, financial position and the nature of the benefits being surrendered. Amongst other things, Mr R's representative said undue emphasis had been placed on the perceived financial viability of the transfer and insufficient weight given to the regulatory presumption against transferring a DB pension and the risks that applied. Mr R's representative also referred to the guaranteed nature of the DB benefits and the uncertainty, given the term to retirement and said that capacity for loss had been conflated with justification for risk – Mr R's ability to bear loss didn't justify a recommendation to take unnecessary risk and when his objectives could've been achieved without jeopardising a guaranteed retirement income. The importance of the cash incentive offered had also been overstated. And the admission that Mr R's ATR had been miscategorised demonstrated a critical flaw in the advice process.

The investigator considered those comments and responded but he wasn't persuaded to change his view. He told the parties that the complaint would be referred to an ombudsman to decide.

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.

Having done so I've reached the same conclusions as the investigator and for the same reasons. Hence I'm not upholding the complaint that the transfer was unsuitable but I agree, and as JLT has admitted, that there were issues regarding Mr R's ATR and if the recommended investments were in line with his correct ATR.

In reaching my conclusions 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). 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 AFFS's advice. 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 all the available evidence and the wider surrounding circumstances.

- 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. And which include COBS 19.1.6G (2) which says, when a firm is making a personal recommendation for a retail client who is a member of a pension scheme with safeguarded benefits (which a defined benefit pension scheme is) and who is considering whether to transfer, a firm should start by assuming that a transfer will not be suitable.

As I've noted, and as Mr R's representative has stressed, since 2005 the starting assumption in COBS 19.1.6G is that a transfer from a DB scheme won't be suitable. So AFFS should only have considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr R's best interests.

I don't agree that AFFS ignored that assumption. Or promoted or encouraged the transfer. I've seen that the offer letter dated 12 February 2010 did set out the offer very prominently and said, at the foot of the letter, that the offer was only open until midnight on 30 April 2010. That might've introduced an element of perceived urgency and that the offer was something that shouldn't be missed. But the letter came from the DB scheme, rather than AFFS whose approach was, in my view, more balanced. I think AFFS did start with the assumption that transferring wouldn't be suitable. I note that when AFFS sent Mr R the suitability report on 31 March 2010 AFFS said that the decision whether or not to transfer out of a final salary (DB) pension scheme was complex and it was important that Mr R fully understood the benefits he'd be giving up if he transferred. And a copy of the regulator's '*Guide to the Risks of Salary-Related Occupational Pension Transfers*' was enclosed.

<u>Financial viability</u>

The critical yield (growth) required to match Mr R's DB benefits at the scheme retirement age of age 65 was around 6.5% if he took tax-free cash and a reduced pension – which I think he most likely would do. The advice was given during the period when this service was publishing 'discount rates' on our website for use in loss assessments when a complaint about an earlier pension transfer was being upheld. Businesses weren't required to refer to these rates when giving advice on pension transfers. But I consider they do give a useful indication of what growth rates would've been considered reasonably achievable for a typical investor.

The investment return (critical yield) required to match the DB pension at retirement at age 65 was around 6.5% pa if Mr R took tax-free cash. The relevant discount rate was 6.7% pa for the 24 years to retirement. 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% pa.

I've taken this into account, along with the composition of assets in the discount rate, Mr R's (properly assessed) medium ATR and the term to retirement. Here I don't think it was unreasonable to proceed on the basis that he'd likely receive benefits of a higher overall value than the DB pension at retirement as a result of investing in line with that attitude to risk.

Capacity for loss

I also need to consider whether Mr R had sufficient capacity to absorb any losses should his pension fund reduce. I bear in mind that the DB pension represented some 18 years' service and so would form a significant proportion of Mr R's overall pension provision. Mr R had said in the questionnaire that he anticipated that his other pension(s) (plus State benefits) would form the majority of his income in retirement. And the suitability letter repeated that and said hence he may be more comfortable with the risks associated with the transfer. Mr R did have some other pension provision – it appears he'd more recently transferred two other pensions valued at around £39,000 and £43,000. And bearing in mind his age, he'd have over twenty years to build up further pension provision. I note here what's been said about that not justifying the risks involved in transferring DB benefits. I'd agree that Mr R naturally wouldn't want to suffer any loss, but capacity for loss is a relevant consideration in looking at suitability. Here I think there was evidence that Mr R would have other provision on which he'd be able to rely and so he was in a position to absorb potential investment losses.

Other reasons for transferring

I think there were some issues in the advice process. There's some divergence between what Mr R now says his objectives were and what was recorded at the time. The questionnaire said, about the additional cash sum on offer, that Mr R intended to take all of it as cash and that he'd be using it to repay debts or loans. And that's reflected in the suitability report. However, when we asked about how the £5,000 incentive was spent, Mr R said he wasn't in debt at the time and his only financial liability was his mortgage. He said the money was to cover potential legal costs – he and his colleagues were unhappy with their redundancy packages and were considering seeking legal advice. I understand that Mr R was made redundant in 2007 and so some time had passed if Mr R was thinking about taking legal action.

Whatever the position was, I think AFFS's paperwork could've been more detailed and gone into more depth about exactly what Mr R intended to use the cash payment for and what sort of debts or loans he had and if he might be able to meet those commitments by other means. I note what he's said more recently about having access to other funds. But the contemporaneous evidence supports that he did have a need for the money. And AFFS's suitability report did make it clear that it would be better to use the incentive to get a higher transfer value which would decrease the investment returns needed to provide higher benefits than the DB scheme would've paid. Mr R went ahead with taking the cash incentive which again indicates he had an identified need for that money. And, as the investigator pointed out, if the transfer was financially viable then Mr R shouldn't be worse off in retirement anyway and he'd have had the benefit of the additional cash sum.

I think AFFS did explain to Mr R the nature of the DB scheme and the guaranteed benefits it offered. As I've said, he was given a copy of the regulator's guide. The suitability letter set out that he'd be exchanging the promise of a certain level of benefits at retirement for the chance of achieving a higher income in retirement; the benefits were entirely dependent on the performance of his chosen funds and the annuity rates when he retired; and there was a risk that his benefits in retirement would be less than he'd have received from the DB scheme. The report set out the critical yield required if Mr R took the maximum enhanced transfer value (which AFFS said he should) and if he instead took the additional cash sum. And that, either way, his benefits at retirement could be reduced, depending on the required critical yield being achieved and on annuity rates at retirement, which might be higher or lower than had been assumed in the critical yield calculation. And that there was a significant risk, if he moved his pension out of the DB scheme, that the benefits available to him at retirement, or to his dependents on his death, would be less than if he'd left his pension in the DB scheme.

Mr R's ATR

As JLT has admitted, there were issues in how Mr R's ATR was assessed. Based on the responses to the questions about risk he gave, AFFS concluded he had a medium to high ATR. But, in considering Mr R's complaint, JLT identified that the investment funds Mr R selected (on AFFS's recommendation) were outside the level of risk Mr R had indicated he was prepared to accept. So JLT offered to complete a loss assessment. Although, and presumably as the complaint wasn't settled, JLT didn't go ahead with that.

The investigator set out in his view what JLT needed to do and based on Mr R being a medium risk investor. I think what the investigator suggested (and to which JLT hasn't objected) is fair and reasonable and aims to put Mr R back in the position he'd be in if his transferred fund had been invested suitably and in line with his correct ATR. I've repeated that below. I'd point out that a calculation is required which may or may not show that Mr R has suffered a financial loss.

Summary

I'm satisfied that AFFS gave Mr R sufficient information as to how the DB pension worked and about the risks involved in transferring. The transfer was financially viable at the time and the cash sum would enable Mr R to meet certain objectives. All in all I don't think the advice to transfer was unreasonable. So I'm not upholding the complaint about the advice to transfer. But I am upholding the complaint about how Mr R's fund was invested.

Putting things right

To compensate Mr R fairly JLT should:

- Compare the performance of Mr R's investment with that of the benchmark shown below. If the **fair value** is greater than the **actual value**, there is a loss and compensation is payable. If the **actual value** is greater than the **fair value**, no compensation is payable.
- JLT should also add any interest set out below to the compensation payable.
- If there is a loss, JLT should pay into Mr R's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. JLT shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If JLT are unable to pay the compensation into Mr R's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. So the compensation 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 Mr R won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr R is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr R 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 Mr R in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Standard Life Personal Pension	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of settlement	Not applicable

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal from the Standard Life Personal Pension should be deducted from the fair 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 JLT total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr R wanted Capital growth and was willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr R's circumstances and risk attitude.

My final decision

I uphold the complaint in part. JLT Wealth Management Limited must redress Mr R as I've set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 17 December 2025.

Lesley Stead
Ombudsman