Financial Ombudsman Service

The complaint

Mr R 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.

Mr R met with an adviser from JLT in May 2010 to discuss his defined benefit pension.

A fact find analysis was undertaken to establish Mr R's circumstances, as follows:

- Mr R was 39 and married.
- He was employed, earning £50,000 pa.
- Mr and Mrs R had dependent children.
- Mr and Mrs R owned their home worth £420,000 with a £150,000 mortgage.
- They had cash savings of £1,000 and £3,000 in investments.
- Mr and Mrs R owed £2,000 on credit cards and had a £1,000 overdraft.

Mr R's attitude to risk was recorded as "adventurous" and he agreed to invest on a 20% balanced, 60% adventurous, 20% speculative risk investment basis.

Mr R had two pension arrangements. His preserved defined benefit entitlement which was split into two parts of service estimated in 2010 to pay a total of £12,570 pa. This estimate was subject to revaluation until normal retirement age (65). Mr R also had a defined contribution pension with his employer which wasn't valued at the time of advice.

In 2010, the scheme trustees made an enhanced offer for Mr R to transfer his preserved benefits out of the scheme. The enhanced offer was a total transfer value of £98,751.

Alternatively, he could transfer a total lower sum of £85,770, and take a cash sum of £11,508.03, which would be subject to tax.

A transfer value analysis (TVAS) had been undertaken to show the level of investment growth required in order to replace the benefits at age 65 and 60.

To match the benefits at age 65, a transfer would need a critical yield of between 7.7% and 7.9% at age 65, and it would be between 8% and 8.3% at age 60 based on Mr R taking the enhanced cash offer.

JLT issued a suitability report dated 17 June 2010. JLT recommended that Mr R transfer the defined benefits to a Friends Provident PPP and invest in BlackRock funds to match his attitude to risk.

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

- He would like a cash sum, so he could make some home improvements.
- The plan benefits did not represent a significant part of Mr R's pension funding.
- Mr R's dependants would receive significant sums on his death before retirement.
- He would prefer to move his pension to have control.
- He wanted to take tax free cash (TFC) at retirement.
- When he retired, he did not want his pension to increase to provide some protection against inflation.
- He would like to retire early - possibly in his late fifties.

Mr R accepted JLTs recommendation and the transfer took place in June 2010.

JLT then wrote to Mr R in June 2021 to explain that it had completed a review into the advice and deemed it to be suitable and that it met his needs. This letter also set out the timescales that Mr R had to bring the complaint to this service and these were six years from the date of advice or three years from when he became aware that he had cause for complaint.

Mr R then raised a complaint in March 2023, but JLT declined to uphold it. Mr R asked this service to consider the matter further.

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

- With regard firstly to the jurisdiction of this service to consider the complaint – and specifically the timeliness of Mr R raising his complaint - Mr R had confirmed that he didn't have concerns before the review undertaken by JLT in June 2021, and had raised his complaint within three years of that. As such, the complaint fell within our jurisdiction.

- 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 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 R'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 between 7.7% and 7.9% if the cash enhancement was taken, and between 8% and 8.3% 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 R'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.

- Although Mr R was recorded as wanting control over his pension, he wasn't a particularly experienced investor and there was no suggestion that he had the drive or relevant knowledge to be able to manage his own pension funds.

- Although Mr R may have found the prospect of retiring early appealing, this should have been subject to an anlysisis of whether or not this was in fact feasible. And although Mr R indicated that he would want £18,000 pa in retirement, given the number of years left until Mr R's prospective retirement, it would in any case have been difficult to predict what his expenditure might be. And so this made it difficult to justify a transfer – at the age of 39 – on the basis of possible early retirement.

- The suitability report said that the defined benefits didn't represent a significant part of his pension funding, but this wasn't the case at that time. And by transferring, Mr R was placing all of his pension funds into a risk based environment.

- Mr R was recorded as wanting to take tax free cash at retirement, but this was possible through the scheme. The amount available from a PPP might have been higher, but there was no indication as to why Mr R would have needed a higher tax free sum at retirement at the expense of guaranteed income.

- Mr R also wished to take the cash enhancement for home improvements, but this should have been offset by the adviser informing him that this would be to the detriment of his future retirement provision. If this was a genuine desire, Mr R could have looked at other means of raising the funds.

- 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 R 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 R's withdrawals.

- Further, Mr R had said that his family would receive significant funds in the event of his death and that the different way in which death benefits could be paid after a transfer wasn't a priority for him.

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 R planned to retire at 60, but given the likely size of his defined contribution plan by that time, it seemed likely that he wouldn't need to access his defined benefits before the scheme's normal retirement age. 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 R, JLT could make a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

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

- The point about capacity loss was subjective – Mr R had over 20 years to retirement, was earning £50,000 pa and had previous experience of investing. JLT considered that he had the ability to absorb any losses associated with stock market investment.

- 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.

- Mr R had confirmed that he intended to take the maximum tax free cash at retirement, and so the assessment should be based on the lower critical yields associated with this.

- Mr R had confirmed that 60 was his preferred retirement age, and he was provided with the required critical yields to this age as well as to 65.

- It had been Mr R who'd confirmed in the fact find that the defined benefits didn't represent a significant percentage of his retirement benefits, and the suitability report simply reiterated this. But JLT acknowledged that the defined benefits did appear to represent a significant part of his retirement provision, as set out in its final decision letter.

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.

The applicable guidance, rules, regulations and requirements

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 R 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 R'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 R in the context of the above requirements and guidance.

JLT's rationale for transferring

Mr R 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 R 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 R'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 R 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 R'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, mid and high band growth rates set out by the regulator were 5%, 7% and 9% respectively.

The critical yields to age 65, at between 7.7% and 7.9% to age 65, and to age 60, at between 8% and 8.3%, if the enhancement was taken as a cash sum, therefore 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 the maximum tax free cash would be taken at retirement should be used for comparison purposes. But according to the suitability report, these were between 7.4% and 7.5% to age 65, and between 7.6% and 7.8% 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 8.5% pa to be achievable in terms of growth, in line with Mr R's attitude to risk and term to retirement, according to its in house actuaries. I've also noted Mr R's selected "adventurous" attitude to investment risk. But I have some concerns in that regard.

Initially, I'd acknowledge that, within the fact find the risk ratings were accompanied by descriptions of what this meant. I think it's worth setting out here the description for the "Adventurous" categorisation:

"You are willing to accept a high level of investment risk in order to seek significantly higher growth and higher pension benefits at retirement You are prepared to accept that this will increase the risk of large fluctuations in the value of your investment and losing some or possibly all of your capital. You could get back less than you invest. Typically, you would consider investing primarily in Shares both in the UK and overseas and you will be exposed to currency risk via investment in overseas markets. Initially all of your investment will be in Shares but risk should be reduced as you near retirement by spreading your investment across the other asset classes."

Mr R also indicated within the fact find that he had £3,000 in "other investments".

But this could have been in fairly mainstream products such as ISAs (even cash ISAs) or PEPs, which wouldn't necessarily in my view confer on someone a particularly sophisticated experience or knowledge of investing, such that JLT could be reassured that Mr R's selected "adventurous" risk rating didn't require further examination.

Additionally, as acknowledged by JLT as not being accurate, Mr R indicated in the fact find that the defined benefits didn't represent a significant proportion of his pension provision. As far as I can tell, other than the defined contribution scheme which I understand began three years earlier, Mr R's defined benefits represented the entirety of his pension provision.

I think that this ought to have been quite apparent from even a cursory assessment of the information Mr R had provided in the fact find. And I think it ought to have prompted additional questioning as to Mr R's understanding of his financial situation, along with his understanding and appreciation of investment risk.

Whilst I accept that it was entirely possible that, given the number of years left until retirement, Mr R was prepared to take some risk with his pension funds, my view is that his circumstances – modest savings/investments and unknown investment experience – combined with the inconsistencies in his assessment of his financial position, wouldn't sit comfortably with an "adventurous" risk rating. And I think it was incumbent upon JLT to assess this in more detail and explain to Mr R why this was the case.

It's not possible to know the outcome of any further hypothetical discussion regarding this, but I think there are clues. Mr R didn't express a straightforward "adventurous" risk rating, instead seeking to balance more speculative investment with balanced investment. And I think had JLT pointed out that, by transferring, the entirety of his pension provision, rather than just the defined contribution part of it, would be exposed to investment risk, he would more likely than not have viewed things differently.

Therefore, whilst the critical yields might have been lower than the upper growth band set by the regulator, bearing in mind Mr R's seeming misunderstanding of his financial position and lack of significant other investments and experience, I think the mid band growth rate is likely to be the more relevant here in terms of the type of risk to which Mr R was likely to want to be exposed, or even if I'm wrong on that, to which he in any case *ought* to have been exposed.

Therefore, in the event of a more fully assessed and appropriate risk rating for Mr R, the regulator's growth assumptions and the discount rate, I think it's more likely than not that the critical yields would have been unachievable, year on year, for the number of years that Mr R 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 R'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 R would be relinquishing.

But financial viability isn't the only consideration – other factors also needed to be taken into account to determine whether the transfer was suitable, or necessary, to meet Mr R's objectives.

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 R. And I'd also reiterate my concerns about Mr R's recorded risk rating as set out above

As set out above, part of JLT's reasoning for the recommended transfer was that Mr R required flexibility of income and control over his pension funds. 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 R 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. Although again I'd point to my comments above about Mr R's actual understanding of his financial position and the degree of risk to which he should have been exposed.

But I don't think Mr R 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 R 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 R 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 mid 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.

Alternatively if, on the basis of an income requirement which outstripped this over the years from whatever age Mr R chose to retire (if early) left to age 65 – although as with the investigator 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 R could then have begun to take the scheme benefits early if needed.

In light of this, and given that in the 14 years up to that point Mr R had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of considerable value. 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 R'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 R's retirement – and Mr R would have been able to transfer out of the OPS then if needed.

Mr R therefore didn't need to make any decisions about transferring out his defined benefits at that point. The cash enhancement of around £11,507 may have been appealing, but if this was a factor in Mr R'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 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 R 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 R.

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 R'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 R personally.

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

There was in my view no need for Mr R 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 R why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees.

I've also thought very carefully about whether the service provided to Mr R was a balanced appraisal of the options available to him. 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 R'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 R to relinquish 14 years' valuable benefit guarantees – especially at the age of 39.

Mr R could have paid for his home improvements through the exploration of other options instead of accessing the £11,507 which would be paid as a cash enhancement. An in doing so, JLT ought to have emphasized the value of his pension scheme accrual, 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 given the level of risk to which Mr R's pension funds ought reasonably to have been exposed, 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 R's circumstances, 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 R 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 R, nor was it in his best interests. The key contributing factors here are: the lack of a comprehensive and balanced portrayal of Mr R'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 R 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 the risk to which Mr R's pension funds ought to have been exposed, 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 R's best interests.

Putting things right

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

I consider that Mr R 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 R 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 R 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 R'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 R redress as a cash lump sum payment,
- explain to Mr R 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 R receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr R 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 R 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 R's end of year tax position.

Redress paid to Mr R 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 R'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 £170,000, 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 £170,000, I may recommend that the business pays the balance.

Determination and money award: I require JLT Wealth Management Limited to pay Mr R the compensation amount as set out above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I would also recommend that JLT Wealth Management Limited pays Mr R the balance.

If Mr R 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 R could accept my decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept my final decision.

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 R to accept or reject my decision before 9 January 2024.

Philip Miller
Ombudsman