DRN-4263388

The complaint

Mr B has complained that JLT Wealth Management Limited (JLT) gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) to a Personal Pension Policy (PPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

On 20 April 2010, JLT wrote to Mr B. The letter said that JLT would advise Mr B in relation to an enhanced transfer value offer by the trustees of his OPS in respect of his defined benefits. The letter also said that the advice provided would be paid for by the company and Mr B was under no obligation to accept the recommendation JLT provided. Included with the letter was a "Fact Find" and "Risk Assessment" for completion by Mr B.

Mr B subsequently completed and signed the Fact Find document on 28 April 2020. It noted the below information:

- He was 39, in good health and co-habiting, with two financially dependent children.
- His annual income was £40,000.
- Mr B's scheme retirement age was 65, but he wanted to retire at age 60.
- Mr B estimated he would need £10,000 pa in retirement.
- A replacement defined contribution pension plan put in place by his employer was being contributed to at a rate of 4% pa, which began in 2007.
- Mr B's main residence was valued at £130,000 and he had £5,000 in cash deposits.
- He had a mortgage of £70,000 and a credit card liability of £1,000.
- He had a "balanced" Attitude To Risk (ATR)
- Mr B also indicated that he wanted a cash lump sum now at the cost of sacrificing future benefits as he was at risk of redundancy.

A transfer value analysis (TVAS) was produced on 3 June 2010 which was based on the enhanced transfer value of £74,801.34 and resulted in a critical yield at age 65 of 7.2% and 7.4% at age 60.

The critical yield based on taking the incentive as a cash lump sum was 7.8% at age 65 and 8.2% at age 60.

On 14 June 2010, JLT wrote to Mr B following receipt of the completed Fact Find. The letter enclosed JLT's recommendation report, dated 9 June 2010, which recommended that Mr B transfer his defined benefits to a Friends Provident PPP.

JLT noted that Mr B had the following objectives, which formed the basis of its reasons for recommending the transfer:

- The required investment returns were 7.4% pa if Mr B took all of the enhancement as cash or 6.8% per annum if Mr B invested the enhancement in an alternative pension arrangement within a range of investments JLT would recommend for Mr B's balanced attitude to investment risk.
- Transferring provided an immediate cash sum of £8,717 (less Income Tax and National Insurance) which Mr B was keen on receiving due to redundancy.
- Transferring provided the level of lump sum death benefits before retirement that Mr B required.
- Transferring provided overall flexibility and personal control over Mr B's pension fund, which was important to him.
- Should Mr B die before retirement, the whole of his personal pension fund at the date of his death would be paid to his estate or nominated beneficiaries, whereas if he remained in the Scheme only a return of his own contributions to the Scheme would be paid.
- If Mr B was still single when he retired he may be able to buy a higher pension with his fund than would be provided by the scheme as the scheme automatically provided a 50% spouse's pension - although this wasn't guaranteed and depended on annuity rates at the time and the size of Mr B's fund.

On 26 June 2010, Mr B completed and signed "Transfer Option Form A", ticking the option to receive a cash sum enhancement, confirming advice had been received and providing his account details for payment.

Mr B signed and dated Friends Provident's declarations on the same date, as well as an acknowledgement slip confirming he had read and understood JLT's advice.

Mr B accepted JLT's recommendation, received the cash enhancement and his pension funds were transferred.

Mr B subsequently complained to JLT, raising concerns the advice was unsuitable.

JLT issued a final response letter on 11 May 2023 which didn't uphold the complaint. In summary, JLT disagreed with Mr B's complaint, saying Mr B had a balanced attitude to risk.

JLT also said that Mr B wanted to accept the cash enhancement offered by the scheme trustees at the cost of sacrificing future benefits because he was being made redundant. JLT further asserted that the hurdle rate at the time meant that the growth which was required was less than would be normally expected to provide similar benefits to that of the prior scheme, thereby reducing the risk of making the transfer.

Dissatisfied with the response, Mr B asked this service to review the matter.

Having considered the complaint, our investigator thought that it should be upheld. He said the following in summary:

- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- The defined benefits accrued by Mr B offered a guaranteed income for life and would form a significant part of his total pension provision. The defined contribution plan had only been in place for three years by that point.

- Given Mr B’s low level of other assets and outstanding liabilities, he had a low capacity for loss. Given his overall circumstances, including his family situation, his priority would have been financial security.

- Mr B’s self-identified “balanced” risk rating hadn’t been assessed in depth, and given his lack of prior investment experience or history, he ought to have been attributed a risk averse or cautious risk rating.

- Mr B considered himself to be at potential risk of redundancy, and so found the cash lump sum incentive to be appealing, but he wasn’t made redundant and still works for the same employer. Given that Mr B would have been in a vulnerable and insecure position, JLT should have managed his concerns around this. JLT could in any case have waited to learn whether this would transpire before advising Mr B to transfer. Other options for Mr B achieving financial security in the short term hadn’t been considered or discussed.

- Mr B had been presented with the option whereby he could access a cash lump sum, with the threat of redundancy hanging over him – and so it would have been an easy option for him. But a conversation around other options post-redundancy should have been held.

- Further, the advice had been given on the assumption that the cash enhancement would be invested in a new pension plan – not for a contingency fund in case of redundancy.

- The advice had been given during the period when this service was publishing information with which businesses could calculate future “discount” rates.

- Whilst businesses weren’t required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The discount rate was 6.9% pa for the period up to Mr B’s normal retirement date (65), and 6.7% to age 60. The regulator’s low, mid and upper band projected annual growth rates were 5%, 7% and 9% respectively.

- This compared to a required critical yield to match the scheme benefits at 65 of 7.8% if the cash enhancement was taken, and 8.2% at age 60 on the same basis.

- Talking this into account, in addition to the composition of assets used to determine the discount rate, Mr B’s attitude to risk, and his term to retirement, it was likely that he would receive benefits of a materially lower overall value by transferring.

- Mr B’s concerns didn’t displace JLT’s responsibility to provide suitable advice. Mr B didn’t know whether the intended course of action was in his best interest, and he was reliant upon JLT. Financial advice also wasn’t simply about wish fulfilment – if a course of action wasn’t in a client’s best interest, it was incumbent upon an advising firm to explain this.

- In terms of the death benefits, although the prospect of a lump sum might have seemed appealing, the priority of pension benefits was to provide retirement security for the individual rather than act as a kind of life assurance plan. And JLT didn’t do enough to establish to what extent Mr B was willing to accept lower overall benefits in retirement for the sake of the lump sum death benefit. And the size of any lump sum post retirement would in any case depend upon the amount remaining after Mr B's withdrawals.

- There were also benefits associated with the defined benefit scheme which JLT failed to highlight. Mr B was cohabiting with two dependent children. If Mr B decided to marry, the spouse's pension would have become relevant, but his children would in any case have benefitted from the dependants' pensions.

- As to early retirement, given that Mr B was 39 at the time of the advice, it couldn't be predicted with any reasonable degree of certainty as to what his future plans might be, or what income he might need. This made it difficult to justify transferring with so many years left to retirement.

- Mr B was only provided with a binary option for answering the question as to whether he sought flexibility with his pension funds – yes or no. And presented with this, most retail customers would answer "yes". But Mr B had no evidenced need for flexibility or control.

- Alongside Mr B's concerns about redundancy, JLT had set out stock motives for the transfer, rather than it being tailored to his actual specific objectives.

- JLT may have provided risk warnings to Mr B, but this didn't mean that the transfer advice had been suitable. And Mr B wasn't placed in a properly informed position to be able to take personal responsibility for his decision to transfer.

The investigator concluded that the transfer advice had been unsuitable, and so he didn't proceed to consider the suitability of the subsequent investment recommendations.

The investigator recommended that JLT undertake a loss calculation in accordance with regulator's policy statement PS22/13, and as set out in the regulator's handbook in DISP App 4. Mr B had no plans to retire at present (and indeed couldn't do so for many years) and so the investigator said that the calculation should be based upon an assumed retirement age of 65, as per the regulator's usual assumptions in its guidance.

If the redress was paid directly to Mr B, JLT could make a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

He also said that JLT should pay Mr B £300 in respect of the trouble and upset that the matter would have caused him.

Mr B accepted the investigator's assessment. JLT didn't, however, saying the following in summary:

- Mr B had confirmed that he intended to take tax free cash at retirement, and so the assessment should be based on the lower critical yields associated with this.
- The point about capacity loss was subjective – Mr B had over 20 years to retirement, was earning £40,000 pa and had minimal unsecured debt. JLT considered that he had the ability to absorb any losses associated with stock market investment.

- Mr B's lack of investment experience didn't mean that he had no appetite for risk. Most individuals become exposed to investment risk at some point in their lives. Mr B's balanced risk categorisation was appropriate for his personal circumstances.

- As confirmed by the investigator, businesses weren't required to refer to discount rates when giving advice. JLT failed to see, therefore, why it was a useful indicator of the type of growth which would be achievable compared to the hurdle rate calculated by JLT's actuaries.

- Being closer to his employer than JLT, Mr B would have had a much better idea of the potential changes, including potential redundancy, which were being implemented in the near future. It was the trustees who offered the cash enhancement and set a timeline for its acceptance. This was a major factor in Mr B's decision making, to provide himself with a bigger cash buffer should he be made redundant. JLT was employed by the trustees to provide advice in respect of the transfer, and no other aspect of financial planning was discussed – as was made clear in the suitability report.

- JLT concluded that the advice was suitable, met Mr B's objectives of providing a cash sum to protect his family and their home, and also provided the potential for a bigger retirement pot at age 60. Mr B was also able to understand the risks associated with transferring to the PPP.

The investigator wasn't persuaded to change his view on the matter, however, and said that, as agreement hadn't been reached, it would be referred to an ombudsman for review.

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.

And having done so, I've reached similar conclusions to those set out by the investigator, and for broadly the same reasons.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

<u>The applicable guidance, rules, regulations and requirements</u>

This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time JLT advised Mr B were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like JLT, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, JLT needed to gather the necessary information for it to be confident that its advice met Mr B's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) *take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I've therefore considered the suitability of JLT's advice to Mr B in the context of the above requirements and guidance.

JLT's rationale for transferring

Mr B wasn't categorised as an "execution only" or insistent client, and JLT was taking him through the advice process. Therefore, JLT could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, fact finding was undertaken for Mr B and his circumstances and objectives were recorded – as I've noted above.

As with the investigator, I've noted above that the FCA's guidance was that the starting assumption for an assessment of Mr B's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives.

And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr B would be better off financially as a result of the transfer.

The financial case to transfer

JLT obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr B's objectives from a financial perspective.

The suitability report was issued before the FCA's revised guidance which was released in late October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. I've noted that JLT has questioned the usefulness of such discount rates, and as noted by the investigator, businesses weren't required to reference these when providing advice on transfers. But I do think that, as one of several metrics, they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the number of years left to the scheme retirement age of 65 was 6.9% pa, and to age 60 this was 6.7%. And the low and mid band growth rates set out by the regulator were 5% and 7% respectively.

The critical yields to age 65, at 7.8%, and to age 60, at 8.2%, if the enhancement was taken as a cash sum, therefore comfortably exceeded both the discount (or growth) rate deemed achievable, and both the low and mid growth rates used by the regulator.

JLT has said that the lower critical yields which assumed that tax free cash would be taken at retirement should be used for comparison purposes. But according to the suitability report, these were 7.4% to age 65, and 7.7% to age 60 – and so both still exceeded the lower and mid band regulator's growth assumptions, and the discount rates, to those ages.

I've noted that JLT considered 8% pa to be achievable in terms of growth, according to its in house actuaries. But I haven't seen any justification for this being higher than the regulator's assumed mid band growth rate, which might reasonably have been the growth rate to bear in mind given Mr B's recorded balanced attitude to risk. Therefore, given the regulator's growth assumptions and the discount rate, I think it's more likely than not that the critical yields were unachievable, year on year, for the number of years that Mr B had until he reached either early or normal retirement age. And as a reminder, the critical yields set out above were required to just match the scheme benefits. They needed to be bettered to provide enhanced benefits.

From a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr B's best interests. As such, my view is that the transfer couldn't be justified from a financial perspective, especially given the valuable guarantees which Mr B would be relinquishing.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that JLT did provide warnings on the guarantees which would be relinquished, but as JLT will be aware, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. JLT needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr B.

As I've set out above, part of JLT's reasoning for the recommended transfer was that Mr B required flexibility of income and control over his pension funds. There was also the threat of redundancy, which would have fed into Mr B's decision making at the time. And so I've given these arguments careful consideration.

I'd initially say that, even without investment experience or other significant assets, I do acknowledge that Mr B may have understood the principle of risk/reward which would be associated with flexible income drawdown, and that there may have been discussions around such concepts with colleagues who were going through the same process. I also accept JLT's point that there will always be a "first time" that an individual exposes some of their assets to investment risk. And so I think it's credible that Mr B had a balanced risk attitude, especially given the number of years left to retirement.

But I don't think Mr B in any case needed to take the associated risks here. In terms of the "control and flexibility" argument, I understand this to mean that Mr B would have control over his pension funds, outside of the scheme, and could alter the income he withdrew from a flexi-drawdown arrangement.

But as noted above, by age 65, Mr B would have accrued around 28 years' worth of defined contributions in the replacement scheme, or 23 years by age 60. Given the likely value of this separate pot of money on the basis of the contribution rate, which, on the basis of a 2% pa increase in salary and the regulator's lower band growth rate, might have been in the region of £62,000, this could be used to plug any gaps between him starting to take flexible benefits early and his OPS/state pension beginning. Mr B envisaged needing £10,000 pa in retirement. So it's possible that he could have relied on the proceeds of his defined contributions plan for flexible access to pension benefits, and then taken guaranteed benefits from the OPS as and when needed.

Alternatively if, on the basis of an income requirement which outstripped this over the years from whatever age Mr B chose to retire (if early) left to age 65 – although I would say that I don't think the actual income requirement was demonstrably known at the time of advice, or could in any case reasonably have been known with any certainty given his distance from retirement - Mr B could then have begun to take the scheme benefits early if needed.

In light of this, and given that in the 15 years up to that point Mr B had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of considerable value - especially to a "balanced" investor who had no previous investment experience. And they shouldn't have been relinquished lightly in favour of flexibility which, as far as I can tell, was loosely defined around the possibility of early retirement – albeit the actual likely decision making around this was some years distant – and which, as set out above, could in any case likely have been achieved to some degree by accessing his defined contribution accrual before the scheme benefits.

Mr B's plans, including retirement, may in any case have changed significantly in the 20 intervening years between then and him reaching age 60. Any flexibility requirements could have been addressed nearer to, or at, the point of Mr B's retirement – and Mr B would have been able to transfer out of the OPS then if needed.

As with others in his position, I think it's fair to say that Mr B may have been concerned about his employment future – he was clearly concerned about the possibility of redundancy. And I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or their own employment prospects.

But as set out by the investigator, and as far as I can tell, it wasn't the case that Mr B had been notified of impending redundancy, and indeed he remains in the same employment. There was also no prospect of the OPS funds being lost to the employer if he didn't transfer out. Further, the suitability report said that it was envisaged that the scheme would be fully funded, so there was no prospect at that time of the scheme entering the Pension Protection Fund (PPF) – but which would in any case still have retained valuable guarantees.

Mr B therefore didn't need to make any decisions about transferring out his defined benefits at that point. The cash enhancement of around £8,700 may have been appealing, but if this was a factor in Mr B's decision making as to whether to transfer, it was the responsibility of JLT to consider other ways in which this might be achieved before recommending the transfer. And I can't see any discussion around prospective redundancy lump sum payments, or possibilities of accessing other assets in the short term which could be relied upon until Mr B found alternative employment – for example, Mr B had £60,000 equity in his property, along with £5,000 in savings. He also had a partner who may have been able to help support the family in the short term, if indeed, Mr B was made redundant.

And so on the basis of what I've said above, it follows that I don't think the mooted possibility of early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr B to transfer his deferred benefits.

Death benefits

I can't see that the different manner of payment of these in the event of the transfer was an important consideration for Mr B.

But suffice to say that I agree with the investigator's observations that accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy in the form of a lump sum. The recommendation needed to be given in the context of Mr B's best interests rather than any lump sum legacy for his family.

So I don't think the prospect of a lump sum benefit by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr B personally.

What should JLT have done – and would it have made a difference to Mr B's decision?

There were understandably concerns relating to Mr B's employment prospects at the time - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr B. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've also said above, there was no need for Mr B to make any decision about transferring his OPS benefits at this point in time and it was the responsibility of JLT to explain to Mr B why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of Mr B being made redundant, or of the scheme benefits needing to enter the PPF.

I've also thought very carefully about whether the service provided to Mr B was a balanced appraisal of the options available to him. Mr B, amongst many others in a similar position, may have been concerned by developments relating to his employment, but he was nevertheless entitled to an impartial review of his options.

And looking at those options, especially relating to flexibility, I don't think enough weight or consideration was given to the alternative means, such as the defined contribution plan, of achieving this.

For the reasons given above, I don't in any case think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr B's income needs could likely have been met by well-planned access to his different types of accrued benefits and other assets by the time he came to point when he was considering early retirement. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr B to relinquish 15 years' valuable benefit guarantees – especially at the age of 39.

Any concerns Mr B may have harboured about potential redundancy could have been potentially allayed through the exploration of other options instead of accessing the £8,700 which would be paid as a cash enhancement, such that he appreciated the important guaranteed benefits which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, and a future pension which would, other than the state pension from age 67, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, albeit in a different format from those available from the PPP.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. As I've set out above, the critical yields were higher than the discount rate and the low/mid band growth rates set out by the regulator. And I'd reiterate that I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits.

Taking account of Mr B's circumstances, including his recorded attitude to risk, his objectives and the guarantees which the OPS offered, my view is that JLT should have advised against the transfer.

And I think that, had this happened, Mr B would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to the conclusion that the recommendation to transfer wasn't suitable for Mr B, nor was it in his best interests. The key contributing factors here are: the lack of a comprehensive and balanced portrayal of Mr B's options and the future benefits available from both the OPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least two of the key benefits sought by Mr B were available without needing to transfer – possible early retirement and flexibility through utilising the different types of scheme benefits which would have been available to him.

My view is that, taking account of the critical yields, and Mr B's recorded "balanced" attitude to risk with regard to his pension funds, and matching that with the likely corresponding investment returns, it was unlikely, albeit I acknowledge, not impossible, that the benefits available from the OPS could be bettered through the transfer.

As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as set out in COBS 2.1.1R and the guidance of COBS 19.1.6, JLT would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr B's best interests.

Putting things right

A fair and reasonable outcome would be for the business to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice.

I consider that Mr B would most likely have remained in the OPS if suitable advice had been given.

JLT Wealth Management Limited must 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: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Mr B hasn't yet retired, and cannot do so for many years. And as I've set out above, given the amount of time left to retirement, I don't think it could be assumed that Mr B would take his defined benefits before age 65, especially with the possibility, as outlined above, of accessing his accrued defined contributions and other assets flexibly if required. So, compensation should be based on the scheme's normal retirement age, 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 DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of my final decision.

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

- calculate and offer Mr B redress as a cash lump sum payment,

- explain to Mr B before starting the redress calculation that:

- its 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 their redress prudently is to use it to augment his defined contribution pension

- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr B accepts JLT Wealth Management Limited's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, businesses may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension.

Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr B's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £190,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £190,000, I may recommend that the business pays the balance.

Determination and money award: I require JLT Wealth Management Limited to pay Mr B the compensation amount as set out above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I would also recommend that JLT Wealth Management Limited pays Mr B the balance.

If Mr B accepts this final decision, the award will be binding on JLT Wealth Management Limited.

My recommendation wouldn't be binding on JLT Wealth Management Limited. Further, it's unlikely that Mr B could accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept my final decision.

As with the investigator, my view is that this matter will have caused Mr B a not inconsiderable amount of concern about his security in retirement. As such, I agree that JLT Wealth Management Limited should also pay Mr B £300 in respect of this.

My final decision

My final decision is that I uphold the complaint and direct JLT Wealth Management Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 January 2024.

Philip Miller
Ombudsman