DRN-4209641

The complaint

Mr J has complained about the advice he received from JLT Wealth Management Limited ("JLT") in relation to his occupational defined benefit ("DB") pension. Mr J has stated that the process followed by JLT facilitated the transfer of the DB benefits to a personal pension with the transfer resulting in lower retirement benefits and a financial loss being suffered.

Mr J is being represented in this complaint however for ease of reference I have only referred to Mr J throughout the decision below.

What happened

Having been offered the option of advice by the trustees of his employer's DB pension Mr J contacted JLT to discuss his deferred DB pension.

The advice process began when Mr J completed JLT's fact find on 26 August 2011. Within this it confirmed Mr J was:

- Aged 40, divorced with two dependent children.
- Was employed with an annual income of around £22,000.
- Mr J selected a balanced risk profile.
- With regard to the enhancement to the transfer value of around £1,800 being offered by the scheme trustees should the benefits be transferred, Mr J confirmed his preference was for this to be paid directly to him in order to help "consolidate / clear" around £10,000 of unsecured debt.
- No other assets or savings were detailed but Mr J was recorded as a member of his employer's defined contribution ("DC") pension scheme. This had a value of around £3,800 and was receiving combined contributions of around £200 per month.

The DB pension advice was contained in JLT's suitability letter dated 2 September 2011. This confirmed that the transfer analysis showed that the transfer was likely to lead to reduced benefits in retirement and as such JLT were advising against the transfer.

An acknowledgement slip which accompanied the suitability letter was completed by Mr J on 14 September 2011. This confirmed Mr J's desire to transfer the DB pension. Within this form Mr J confirmed his reasons as being:

"I wish to transfer my benefits to my [employer's name] *stakeholder pension for which there is no charge to transfer. I have discussed my options with them (Prudential)"*

On 16 September 2011 JLT wrote to Mr J to confirm that he had instructed them to complete the transfer on an insistent client basis and asked Mr J to sign and return the necessary documentation including Option Form A, Request for Transfer Form, and for Mr J to provide appropriate identification.

On 26 September 2011 Mr J signed 'Option Form A' where it was confirmed he wanted the enhancement being offered by the scheme trustees paid directly to him, less tax and national insurance.

Following this, the transfer was processed and the transfer value of around £41,000 was moved to Mr J's occupational DC scheme held with Prudential.

Mr J registered his complaint with JLT in December 2022.

JLT issued their complaint response in January 2023. This stated that they had advised Mr J to retain the DB pension and only proceeded with the transfer on an insistent client basis. JLT stated their suitability letter had clearly noted that transferring was likely to lead to reduced benefits in retirement however Mr J had chosen to transfer anyway. As such the complaint was not upheld.

Unhappy with the response from JLT Mr J referred his complaint to this service in March 2023.

Our investigator looked into things and upheld the complaint. The investigator stated that some of the reports produced by JLT did not use Mr J's planned retirement age and that the transfer analysis report was a long and complicated document that would have been difficult for Mr J to understand.

Additionally, the fact that the acknowledgement slip which allowed Mr J to circumvent JLT's advice was attached to the suitability letter was also a concern to the investigator, as was the rationale included by Mr J, which did not actually give a reason why Mr J was rejecting the advice.

Finally, our investigator noted that whilst Mr J wanted the enhancement paid to him directly in order to repay some of his unsecured debt, the fact find contained little information to establish if this was Mr J's only option to reduce / repay this debt.

JLT did not agree stating that they considered the suitability report clear that the advice was to retain the DB pension, whilst the transfer analysis document was long this had been summarised in the suitability letter, with Mr J additionally signing to confirm this had been read and understood.

Whilst the fact find stated Mr J's retirement was targeted at age 67, there was nothing to suggest that this later retirement date would have altered the advice in any way. Finally, JLT noted that they were clear with Mr J that their advice was limited to his DB pension and as such their remit did not cover his debt or the options he may have had to repay this.

Our investigator considered these points however remained of the opinion that the insistent client process followed by JLT was flawed, did not give sufficient information to Mr J in order to allow him to make an informed decision and as such was not minded to change their outcome.

Given no agreement could be reached the case has been passed to me for a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business 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.

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.

- Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.
- Principle 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.

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But there were Conduct of Business Sourcebook ('COBS') rules in the regulator's Handbook which required JLT to 'act honestly, fairly and professionally in accordance with the best interests of its client'. In addition, COBS required JLT to provide information that was clear, fair, and not misleading. So, its recommendation had to be clear such that Mr J would reasonably have understood the advice and the implications of acting against that advice.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our investigator gave.

Financial viability

In its suitability report JLT set out that the critical yields were too high to be achieved by reinvesting the funds in a personal pension. It said for that reason it didn't recommend that Mr J should transfer out of his DB scheme. I agree with JLT's analysis. That is that it was more likely than not that Mr J would be worse off in retirement by transferring. As this isn't disputed by either party to the complaint, I have not gone on to analyse the financial viability of the transfer as it is clear the transfer was likely to lead to reduced benefits for Mr J.

The question I must consider is whether Mr J was treated fairly as an insistent client.

In this regard, I have reached the same conclusion as our investigator.

JLT have stated that they consider the advice report to clearly document that their advice was to retain the DB pension and that Mr J chose to go against that advice and proceed with the transfer, as such he was treated as an insistent client.

Having looked at the advice documentation I agree with JLT that it does state that Mr J should retain the DB benefits and not complete the transfer. However, I do not believe JLT's process was fair in that it did not provide sufficient information to allow him to make such a decision.

Whilst JLT's suitability letter did state that the advice was to retain the existing DB pension, the advice process made it too easy and straightforward for Mr J to disregard this and move forward with the transfer. The acknowledgement slip was attached to the suitability letter itself with Mr J simply having to choose an option.

Sending the acknowledgement slip with the suitability letter undermined the importance of the advice to retain the DB scheme and made it easy for Mr J to make a financially harmful decision. Had the acknowledgement slip not been included at that time, Mr J would have been put into the position of actively having to contact JLT to proceed as an insistent client, a process I would not consider too burdensome for someone with a genuine desire to transfer pension benefits. This would have more clearly separated the advice to retain the DB scheme and the process of transferring the benefits as an insistent customer and better ensured Mr J was fully aware that the transfer was not in his best interests.

In addition, having assessed the acknowledgement slip on file I do not believe Mr J states *why* the transfer is required. The reasoning included simply confirms Mr J wants to transfer with no actual further detail as to why. I do not consider this to be appropriate and this should have been questioned further by JLT at that time. Mr J was only 40 years of age at that time and was transferring the bulk of his pension provision away from a risk-free environment.

The 2011 documentation shows that JLT were fully aware that the transfer was likely to lead to Mr J being worse off in retirement, as such I would have expected them to ensure Mr J had robust and well thought out reasons for rejecting JLT's advice and proceeding with the transfer.

The only specific objective noted on file in relation to the pension transfer relates primarily to Mr J's goals for the offered enhancement, which was to be used to repay unsecured debt. Whilst JLT have stated that discussing Mr J's debt was outside of their remit, the fact find made clear Mr J's intentions regarding the available enhancement and this should have alerted JLT to the fact that Mr J may already be prioritising the short-term cash available from transferring, rather than his long-term retirement provision.

As such, further questions around Mr J's long and short-term objectives should have been asked to ensure Mr J was fully aware of the consequences of his actions and establish if other alternatives were available. This would have been entirely in keeping with Principle 6 and COBS 2.1.1R detailed above.

JLT's role required them to go further than simply actioning Mr J's request, as professional advisers they should have challenged Mr J's objectives highlighting their long-term cost, especially when they appear to be limited to making a fairly small repayment on unsecured debt.

Given the flaws in JLT's process (detailed above) I do not consider it reasonable to treat Mr J as a true insistent client. JLT's process allowed the advice to be circumvented too easily, with Mr J's (apparently) pre-conceived preference for transfer going unchallenged, with no clarification sought on Mr J's actual reasoning for choosing to transfer.

I've considered carefully whether Mr J would still have insisted on a transfer away from his DB scheme had the full conversations and documentation detailed above been provided by JLT. Overall, I am not persuaded that Mr J would have insisted on the transfer.

I have based this decision on the fact that Mr J was an inexperienced investor who was dealing with the bulk of his retirement provision. Mr J was moving a significant proportion of his retirement provision into a risk-based approach with confirmation from his advisers that this was likely to lead to reduced benefits in retirement. With all the other conversations and information in place I believe Mr J would have heeded JLT's warnings and retained the DB pension.

As such I have gone on to give redress instructions below.

Putting things right

A fair and reasonable outcome would be for JLT Wealth Management Limited to put Mr J, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have likely remained in the occupational scheme.

JLT should 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.

For clarity, Mr J has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr J's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, JLT should:

- calculate and offer Mr J redress as a cash lump sum payment,
- explain to Mr J before starting the redress calculation that:
    - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mr J receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr J accepts JLT's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr J for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr J's end of year tax position.

Redress paid directly to Mr J as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, JLT may make a notional deduction to allow for income tax that would otherwise have been paid. Mr J's likely income tax rate in retirement is presumed to be 20%. However, if Mr J would have been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

My final decision

As per the rationale above I am upholding this complaint and require JLT Wealth Management Limited to complete the redress as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 18 January 2024.

John Rogowski
Ombudsman