DRN-3400889

The complaint

Mr F complains about the advice given by an appointed representative of Quilter Financial Limited ('Quilter') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension with a drawdown facility. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr F approached Quilter in the Summer of 2019 having been introduced to them by a third-party, to discuss his pension and retirement needs and whether he could utilise his pension to help towards repaying debt. The third-party had already helped Mr F to encash a separate workplace pension for the purpose of debt repayment.

Quilter completed a fact-find to gather information about Mr F's circumstances and objectives. Quilter also carried out an assessment of Mr F's attitude to risk, which it deemed to be 'moderate'.

On 4 November 2019, Quilter advised Mr F to transfer his pension benefits into a personal pension with a drawdown facility and invest the proceeds with a major insurer in a with-profits based growth fund and a cash fund. In summary the suitability report said the reasons for this recommendation were:

- To provide Mr F with a tax-free cash lump sum to go towards repaying debt, which couldn't be achieved by remaining in the DB scheme.
- To provide increased flexibility in retirement.
- For health reasons and to potentially improve death benefits.
- To provide the opportunity for long-term investment growth.

In 2021 Mr F complained to Quilter, through a representative, about the suitability of the transfer advice because he says he wasn't given a clear explanation between his guaranteed DB scheme and the expensive drawdown pension option. He said he wasn't told about the alternatives available to him to sort of his debts and went ahead with the advice to transfer believing this was the only way to achieve things. He said he was an unsophisticated inexperienced investor, which contradicts the moderate assessment carried out of his attitude to risk. Mr F also shared his concerns about the conduct of the third-party introducer upon hearing about his complaint and suggested Quilter had inappropriately shared information with them.

Quilter didn't uphold Mr F's complaint. It summary it said Mr F had built up significant debt while he was off work due to ill health, which he was looking to repay. He'd already released funds from one pension to go towards them, but he needed further funds to repay the debts in full. It said Mr F was off work due to ill health and was in receipt of Statutory Sick Pay('SSP') and Personal Independence Payment ('PIP') – he was also receiving benefit from a mortgage protection policy. It said Mr F intended to return to work around June 2020.

It said its advice was clearly set out and that its recommendation Mr F transfer out of his DB scheme was the only suitable option to enable him to meet his objective. It said Mr F's DB scheme had declined him taking his benefits early, including through ill health grounds, and other options such as re-mortgaging or debt restructuring had already been discounted by Mr F as he'd already approached his mortgage lender and the Citizens Advice Bureau ('CAB') to discuss things.

Finally it said that it forwarded the complaint to the third-party introducer on the understanding that another respondent may have been jointly responsible for the complaint. But it said it had no relationship with them and so it wouldn't consider any complaint about their conduct or comment on any fee arrangement Mr F might have agreed with them.

Mr F, through his representative referred his complaint to our service. An investigator didn't uphold the complaint. In summary they said that it wasn't unreasonable for Quilter to have passed the details of Mr F's complaint to the introducer given what's set out in the regulator's rules. But they said the actions of the third-party introducer wasn't something they'd considered as part of the complaint because the complaint was against Quilter.

Overall they thought the recommendation that Mr F transfer out of his DB scheme was suitable – they didn't think there was another viable option to enable Mr F to repay his debts, which they thought was something he had to do given the circumstances and despite his limited investment knowledge and capacity for loss. They said the suitability report was clear that other options were considered and discounted – Mr F couldn't borrow further money and his DB scheme had declined him taking his benefits early. They said that, while Mr F was optimistic about returning to work this wasn't guaranteed and his mortgage protection policy was due to stop a few months after the advice. They said that on speaking to Mr F's wife, she said that had they not taken the lump sum from Mr F's pension they would've had to cut back on essentials and would've experienced financial hardship.

Mr F, through his representative, disagreed. In summary Mr F said:

- Despite Quilter referring to the debts as being in his name, this is factually incorrect – every item of credit was in his wife's name. To suggest they were in his name is deceitful.
- Quilter should've referred him and his wife to an insolvency practitioner – entering a Debt Arrangement Scheme ('DAS') would've allowed the interest on the debt to be written off and a repayment programme established in line with their budget. Quilter chose to ignore this option.
- He has email proof that his DB scheme did allow ill-health retirement for deferred members with no actuarial deduction, which was effective from March 2019. Quilter failed to carry out its own research to explore this option.
- No advice was given to him about the options available for his jointly held mortgage, including the option of reduced payments.
- Quilter failed to treat him fairly – he was a vulnerable consumer due to his ill health.

Mr F's representative later added that despite what the advice paperwork said, neither Mr F nor his wife spoke to the CAB – this was a figment of the introducer's imagination, which Quilter then relied on. And despite repeated requests, Quilter had failed to provide a copy of the agreement between it and the introducer or where the fee was paid.

The investigator wasn't persuaded to change their opinion – they said they thought it was reasonable for Quilter to have relied on a letter from Mr F's scheme administrator of

5 August 2019, which said ill health early retirement wasn't available to deferred members. And they said that, while they acknowledged what Mr F is now saying, he confirmed in an email at the time that he'd read and fully understood the suitability report and this said he'd discussed the option of a debt management plan with the CAB.

The complaint was therefore referred to me to make 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided not to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Quilter should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr F's best interests (COBS 19.1.6).

Firstly, and for the sake of completeness, Mr F's representative has repeatedly referred to the actions of the third-party introducer including their conduct when they heard about the complaint as well as commenting about their regulatory status and what they might or might not have done wrong. Quilter has said the introducer did not have a relationship with it – they weren't an appointed representative or in any other way connected to it. And I've not seen anything to suggest otherwise. This complaint is about Quilter and they've accepted they gave advice to Mr F about his DB pension. So my consideration here is whether Mr F has lost out as a result of anything Quilter did or didn't do in giving its advice to Mr F to transfer out of his DB pension scheme and nothing more. Any concern or complaint about another party is a separate matter.

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17 /9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The closest discount rate to the time of this transfer, which I'm able to refer to was published for the period before 1 October 2017 and is 3.7% per year for nine years to retirement. The share returns that were used to compile this discount rate wouldn't have been significantly different by the time of transfer and, if anything, the bond returns would have got lower. So I think it still gives an approximate guide to the upper end of potential future returns.

For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

Looking at the transfer value comparator Quilter produced, this shows that Mr F would need a sum of around £100,000 to invest at a risk-free return to provide the same benefits as the DB scheme at age 65 (the scheme's normal retirement age) assuming a full pension was taken. Mr F's transfer value was around £52,000. So the critical yield, or growth rate required to match Mr F's benefits at age 65 was 10.1%. If Mr F took a reduced pension and a tax-free cash lump sum the critical yield was 9.58%.

I've taken this into account, along with the composition of assets in the discount rate, Mr F's 'moderate' attitude to risk and also the term to retirement. There would be little point in Mr F giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 9.58% I think Mr F was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with that attitude to risk. The return needed was more than two and a half times the discount rate and was above both the regulator's middle and upper projection rates.

So based solely on this reason, it doesn't appear the transfer out of the DB scheme was in Mr F's best interests. But financial viability isn't the only consideration when giving transfer advice. And in this case Quilter didn't recommend the transfer on the basis Mr F would be better off in retirement. As it set out in its suitability report, there were other considerations which it believed meant a transfer was suitable for Mr F despite providing overall lower benefits. I've considered these below.

Flexibility and access to tax-free cash

It is not disputed that Mr F's main objective and the reason he sought advice from Quilter was because he was looking to repay some debts. I can see that Mr F's representative has made much of the fact that the debts were in Mr F's wife's name and not his and says to suggest otherwise is deceitful. But the advice paperwork is clear that the debts were all in Mr F's wife's name – this isn't in dispute. Mr F was the person receiving advice and I think this is why reference was made to *'your'* debt in the advice paperwork – not because Quilter believed the debts were in Mr F's name. I think all parties, including Mr F's wife understood the position and the reason why advice was being sought – so I don't think this is important to the outcome of the complaint.

Looking at the advice paperwork completed at the time, this records that Mr F was off work due to ill health – he'd suffered a serious medical condition earlier in 2019 and was due to be off work for at least 12 months. Mr F was currently in receipt of SSP and PIP – his joint mortgage was also being paid by an accident, sickness and unemployment insurance policy which was due to end in around six months' time. Mr F and his wife had built up what I consider was a not inconsiderable amount of unsecured debt, which carried a combined monthly repayment of around £460 a month. The budget planner they completed with Quilter suggests they had a surplus income – but this clearly wasn't the case. Quilter recorded that Mr F and his wife were in fact spending it (I understand they'd built up the debt while Mr F was off work) and they had no savings to speak of – so I think it was causing them some financial pressure and in reality it wasn't really affordable.
I'm mindful that while Mr F intended to return to work in around six months' time, because of the nature of his condition I don't think this was guaranteed. So I think his financial position had the potential to worsen significantly if he didn't return to work as he planned in late Spring / early Summer 2020 – his SPP and PIP were due to stop at this point and his mortgage protection policy, which was paying around £1,200 month would've paid out its maximum 12 monthly payments.

Mr F had already taken steps to repay some of the debt by cashing in a small pot pension – something he'd done prior to seeking advice from Quilter. But this wasn't enough to repay all of the debts in full – he needed around £13,000 extra to come closer to full repayment.

So taking everything into account, it seems to me that Mr F's objective was reasonable in the circumstances and in my view it was somewhat pressing. And because Mr F didn't have any savings or other assets he could've used to meet his objective, I think Mr F had a need to access a lump sum. And in this case a need to access his tax-free cash earlier than the normal scheme retirement age and leave his funds invested until a later date when he planned to retire – recorded as being at age 67. By accessing his tax-free cash, which was around £13,000, it appears that Mr F would've been able to meet his objective and repay most, if not all of the remaining debt.

Although this likely meant that Mr F wouldn't be able to take as much income from his pension as he would've been entitled to through the DB scheme, I think this was necessary in the circumstances. I think Mr F's current health meant that he couldn't be certain about when he'd be fit enough to return to work or how it might impact his ability to return to work full-time until his intended retirement age of 67. By transferring his pension to a personal arrangement, it would give him the flexibility to draw an income as necessary according to his circumstances at any given time.

But on the basis that Mr F was able to return to work and meet his intended retirement age of 67, I don't think his overall pension provision would have been far off being able to meet his personal target retirement income. I say this because Mr F's state pension would provide the majority of what he said he needed. But he also had another deferred DB pension scheme, which would provide around £1,200 a year. So with this along with the income he could reasonably sustainably draw from his new personal pension – and if he re-joined his employer's scheme as he said he intended to do - this would also be a useful way of boosting his income in retirement. So I think Mr F's retirement target income could be broadly met this way.

I've thought carefully about whether Mr F's objective could've reasonably been met by other ways, which according to the advice paperwork Quilter considered at the time.

The first of these is whether Mr F could've stayed in his DB scheme and taken early retirement. But I'm satisfied this wasn't an option. Quilter has provided a letter Mr F received from the DB scheme administrators dated August 2019, which says that his calculated annual pension benefit was below the revalued Guaranteed Minimum Pension ('GMP') at age 65, which meant it wasn't possible for him to take his benefits at this time.

The other option was early retirement on ill-health grounds. But the same letter said that this option wasn't available for deferred members. It also appears Mr F's circumstances didn't meet the serious ill-health criteria – this option was only available if Mr F's life expectancy was less than a year.

But I can see that Mr F's representative has produced copies of an exchange of emails it had with the pensions officer at Mr F's DB scheme after the investigator's assessment of Mr F's complaint.
This says that ill-health retirement for deferred members came into effect from 1 March 2019 – so before Quilter's advice to Mr F. Mr F's representative says Quilter shouldn't have relied on the information in the letter of August 2019 and it should've carried out its own research.

But I don't think it was unreasonable for Quilter to have relied on this information. I say this because it was provided by the scheme administrator and appears to have been in response to specific questions asked about Mr F's options for possible early retirement. It was also in my view up to date. So I don't think Quilter had any reason to question the information provided or to believe it was incorrect.

I'd add here that I note from the email correspondence Mr F's representative has provided it was not a given that ill-health retirement would've been granted. It was ultimately at the Trustees discretion having received medical reports, and other assessments and information including from the deferred members employer about the job they were doing. But this doesn't alter my view that I think it was reasonable for Quilter to have relied on the information provided by the scheme administrator at the time of giving its advice and that this option wasn't available for Mr F.

Mr F had a mortgage and its recorded that he had equity in his property – so perhaps a re-mortgage was possible consolidating the debts? But I can see from the advice paperwork that it says this was discounted on the grounds of affordability. I also understand that Quilter has an email from Mr F prior to the fact-find meeting in 2019, which says that his mortgage lender had declined his application for additional lending. And this was referred to in its final response letter to Mr F in 2021. While I haven't seen a copy of this email, I note that neither Mr F nor his representative have disputed this fact - so I think it's reasonable to assume this was the case. Mr F's representative has said that the option of a payment break or other option should have been considered. But I disagree. Mr F's mortgage at this stage wasn't unaffordable – it was being fully met by a protection policy and so was up to date. I consider there was no reason for a lender to grant concessions to Mr F at this stage.

The remaining practical option was to consider and direct Mr F to seek debt advice and the possibility of coming to some kind of informal arrangement with the creditors. The advice paperwork records that this option was discounted after Mr F had discussed things with the CAB as he wanted to maintain his credit score. Quilter told us that Mr F confirmed he'd been in contact with the CAB prior to its involvement who had talked him through debt management plans, but that he was clear he didn't want to consider this option particularly given the impact it would have on his credit score. It says Mr F's feelings on this were strong, which is why it was discounted. But Mr F's representative says that neither Mr F nor his wife ever spoke to the CAB - this was the figment of the imagination of the introducer, which Quilter then relied on.

It's clear there is a dispute about this, so I've thought about this carefully. Having done so, I think, on balance that Mr F and/or his wife did likely discuss things with the CAB as the paperwork from the time records. I say this because I think the evidence paints a picture of Mr F having made some proactive enquires to understand his options – for example he'd contacted his mortgage lender to see if they'd consider additional borrowing / a re-mortgage. And given the letter from his DB scheme administrator of August 2019 was addressed to him personally, it seems likely Mr F had enquired about the early retirement options available to him through his DB scheme. It therefore seems entirely plausible that he'd discussed matters with the CAB too.

Furthermore the advice paperwork records that two further alternatives were apparently discussed with Mr F at the time – asking his mother for help as well as 'downsizing' and repaying the debts from the sale proceeds. There is commentary against both as to why these were discounted.
Neither Mr F nor his representative has disputed that these options were discussed. This suggests to me that there was more likely a discussion with Mr F about the range of other options available and that this included a discussion about the CAB. I'm mindful too that this was all recorded in a document which Mr F acknowledged that he'd read and received. So if there was anything here which didn't accord with his understanding of the discussion he'd had with Quilter or there was something which was factually incorrect, I would've expected Mr F to have queried things at the time.

In any event, I'm not persuaded that in Mr F's particular circumstances at the time, entering into some kind of debt management or informal creditor arrangement was a more suitable option. By transferring his pension to a personal pension arrangement, Mr F could gain access to a lump sum to clear most if not all of the household unsecured debt while at the same time giving him the flexibility of how much income he took and when from his pension depending on his health and his capacity both to return to and remain in work. In my view Mr F's financial problems were set to worsen if his plans to return to work in the near term didn't materialise (I note Mr F was off work for two years in the end). So I think the recommendation to transfer out of his DB pension scheme met Mr F's objectives and in the circumstances was suitable.

Summary

While looking at the financial viability of the transfer of Mr F's DB scheme to a personal pension in isolation doesn't appear suitable, I think there were other compelling reasons which I think in Mr F's particular circumstances at the time mean it was in his best interests to transfer out. Mr F's primary objective was to ease the financial pressure he was under through accumulating a not insignificant amount of unsecured debt while he was off work and not earning. Given Mr F didn't have any other assets available to him to meet his objective, I think he had a genuine need to access his tax-free cash earlier than his normal scheme retirement age. And based on the evidence and information at the time, only a transfer to a personal arrangement would provide what Mr F needed.

By transferring Mr F was giving up a guaranteed and increasing income in retirement and his pension income was likely to be lower than he would've otherwise have been entitled to. But taking everything into account, I think that in the circumstances this was necessary. Mr F's wife told us, on his behalf that Mr F was off work for two years and had they not taken the lump sum from Mr F's pension, they would've had to cut back on essentials, such as food and petrol and would've experienced financial hardship.

So taking everything into account I'm not persuaded that Quilter's recommendation was unsuitable or that it didn't act in Mr F's best interests.

In closing I'd like to deal with two other matters. Firstly, I can see that Mr F's representative has questioned the assessment of Mr F's attitude to risk as 'moderate' and says this is at odds with him being an inexperienced investor. But I can see that Quilter acknowledged and documented Mr F's inexperience and took account of this in making its recommendation. The investment recommendation was for Mr F's pension monies to be invested in a with-profits growth fund to provide for Mr F's desire for a lower volatility style of investment. I can also see that the overall recommendation included around 30% of Mr F's monies to be invested in a cash fund. In my view not only did this reduce the overall level of investment risk, given the uncertainty around Mr F's health and his return to work I think this was appropriate in the circumstances - particularly as its recorded Quilter was going to carry out annual reviews to assess the ongoing suitability. Overall I don't think Mr F's pension fund was exposed to a greater level of risk than I think he'd indicated and accepted he was willing to take.

And secondly Mr F's representative has said Mr F was a vulnerable client and Quilter failed to treat him fairly. While I accept Mr F was likely vulnerable due to his health, this didn't mean Quilter had to refrain from advising Mr F what was in his best interests. And for the reasons I've given above, I think Quilter did act in his best interests – I think the recommendation to transfer out of his DB scheme was suitable for him in the circumstances. So I don't think Quilter acted unfairly or unreasonably towards Mr F in giving its advice.

My final decision

For the reasons above, I've decided to not uphold this complaint – so I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 September 2022.
Paul Featherstone
Ombudsman