

## The complaint

Mr M complained that he was given unsuitable advice to transfer his defined benefit (DB) Occupational Pension Scheme (OPS), to a type of personal pension plan.

JLT Wealth Management is now responsible for answering this complaint. To keep things consistent throughout this decision, when referring to the business, I'll refer mainly to "JLT".

## What happened

Mr M approached JLT in 2018 to discuss his pension and retirement needs. JLT completed a fact-find to gather information about Mr M's circumstances and objectives. Information gathering and discussions then took place over several months and his circumstances of that time were as follows:

- Mr M was 58 years old and married; he was in very poor health. Mr M had been suffering from cancer for some years. Discussions between him and the adviser suggested his life expectancy was, by the time of the advice, very short.
- At the time of the advice, he'd been medically unable to work for a few years. However Mrs M, who was aged almost 60, was in good health and working full time. She earned £43,000 per year and they lived jointly off this income. Mrs M said she enjoyed her job and was intending to keep working until the age of 66.
- Mr M was a deferred member of a DB scheme having previously worked for a company until being made redundant some years before. The cash equivalent transfer value (CETV) was around £98,908. The normal retirement age (NRA) for this pension was 65.
- Mr M had some other, mainly small, pensions. He had two defined contribution (DC) schemes with around £5,200 and £500 in respectively. And he also had a "Section 32" pension (a type of buy-out pension from a former DB scheme). This promised to pay around £4,350 per year at the age of 65 with a spouse's 50% benefit in the event of Mr M's death. These pensions aren't the subject of any complaint.
- Mrs M had her own pension provisions. She was already drawing an annuity of £86 per month. But she had three DC schemes which were worth around £20,000 in total. Both Mrs M and her current employer were still contributing to her workplace pension scheme each month. She anticipated a full state pension at the age of 66 which was in six years' time. Mrs M also told the adviser she was due to part-inherit her elderly mother's house relatively soon.
- Mr and Mrs M owned a property the value of which was said to be over £200,000. This was owned with a mortgage of around £10,000 which had five years to run. They had no other savings investments or assets and some lending debts of around £7,000.

As part of the advice process, it seems the parties engaged with one another throughout the second half of 2018. There were initial calls and written communications and the collection of relevant information. There then followed an adviser introduction.

The JLT adviser and Mr and Mrs M then discussed the DB pension options available during a series of 'phone calls. Later, JLT set out its advice about Mr M's pensions in a suitability report and he eventually transferred away from his DB scheme to a type of personal pension arrangement in December 2018. Mr M was advised to take a 25% tax-free lump sum of around £24,700. The adviser said he should invest the rest of the funds in a type of 'cash' fund in the SIPP because he wanted flexibility and easy access to the money.

Mr M first complained to JLT about its advice at the beginning of 2022. In response, JLT denied it had done anything wrong and said it had acted on Mr M's objectives at the time. He then referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said they thought it should be upheld. The investigator didn't think transferring away from his DB scheme was justified and said some of the things Mr M apparently wanted to spend the money on weren't necessary. The investigator also said holding a large amount of the transferred funds in cash wasn't best use of them. Finally, the investigator said that although there was every indication that Mr M might pass away quite soon, there was no doctor's letter or medical evidence confirming this.

JLT didn't agree that this complaint should be upheld. So, as the complaint couldn't be resolved informally, it came to me for a decision.

I issued a provisional decision (PD) about the complaint in December 2023 in which I explained that I wasn't intending to uphold the complaint. In the PD I set out that Mr M's poor health was fundamental to the advice and I didn't think the advice to transfer was unsuitable because of this. I gave the parties a period to submit any further evidence or information. I've now had a reply from Mr M's representative and can issue 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 all 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'). 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 M's best interests.

I have therefore used all the information we have to consider whether transferring to a new personal pension arrangement was in Mr M's best interests. I've also considered with great care, the very individual circumstances of this situation and responses to the investigator's View. I've also comprehensively considered Mr M's responses to the PD I issued.

I'm very sorry to disappoint Mr M, but I still don't think the advice he received was unsuitable. My final decision is that I am not upholding his complaint.

### Introductory issues

As I said in my PD, I'd like to acknowledge that this is a difficult subject matter to be considering and I would like to convey my sympathy to Mr and Mrs M for the difficult challenges they have faced. I have exercised the utmost care in approaching the specific and relevant aspects of their complaint and have re-considered my approach in the light of having previously issued a PD.

I've had the benefit of listening to a number of long and detailed recorded telephone calls between adviser and client. I've also seen and carefully considered a great number of documents related to the pension transfer advice, and have thought in detail about the objectives Mr and Mrs M had at the time, particularly in the context of him suffering from a life-threatening illness.

I also think that despite the difficult nature of the decisions Mr and Mrs M faced at the time, they approached the entire advice and transfer process in what appears to me to have been an informed and intelligent way. What I mean by this is that whilst I accept that Mr and Mrs M were certainly not pension experts, nor were they the regulated party in this relationship with JLT, I think that Mr and Mrs M fully understood the process and had considered their position diligently. In my view, they appeared very much to understand all the options open to them when discussing these matters with JLT.

### Mr M's health and his objectives

It's clear that Mr M hadn't enjoyed good health for quite a few years. He'd been diagnosed with cancer and told he could expect to survive 10 years. By the time of the advice sessions, we were at around 'Year 9' and so the discussions centred largely around the assumption that Mr M was going to die. So, the advice was given to Mr M in this context.

For example, Mrs M explained her husband had been originally told some time ago that he could potentially be treated for 10 years and that "*we are in the ninth year and things aren't going the right way.*" She further explained that he was at the "*end of the line*" with his treatment. We also know Mr M hadn't worked for at least two years and there was no reasonable prospect of this ever changing.

Our investigator made some very reasonable comments about these 'end of life issues'. Like Mr M's representative, the investigator remarked upon the uncertainty in predicting the advance of Mr M's condition. And it's true that no 'hard' medical evidence was produced.

However, I think against the backdrop of the circumstances that were known at the time, the adviser was entitled to believe what he was being told by Mr and Mrs M. They clearly and repeatedly told the adviser that the cancer was effectively getting worse, and although there was an uncertainty about his exact life expectancy at this point, the prognosis was certainly not good.

Of course, this is an emotive subject and I apologise for the need to bring it up. But the point I'm making here is that Mr and Mrs M engaged in what appeared to me to be a pragmatic discussion about Mr M's health and it was they themselves that put forward a powerful argument to the adviser for obtaining much greater pension flexibility than they had through Mr M's existing deferred DB scheme. Mr M had initially written to JLT outlining what his preferences for his DB pension were and the rationale for transferring to obtain flexibility. He was also clear that he and Mrs M had thought carefully about her situation in the context of him dying first and leaving her to cope financially on her own. He explained that Mrs M had her own independent finances which would support her when Mr M passed away, which they were expecting to happen. He said, *"I have made it quite clear during all conversation[s] that my wish is to make a personal choice ... My wife is fortunately in a sound financial position having a well-paid salary, a good company pension, a full state pension due, other small pensions built up throughout the years and already has provision in place with her sisters for living life beyond me. I am very satisfied that things are in order for her."*

Mr M's objectives were that he wanted a situation whereby he could access more than the 25% tax-free lump sum available to enjoy his limited time left. If remaining in the DB scheme, this amount was only around £13,929. But if transferring to a personal pension arrangement it could be over £24,700. However, the ensuing discussions focussed very much on him accessing his higher tax-free allowance of around £24,700 *and* also another lump-sum element that would likely be within his annual personal tax-free allowance, which was around £12,000 at that time. Although not individually costed, the objectives Mr M had for his future consisted of a holiday, treating his family, flexibility around care costs and reducing the £17,000 they currently had in outstanding debts.

So, I think it's fair to say that Mr and Mrs M led the adviser throughout the latter months of 2018 to believe that Mr M's life expectancy was short. I don't think it would have been unreasonable for the adviser to therefore look at Mr M's life in terms of months rather than years. I think Mr and Mrs M also set out a realistic set of financial objectives connected with these end-of-life preparations and they sought to assure the adviser that the need for flexibility to address these matters had been discussed in detail and that the case for transferring to a personal pension to achieve these things had been clearly demonstrated.

#### The points of complaint

I have considered what's been said on Mr M's behalf. However, I think Mr M's representative makes many complaint points which are somewhat generic and which lack supporting evidence. This doesn't make them unimportant and I will deal with these matters in turn.

- *Telephone 'meetings'*

The first issue raised is that the advice was only ever given over the telephone as opposed to face-to-face. The implication here is that this methodology was both inappropriate and insufficient in the circumstances and that it somehow demonstrates that the advice was poor and / or incomplete. However, I'm afraid I don't agree with this.

Mr M had made it very clear from the outset that he was unwell and suffering from a serious illness. I therefore think it's understandable that the substantive discussions about his pension affairs were over the telephone. As I've said, the telephone advice sessions took

place only after an initial preamble whereby the parties had already communicated several times with one another and had exchanged necessary introductory details both verbally and in writing. Having listened to the relevant call recordings on which the advice was eventually predicated, there is every indication that these were diarised telephone appointments. Mr M appeared entirely comfortable with this arrangement and he was accompanied throughout by Mrs M who played an active role in the discussions.

So I'm afraid I don't consider it to be fair to imply now that these structured telephone advice sessions were inappropriate in this case, or that Mr M somehow received a lesser service as a result. I think that if someone was clearly medically vulnerable to infection in the way I think Mr M probably was, then it's entirely reasonable to have concluded that any unnecessary public exposure ought to be limited, if at all possible. But as I've said, Mr M clearly consented to these calls in any event and there was no indication whatsoever that either he or Mrs M were expecting to be communicated with in a different manner.

I think it's also fair to point out here that the telephone calls during which Mr M's DB pension was discussed were also very comprehensive affairs. For example, an initial fact-finding call was over 28 minutes long. This was followed in due course several weeks later by more detailed discussions about Mr M's full health situation and his objectives for his pension money. The second call I listened to was 1 hour and 50 minutes in duration. A subsequent 'wrap up' call, ahead of the formal written advice, was another 1 hour and 1 minute in duration. To be clear, I have listened to the entirety of all these calls and in my view both Mr and Mrs M seemed very well prepared, comfortable and they were clearly expecting them.

I think it's helpful to summarise some of the discussions that took place in the two 'main' telephone advice sessions. In a general sense, I think the adviser successfully navigated the task of fully understanding all of Mr and Mrs M's objectives on one hand, and yet still getting across all the regulatory information about Mr M's pension choices on the other.

As I've said, there were three substantial calls between the parties with the first being more of a fact-finding exercise. As for the remaining two calls, I think it's helpful for me to set out some of the detail that was discussed.

In the second call (*duration 1h, 50m*), I think it's important to recognise the considered and sympathetic approach the adviser took. He acknowledged the difficult nature of the subject matter and afforded plenty of time for Mr and Mrs M to speak; he also offered time to pause. Mr and Mrs M made it clear they were happy to continue the discussion and it was very clear they had already been supplied with a great deal of written information about Mr M's pension, his options for it and the types of issues they needed to think about if transferring away.

The adviser also told them that considerations other than transferring away from Mr M's must be approached first. We know that a previous discussion had focussed on Mr M retiring straight away from his DB pension. The figures collected about this option were that a lump-sum of £13,929 could be achieved together with an actuarially reduced annual pension of around £2,000. This reflected that Mr M would be accessing his pension well ahead of the NRA (aged 65). The adviser then moved on to the potential to purchase an annuity, and in particular the possibility of a severe ill health annuity.

It's clear to me that at this point Mr and Mrs M fully understood all the options relating to *not* transferring. However, they didn't want to go down this route because Mr M had made it clear that his desire for enjoying his remaining life centred on going on holiday, treating family members and other forms of spending which I will pick up below. In my view, given

the history of his condition, it was agreed that Mr and Mrs M wanted to get on with the other options.

In support of this, Mr and Mrs M accepted the adviser had already provided them with some consent forms which were necessary to progress analysis of a severe ill-health annuity. But they said they didn't want this and he hadn't filled out the forms the adviser had previously sent through in case it implied he wanted an annuity – when they were being very clear he didn't. I think it was to the adviser's credit that he did not simply accept this, and he told them this was a part of the overall analysis process which really ought to be revisited.

The adviser then spent a considerable time reviewing Mrs M's financial affairs, testing these against her situation if and when Mr M passed away. I believe the purpose of this was to ensure that if Mr M insisted on transferring away from the DB scheme, Mrs M would at least be able to enjoy a reasonable retirement on her own, from a financial perspective. At this point Mrs M took some time to really assure the adviser that she and Mr M had fully considered her financial situation if and when he passed away. She said, for instance, that she was certain she wanted to continue working until the age of 66, which for her wasn't that far off. She reassured the adviser that she was physically up to this and that she enjoyed her job. It was reiterated that this salary already provided for all their current needs as a couple. It was confirmed she was also eligible for a full state pension and Mrs M said it was "*definite*" that she would downsize from her current home to a smaller property, thus securing her ability to live a reasonable retirement independently. So, it seems to me that Mr and Mrs M considered Mr M's DB scheme surplus to requirements, in that it was not needed to meet their retirement income needs in the future.

In fact, Mr and Mrs M both stressed to the adviser that they had carefully considered the eventuality of Mr M's likely death and Mrs M being left on her own. They specifically explained they had approached this difficult subject sensibly and the plan was to now obtain the flexibility to allow Mr M to do what he wanted to do before he died. Mrs M also said she'd also anticipated a part-inheritance as her own mother was nearing the end of her life and there were no care home costs involved.

So, Mrs M strongly implied she was due a likely inheritance quite soon. I think the adviser could have explored this in more detail although I accept he largely discounted it for 'safety reasons'. I say this because he referred in the call to inheritances, in his experience, not always being what they seemed. In this regard, although it could be perceived as a failing, I'm sure the adviser was taking a conservative approach to Mrs M's own financial resources in the event of her husband's death.

Even so, Mr and Mrs M went on to tell the adviser they had independently considered a number of options as regards the DB scheme. These included attempting to access Mr M's pension early, as it was, or investing in an annuity. But they had concluded that the option that fitted what they wanted was to transfer away for flexibility reasons and immediately take 25% tax-free cash out. In reality, Mr M still wanted more than the £24,700 this would generate, but this option would allow him to enter a drawdown facility and still remove some more cash without paying any tax – so it fitted their needs.

This telephone call drew to a close with the adviser setting out the discussion summary and the plan for going forward – essentially more analysis was needed. But despite Mr and Mrs M saying they didn't want an annuity, the adviser persuaded them that at least investigating this type of plan might be a prudent idea in terms of providing as many comparisons as possible. Mr and Mrs M therefore agreed to fill out the forms for the enhanced annuity which they already had.

By the time of the third call (*duration 1h, 01m*), it was unfortunately the case that Mr M's latest blood tests had indicated a cause for serious concern. Mr and Mrs M described these as "*not good news*" and they told the adviser that whilst they had experienced setbacks in the past, these types of results had never been so bad and that they were preparing for the worst. I therefore think it was reasonable for the adviser to conclude that the life-limiting trajectory that all the parties had previously discussed was continuing, and to some degree, accelerating.

Nevertheless, the adviser explained that in the meantime he had been investigating annuities as promised. Even though Mr and Mrs M had been relatively firm that this wasn't what they wanted the adviser went through a number of annuity options, including an enhanced annuity based on Mr M probably having a considerably reduced life expectancy. But even though Mr and Mrs M listened to what the adviser said, this part of the discussion concluded by Mr and Mrs M reiterating that the annuity options lacked the flexibility they were seeking and they specifically said that in their circumstances it simply tied them down.

In fact, in my view, Mr and Mrs M were certain that a known and regular income (as would be provided by an annuity) just wasn't what they wanted or needed given that Mr M was expecting to pass away soon. I think the evidence is also very clear that Mr and Mrs M were saying this with a clear mind and had given it a great deal of thought. Mrs M reiterated, for example, that her husband intended to go on holiday if he was able and that they wanted to enjoy his final remaining time together. They were also clear that they were thinking about the probable toll the caring for Mr M, could have on Mrs M as he entered the late stages of his life. She was almost 60 years old and she worked full-time, so I think this too demonstrates the very sensible and pragmatic approach they were taking to the whole situation. In this regard, they specifically said Mr M would likely need some cash to pay for additional care when he inevitably became very ill. They had even estimated the cost of respite carers at an hourly rate as Mrs M was at work. Mrs M also said her husband might not need any money at all if he was too ill - the implication here being that he wouldn't need to spend anything in some months if this were the case. Mr and Mrs M portrayed all these factors as demonstrating a need for flexibility and I agree they clearly were.

- *Vulnerable client*

Another broad point of complaint was raised on Mr M's behalf revolving around him evidently being a "*vulnerable client*". Although I understand the general point being made, I'm afraid Mr M's representative puts forward no compelling or supporting evidence. In the complaint it said "*at the time of receiving advice, [Mr M] was suffering with ... cancer and this is still the case today. [He] was taking various strong medications for his terminal illness. [Mr M] had an anticipated short life expectancy and 'did not know how long he had left'*".

As far as I'm aware, none of these facts are disputed. In fact, the whole crux of the complaint is really about Mr M's anticipated death and what Mr M's representative was setting out here is confirmation that all the parties assumed that Mr M's remaining life would be short.

Of course, I accept that suffering from a life-threatening illness is incredibly stressful. However, it's a reality that financial advisers are called to operate within these difficult situations from time to time and I think this adviser acted appropriately. Everything I've seen (and listened to) implies that Mr M was supported throughout this process by his wife. But he also appears to have maintained composure in dealing with a wholly unpleasant situation in a very admirable way. As I've said before, Mr and Mrs M were not only given a lot of information – the evidence is persuasive that they understood and considered it together.

So, when Mr M's representative raises this point of complaint, it is in my view, only in the most general terms. It said JLT had a "*duty of care*" and I do not disagree. However, I've

found no specific allegation or evidence that JLT failed in such a duty. In short, I accept Mr M had an illness that made dealing with him correctly was important. But in this context, I can't see that the adviser treated him unfairly here.

- *Loss of benefit / guarantee*

Mr M's representative also makes points of complaint that, by transferring away from the DB scheme, there was a loss of both benefits and guarantees. Mr M's representative summarises these perceived failures as a form of negligence and says, "[Mr M] *has explained that he was not desperate for the tax-free cash, at the time it was [only] a 'nice thing to have'.* It also says, "*there was no just reason to transfer away from his pension which provided him with guaranteed benefits and an income for life*".

It's not disputed here that most DB pensions contain valuable benefits which can typically include an ongoing spouse's pension if the pensioner dies; this is usually 50% of the pension being paid in retirement. Guarantees also typically include a form of index-linking to lessen the effect of inflation.

However, whilst I accept that there was a loss of both benefits and guarantees caused by transferring away, I think the rationale for transferring was wholly focussed on a severely reduced life expectancy. I don't even think now that JLT would argue that there were losses of certain benefits or guarantees, and that Mr M was giving up a pension for life. But unfortunately – as acknowledged by all the parties concerned, including Mr M's own representative - Mr M's life was expected to be very short at the time the advice was given. And so the only meaningful pension for life was the 50% spouse's pension Mrs M would likely get when Mr M passed away.

There's also no suggestion, in so far as I'm aware, that Mr M was ever "*desperate*" for tax free cash. But neither could it reasonably be construed only as a "*nice to have*" extra. In reality, Mr and Mrs M both appeared very sure that Mr M's failing health meant he required greater financial flexibility with this pension and the option to enjoy the money before he died. The pathway for spending the money was as well planned as one could reasonably expect, given the very difficult circumstances.

*Would Mrs M be left short in her own retirement by Mr M transferring away?*

Essentially, the issue here was that there was a trade-off involved in as much that by transferring away, Mrs M would probably be denied the future 50% spouse's pension guaranteed by the existing DB scheme.

Whilst this was a matter for the adviser to ultimately judge when making his final recommendation about suitability, I come back to what I've said above. This is that Mr and Mrs M themselves had sought very hard to persuade the adviser that they had firstly considered this issue in depth; and secondly that having considered it, they had concluded that Mrs M's retirement would still be financially secure.

Whilst Mr and Mrs M had obviously made some pension provisions during their long working lives – they didn't have *substantial* pensions to live off in retirement. However, the indications were that they could still enjoy a reasonable lifestyle when retired, from a purely financial perspective. In my view transferring away from this DB scheme in these circumstances didn't materially change this one way or the other. I say this because even if I were to consider the argument that Mr M's representative now puts forward, which is that Mr M should have just stayed in his DB pension, I think the prospect of Mrs M being materially better off is unlikely.



This is because by Mr M remaining in the DB scheme, he would have first needed to substantially moderate his end-of-life financial objectives. He'd have to accept that the highest cash he could generate in this scenario was a lump sum of £13,929 – far below his hoped-for amount. The potential consequences of this would likely be not reducing the mortgage and / or the credit card debt they had, thus leaving these liabilities for Mrs M to address herself after Mr M had died. It could also mean giving up his stated aspirations for additional end-of-life caring support, or for a final holiday with his wife. But more so, it should be remembered that by remaining in the DB scheme Mr M's annual pension was only around £2,000 meaning Mrs M's annual spouse's pension after his death would be £1,000.

I've mentioned the generic benefits of remaining in a DB pension quite a few times throughout this decision. In most cases, the loss of such benefits and guarantees is indeed not right for consumers. But in this particular situation, I don't think giving up a £1,000 annual spouse's pension was unsuitable when considered against the alternative form of spending and debt reduction Mr and Mrs M were planning.

If using the tax-free 25% allowed under pension rules, and then straddling the remainder over the 2018-20 tax years to take two further tax-free annual payments, it's not unreasonable to say Mr M could quickly generate around £48,000 tax-free when he transferred away. In my view, this would successfully address all of the financial objectives Mr and Mrs M had consistently set out in all their dealings with JLT. This would have included leaving Mrs M with no mortgage or other debts. In my view, the evidence points to then using the remainder £50,000 to pass to Mrs M tax-free upon her husband's expected death. This wasn't unsuitable in their situation.

I think this would have been of great reassurance to Mrs M. I think that both she and Mr M thought this too and they both fully understood that what she was effectively giving up was £1,000 per year for the rest of her life. However, Mrs M was adamant she would be still working after Mr M's death throughout her early and mid-sixties. She would therefore be approaching her retirement still earning £43,000 per year with no debts, considerably less outgoings and a further £50,000 in cash to add to the modest personal pensions she already had. She would be continuing to add to her own workplace pension and there was the "Section 32" pension I mention at the beginning of this decision.

Her stated post retirement strategy was also still yet to be triggered: this consisted of the state pension, downsizing her property to release cash and following JLT's recommendation that she could seek independent financial advice if needed. And none of this includes what Mrs M had also told the adviser several times about being confident of a part-inheritance relatively soon (with no care home costs anticipated).

The question here, therefore, is whether the giving up of the spouse's 50% pension of around £1,000 per year was worth these alternatives. The adviser concluded it was. And having considered all of Mr and Mrs M's circumstances and objectives I also think the advice was suitable. I've considered whether the money for Mr and Mrs M's aspirations could have been achieved in other ways. But we know Mr M had only around £5,700 in two small DC pensions and I don't think this came close to what he wanted to achieve. I've noted that these small sums too would have probably been left to add to Mrs M's assets in due course anyway.

### Responses to my PD

I thank Mr M and his representative for the reply to my PD and the many points made within. I don't intend to cover every single point, not least because I've already set out my opinion about the points made in a very detailed way. As long as the response from Mr M's side is, I think it's fair to point out that no new information is contained within it – only a re-emphasis

of points already made (and indeed, considered). Nevertheless, I've taken time to carefully reassess everything that's been put forward on his behalf.

The first point made on Mr M's behalf by his representative was concerning the differences in outcome of my Decision, with the investigator's View. I understand the point being made here, but of course; Mr M's representative will know that the latter is a recommendation whilst the former is what actually matters. Nonetheless, I think both the View and the Decision recognise the very difficult and sensitive nature of the ultimate conclusion process and the complexities involved in this case. I understand Mr M was disappointed with the change in outcome but trust his adviser will explain that occasionally, investigator's Views do differ with the ombudsman's Final Decision on a complaint. And to portray this as "rare" as his representative has, certainly needs contextualising – it is not a fair description of the outcome of complaints generally, in my view.

The response to the PD then asked me to reconsider the issues of Mr M's health and potential life expectancy. However, I have dealt with these issues in considerable detail above and can't really add much more. The narrative was that Mr M was very ill and facing death relatively soon. I think the adviser had every right to accept what he was being told about this as the updates about his poor health were many and detailed. Mr M's pension objectives, not surprisingly, therefore centred around him using the money to enjoy his remaining time with his family and afford a flexibility which both he and Mrs M had clearly thought very carefully about. To a degree – and I agree with Mr M on this point – the objectives were mainly short-term. But as I've explained, they were extremely important short-term objectives, focussing as they did on Mr M's end-of-life quality and care issues. As I also pointed out, these appeared balanced and well considered by Mr M, supported by his wife.

The response to the PD also highlighted that Mrs M was facing her own mental health challenges. I accept this was obviously the case and am sure her husband having a terminal illness was emotionally challenging to a very significant degree. However, to portray now – as Mr M's representative does – as both Mr and Mrs M not being able to make financial decisions about the future, is to underestimate their resolve. In my view, the evidence was clear that even under these unpleasant circumstances, Mr and Mrs M were facing these issues with formidable pragmatism. Once again I was asked to consider that these 'meetings' were telephone based as opposed to 'in person'. However, I had said quite a bit about this in my PD and the planned, organised and supportive circumstances in which these meetings took place. To be clear, there was absolutely no evidence whatsoever suggesting that Mr M wasn't happy with these arrangements or that his preference was for anything else.

Finally, I considered the issue of the mortgage which Mr and Mrs M had. I'd made some comments in the PD about the worth of paying this down, as Mr M had consistently wanted to do. The advantage of this, he said, was to leave Mrs M with no mortgage to pay when he passed away. Mr M's representative said the mortgage was almost paid off, however with 5 years left I'm afraid I disagree. Unfortunately, I think 5 years was a much longer time frame than what Mr M judged he had left and what he led the adviser to believe in terms of his life expectancy.

### Summary

At the beginning of this decision I made it clear that the regulator's stance on DB transfers is that an adviser should start from the premise that transferring away is much more likely to *not* be suitable for a consumer. I was also clear from the outset that in assessing this complaint, it was JLT which was the regulated party here. So, whatever Mr and Mrs M

thought was a good idea, a constructive and suitable way forward still needed to be achieved by the adviser and he had to make sure his advice was in their best interests overall. The adviser's job here was to really understand their circumstances and make a recommendation that was suitable. It was on this basis that I approached this complaint.

However, it's fair to also recognise that these were unusual circumstances. Mr M had endured several years of serious illness and the prospect now was that his life was going to be cut short. By the time the parties met to discuss his financial affairs, the clear indications were that he was approaching an end-of-life scenario. Mr M told the adviser that he wanted to enjoy any remaining quality time he had left with his wife. He wanted to also treat members of his family with financial gifts and take a holiday whilst his health still permitted. He also said he'd like to pay down his remaining mortgage, the expiry of which was due to post-date his death by several years. He also wanted to eliminate the other outstanding debts he and Mrs M had so that these would be paid down by the time he died. Ultimately his overarching goal was to use his deferred DB pension in the most flexible way possible so that he was entering this final phase of his life with the financial firepower he and Mrs M believed he needed.

In my experience, it's often the case that 'flexibility' is used inappropriately as a rationale for transferring away from a DB pension to a personal pension arrangement. It is often poorly defined and not genuinely required. But in this case I think flexibility was a genuine need. In my view, the relevant legislation permits transfers where such a need is demonstrated and I have set out above how I think this applied to Mr M.

I think the evidence is strong that Mr M himself, accompanied and supported at all times by Mrs M, put forward a powerful case for transferring away. They had carefully considered the alternatives over several months, unhurried and supported along the way by their adviser. There were substantive discussions between the parties about remaining within the DB scheme and potentially retiring early from that. There were similar discussions about purchasing various different types of annuities. I think it's reasonable to say that there were also detailed discussions about considering numerous sub-options within these different choices. However, a consistent theme throughout was that Mr and Mrs M were very clear, both verbally and indeed in writing, that their desire for financial flexibility outstripped all the other different choices the adviser had set out for them.

Whilst considering this complaint, it was clear that Mr and Mrs M had not only done their own research, but they listened very carefully to everything the adviser had told them and engaged constructively in the discussions that took place. In my view, the adviser provided a very comprehensive advice service and achieved the difficult fete of broadly meeting Mr and Mrs M's objectives – in difficult circumstances - while still providing appropriate challenges to their emerging views about transferring the DB scheme.

Ultimately, the adviser recommended that Mr M should transfer away. He could access over £24,700 and almost £12,000 more without paying any tax. In a few short months after the transfer, he could, if he wished, access around another £12,000 tax-free. I think these amounts neatly fulfilled the objectives Mr M had for spending before he expected to die.

The rest of the money was invested in cash. However, I don't accept that this was unsuitable in these particular circumstances. Mr and Mrs M specifically said they wanted "no risk" and there's verbal and written evidence of this. The suitability report, for instance, said; *"We discussed the position during our meeting and you confirmed that you wanted No Risk to mean precisely that, whilst still allowing for access to funds. This will limit growth potential, but it reduces the risk of the fund value falling sharply at a point when you may have little time left to recover any losses before drawing the benefits. We would suggest that you review your funds at least annually."*

At the time, we were in a period of very low inflation and low interest rates and the whole point of the transfer was to cope with the unknown. Mr and Mrs M had put forward a realistic proposition that Mr M might need to buy-in care support which would clearly benefit him, but also be a source of support for Mrs M in what would no doubt have been very difficult circumstances.

The adviser first recommended a low-risk growth fund, but Mr and Mrs M didn't even want this. Mr M had acknowledged in the 'fact-find' that "*my circumstances are such that I cannot take the risk, nor do I wish to*". So, the adviser said they could put it into a cash fund currently paying 0.65% interest with no annual management fee. This was a Bank of England (BoE) base rate tracker (BoE base rate minus 0.1% - and in December 2018 the BoE rate was 0.75%). So had the BoE rate gone up, his fund value would have tracked upwards too. They unambiguously said on the call, "*we want to go for that one then*".

So, I'm satisfied that Mr and Mrs M knew this cash fund option was right for them and could be reviewed. I think it was an integral part of the short-term flexibility they wanted at the point of initial drawdown and they knew they could change funds at any time.

Of course, I accept the issue of loss of benefits and guarantees in transferring away from the DB scheme. But the evidence is very strong that this had been appropriately considered by all the parties. The adviser – and Mr and Mrs M – came to the view that these losses were outdone by advantages elsewhere; I agree. Ultimately the recommendation met Mr M's objectives and I'm satisfied the adviser acted in Mr M's best interest.

I do understand this will be disappointing. However, in my view the advice provided was suitable.

I am therefore not upholding Mr M's complaint.

### **My final decision**

I am not upholding this complaint.

I do not direct JLT Wealth Management to pay Mr M any compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 February 2024.

Michael Campbell  
**Ombudsman**