DRN-3610583

The complaint

Mr G complains that an appointed representative of Quilter Financial Services Ltd gave him unsuitable advice to transfer the benefits from his defined-benefit (‘DB’) occupational pension scheme and a personal pension plan to a self-invested personal pension (‘SIPP’). He says the advice was unsuitable for him and believes this has caused a financial loss.

A law firm have helped Mr G to bring this complaint. But, for ease of reading, I will refer to the law firm’s comments as being Mr G’s.

It was Quilter’s appointed representative, rather than Quilter itself which gave Mr G advice. But as Quilter is responsible for responding to the complaint, I will refer to the appointed representative’s comments and actions as being Quilter’s.

What happened

In 2016 Mr G and Quilter discussed his pension and retirement needs. Exactly who instigated the meeting is disputed. But, in April 2016, Mr G signed a form giving Quilter “*authority to proceed* “ and he agree to pay a fee of £5,000 for its advice together with a charge of 0.5% from his pension fund for ongoing service.

Quilter completed a fact-find to gather information about Mr G’s circumstances, objectives and attitude to risk. It also gathered evidence from Mr G’s two pension schemes and it obtained a pension transfer value report. Amongst other things Quilter found:

- Mr G was 56 years old, he was engaged but he and his fiancé lived separately and weren't financially dependent on each other.
- In 2012 Mr G had an accident causing catastrophic spinal injuries. He spent a long-time in hospital. He couldn’t continue his former job resulting in a large drop in income. He uses a wheelchair and has other related long-term health conditions.
- Mr G lived in adapted rented accommodation but wanted to move home.
- He had two jobs earning around £23,300 a year. He also had benefit income of around £7,260 a year.
- He had regular outgoings of around £20,160 a year.
- He had dets totalling around £15,000 that were managed by an individual voluntary arrangement (IVA). He was repaying his debts at a cost of £360 a month.
- He had no savings.
- His DB pension scheme had a cash equivalent transfer value (‘CETV’) of £150,075 from which he could draw an income immediately of £5,215 or at age 60 he could take an income of £6,561.
- The critical yield (the growth rate required to match the benefits from the DB scheme) was 35.3%.
- Mr G’s personal pension had a total value of £32,181.
- Quilter assessed Mr G’s attitude to risk as “*dynamic*”, which was its second highest risk category.

On 7 July Quilter sent Mr G a suitability report advising him to transfer his pension benefits into a named SIPP. Amongst other things the suitability report said that Mr G's principal goal was to be able to pay off his debts and to use tax free cash (TFC) from his pensions for a deposit and to attract borrowing to buy and adapt his own home. It said Mr G could release around £45,500 TFC and by doing so Quilter thought Mr G could secure a mortgage and afford a property up to a value of around £160,000.

Quilter added that the attitude to risk questionnaire Mr G had completed assessed him as being an *adventurous* investor. But with his agreement it had reduced that assessment to dynamic. It said that given the extent of the guaranteed income the DB scheme offered it would not recommend a transfer purely on *"this basis*". But it said that as Mr G wanted to draw benefits straightaway the guaranteed income was not the only factor to consider.

The suitability report said that if Mr G chose to take TFC, he could take £31,996 from his DB scheme at age 60 but that would reduce his annual pension from £6,561 to £4,799. But if he transferred his DB scheme funds to an alternative pension then he could take £40,350 at age 60 with an income of £2,600 a year. He could take £37,543 TFC immediately by transferring out of the DB scheme.

Quilter said the critical yield was too high to be matched by transferring Mr G's DB pension to an alternative arrangement. But it said the transfer value analysis report which had produced the critical yield calculation was based on Mr G taking an annuity, which he didn't intend to do. So it stressed that the significance of the figures from the value analysis report "*may be limited*".

Quilter cautioned that to buy an annuity that would match his DB benefits straightaway could cost Mr G £256,770. The transfer value from Mr G's DB scheme was £150,075. But Quilter said that one of the main benefits of transferring away from the DB scheme was the flexibility it gave to take his pension in the format he wished. There was no need for Mr G to buy an annuity but he needed to be aware that he would be giving up guaranteed benefits from the DB scheme by transferring.

Quilter ran through some annuity options including buying a level annuity, which didn't increase with time. It produced a table comparing Mr G's potential income from his DB scheme, beginning on £5,215 at age 56 and increasing over time, against a level annuity of £8,533. It showed that by age 76 Mr G's DB pension income would still be behind the level annuity giving a yearly income of £8,218. It said that while an annuity wouldn't give Mr G the flexibility he was looking for it would provide a guaranteed income.

Quilter added that the DB scheme would pay a pension to a spouse in the event of his death. But it said Mr G liked the idea of leaving the balance of his pension to his adult sons on his death. That wasn't an option if he remained in his DB scheme.

The suitability report also said that while Mr G could take benefits from his DB scheme early, he wouldn't be able to take all of it. That was because he'd transferred funds from another scheme (the previous pension) into his DB scheme and he couldn't access the benefits from that previous pension until age 60. Also, if he were to draw his DB pension from the scheme early, he wouldn't be able to take any TFC. That was because the DB scheme administrators wanted to ensure he had enough funds for the scheme to pay him his guaranteed minimum pension (GMP – the lowest amount his pension must pay him) at age 65.

Quilter said Mr G couldn't meet his objectives of paying off his debts and buying a house without taking the benefits from both his pension funds. It said that paying off his debts could save him £4,320 a year in repayments. It noted that Mr G's view was that while the guaranteed benefits from his DB scheme were valuable they would not allow him to fulfil his immediate objectives.

When Quilter sent Mr G its suitability report the covering email asked him to reply confirming he'd read and understood the report. It also asked him to explain why it would benefit him to transfer out of the scheme, that he was aware of the risks he would be taking and why he wanted to go ahead.

Mr G replied. He said he wanted to pay off his debts and move house. To do so he needed around £45,000 from his two pension pots. His DB scheme wouldn't pay him TFC at that time so he needed to transfer away. He said he fully understood the risks but the flexibility of transferring to an alternative pension was his "*only option to become fully independent again*". He added that he understood he was giving up guaranteed risk free income of £5,215 a year immediately or £6,932 from 60 which increased in line with inflation. He said he was aware that an alternative fund could go down in value or the money could run out. Having reviewed the report Mr G was happy to go ahead with the transfer.

Quilter then arranged for Mr G's personal pension fund of £32,481 to be transferred to the SIPP in August 2016. The DB scheme fund – which was revalued to £177,556 – was transferred to the named SIPP in September 2016. Mr G then took TFC totalling £52,509 from it.

In January 2018 Mr G instructed another financial advice firm to act for him. He was contacted a couple of months later by another firm, I'll refer to as Firm L. Firm L persuaded Mr G to take his funds from the named SIPP and reinvest it into an unregulated scheme. I understand that Mr G has since lost most of those funds.

In 2020 Mr G complained to Quilter. Amongst other things he said:

- Quilter's advice wasn't suitable.
- He hadn't wanted to take any risk with his pension.
- Given his lack of investment experience Quilter's assessment of his attitude to risk as dynamic was "*outstanding*". He wasn't in a position to rebuild any losses to his pension funds.
- Quilter's advice didn't comply with the regulator's guidance or principles.
- The investment portfolio his funds were transferred to wasn't suitable for his attitude to risk.
- He used his TFC to pay off debts and to buy a mobility car but he hadn't been able to buy a property.
- Quilter's suitability report was confusing and contradictory and didn't communicate in a way that was clear, fair and not misleading.
- If Quilter had fully considered Mr G's needs it wouldn't have recommended the DB transfer. And if he hadn't transferred he wouldn't have lost the funds.
- Quilter should have identified that Mr G was vulnerable. It should have warned him that fraudsters could encourage him to make unsuitable investments.

In December 2020 Quilter replied. It didn't uphold Mr G's complaint. Amongst other things it said:

- The initial outcome of its assessment of Mr G's attitude to risk was that he was *adventurous* but following discussion it had downgraded that to *dynamic*.
- Mr G had some investment experience and kept abreast of investment issues. He was not risk averse.

- Quilter's suitability report warned, several times, that the critical yields were unlikely to be achieved and that it wouldn't recommend a transfer based solely on Mr G's risk profile.
- Quilter was satisfied it had complied with all regulatory requirements.
- Mr G's main aim wasn't to ensure his standard of living in retirement but to pay off debts and to provide a deposit to buy a property.
- He had an immediate need for a cash lump sum which wasn't available through his DB scheme. His only option was to use his pension fund. So the transfer was in his best interests.
- Quilter put its recommendation to Mr G in person and went through it in detail and explained anything Mr G wasn't clear about.
- After receiving the suitability report Mr G emailed Quilter to confirm he understood the recommendation, the risks involved and what he was giving up.
- It said Mr G implied that Quilter was to blame for him losing money to "fraudsters". It said that allegation was without foundation.

Mr G referred his complaint to our service. One of our investigator's upheld it and required Quilter to pay compensation. In short he said that the starting point for an advising firm is to consider that a transfer won't be suitable. In Mr G's case, given the high critical yields, it was unlikely that Mr G could match the benefits from his DB scheme once he'd transferred out of it. Instead of transferring out of his DB scheme, Mr G could have taken TFC from his personal pension of around £8,000. And taken the balance owing on his IVA as a taxable sum from his personal pension.

The investigator added that, while Mr G wanted to buy a property at the time of the advice he hadn't identified a house to buy. Mr G said he was looking to move in the next 12 to 18 months. So he didn't know how much he would need to buy a house. In those circumstances it wasn't in his best interests to transfer his main source of retirement income. In the intervening 18 months his circumstances could have changed and he might no longer have needed to make the DB transfer. Also, once he'd paid off his debts he would have had a surplus income from which to save for a deposit and he would have had the funds left over in his personal pension. And once he'd found a property to buy he could have looked again at his position and decided at that point if he wanted to transfer out of the DB scheme. So the transfer wasn't appropriate at that time.

Quilter didn't provide a substantive response to the investigator's assessment of the complaint; so it was 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.

Both Mr G and Quilter have made many points in bringing the complaint and in replying to it. I've considered carefully everything on file. But in this decision I don't intend to address each and every issue or point raised. Instead I will focus on the issues that are at the heart of Mr G's complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business (PRIN) and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Quilter's actions here.

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

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

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

The regulator, the Financial Conduct Authority ('FCA'), says in COBS 19.1.16 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 it was in Mr G's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Quilter gave its advice during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. 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.

Mr G was 56 at the time of the advice and had no intention of retiring before age 66 at the earliest. The critical yield required to match Mr G's benefits at age 60 was 35.3% if he took a full pension and 31% if he took TFC and a reduced pension. For further comparison, the regulator's upper projection growth rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr G's – at best – medium attitude to risk (which I will address in more detail below) and also the term to retirement. There would be little point in Mr G 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 31%, I think Mr G was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

Quilter has provided cashflow models which it says show Mr G would've been able to meet his needs despite the high critical yields. I've considered these, but I'm not persuaded the models Quilter has used are fully representative of Mr G's position. And I don't think it's brought all the information he needed to make an informed decision to his attention.

Quilter did point out by transferring to an alternative scheme Mr G was unlikely to match the benefits from his DB scheme. But it then went someway to downplay the significance of that by saying the relevance of critical yields was "limited" as Mr G didn't intend to buy an annuity. But, at that time, the regulator required firms like Quilter to quote critical yields to give consumers like Mr G an insight into what they might be giving up. So I don't think it was fair for Quilter to downplay the significance of this critical yield, as this clearly demonstrated that Mr G would almost certainly be worse off in retirement.

Further, while saying that comparison to annuities was of limited value, Quilter then used a table of information which compared Mr G's income from his DB scheme with a level annuity implying that Mr G could actually be better off by transferring and buying an annuity. Quilter believed that, owing to his health conditions, by transferring Mr G could afford an enhanced level annuity (which didn't increase in value) of £8,553 a year. The table it produced to compare those income levels showed that at age 76 Mr G's yearly income from his DB scheme would still have been below the level annuity. However, that table misrepresents the position. It only compares the annuity against the income of £5,215 Mr G would be entitled to at age 56 and increasing in line with inflation each year. But Quilter didn't adjust Mr G's projected DB scheme income to allow for the increase he would receive at age 60 when he became entitled to take the benefits from his previous pension which he'd transferred into the DB scheme. Neither was it adjusted to reflect the increased income Mr G could expect to receive when his GMP became payable at 65. So the table wasn't a fair comparison of what Mr G's actual income was likely to be from staying in the DB scheme.

Also, the transfer value analysis report of 27 June 2016, shows the increase Mr G could expect to receive at 65. And that shows he could expect to receive an annual income of £11,600 a year (gross). But, as far as I can see, Quilter didn't ever bring this significant increase in his pension – at age 65 – to his attention. It's not mentioned anywhere in its suitability report. It's also notable that Mr G didn't refer to it when he set out his understanding of the benefits he'd be giving up in response to Quilter's advice. And, if Quilter had brought this to his attention it's likely that Mr G would have thought much more carefully about whether or not he wanted to transfer out of the DB scheme. It follows that I don't think Quilter gave Mr G enough information with which to make an informed choice. And I doubt he would have been aware of how much worse off he was likely to be once he reached 65.

For the above reasons alone I don't think that transferring out of the DB scheme was in Mr G's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Quilter has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and TFC

Mr G said he wanted the flexibility to access his pension funds in a manner that suited him. His reason for this was principally so that he could access TFC to pay off his debts and to secure borrowing for a mortgage. But, as our investigator said, Mr G didn't need to access the funds from his DB scheme in order to pay off his debts.

I understand that Mr G had an IVA. I'm also aware that such an arrangement can be extremely damaging to an individual's credit score. And IVAs can make it very difficult, if not near impossible for their holders to secure a mortgage or other borrowing. So I can see why clearing his IVA and rebuilding his credit score was an important goal for Mr G. But Mr G had a fund of over £32,000 available to him from his personal pension. The income he could draw from that pension was dependent on investment performance and so wasn't guaranteed. Unlike his DB scheme which would give Mr G an index linked, guaranteed and risk free income that would increase each year. So the personal pension fund was less valuable to Mr G than his DB scheme.

In those circumstances it would have made sense for Mr G to use the funds from his personal pension to address his debts in the first place. There's evidence on file, from the firm that was managing Mr G's IVA, that he'd made an offer of £10,000 to clear those debts and have the IVA removed. If that offer was accepted then Mr G could have cleared all his debts using the funds available from the personal pension with around £20,000 left over. And even if his creditors didn't accept that offer, he would still have around £15,000 left over after clearing the debt of £15,000 Quilter referred to. That action would have helped to repair his credit score which would in turn have improved the possibility of him securing a mortgage. Further he would have been £360 a month better off as he wouldn't be making the debt repayments. However, I'm aware that, even after clearing an IVA, they can still affect a person's credit score for around six years from when they were entered into. So it's possible the IVA might have made it more difficult for Mr G to secure a mortgage even if he cleared it.

Also, it's notable that at the time Mr G lost his pension funds in 2018 he still hadn't bought a property. So he clearly didn't have an urgent need to release funds for that purpose at the time Quilter gave its advice. At that time he hadn't identified a property he wanted to buy; didn't know how much he would need to buy it; and didn't know if he could secure a mortgage in order to do so. It follows that he had no urgent need for flexible access to his DB pension funds. He could have left those where they were and only accessed them if the need arose at a later date. So I think Quilter should have been clear with him that, at that time, he had no urgent need for those funds and it wasn't in his best interests to make the transfer. That's because, once transferred, Mr G had no prospect of reversing that decision, and the valuable DB benefits would be lost forever.

Quilter's role was to discern what Mr G's wants and needs were and why he wanted to transfer his pension at that time. Its role wasn't simply to do what he wished without appropriate analysis and challenge of his motives for doing so while presenting the other options that were available to him. And I don't think Quilter met its obligations to challenge his objectives or the timing of those in light of what he would be giving up. Nor did it fully explore what he could achieve through other means without giving up the benefits from his DB scheme. It follows that I don't think Mr G needed to access his DB scheme funds when he did and Quilter should have advised him accordingly.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr G as, if he died shortly after making the transfer his family could inherit whatever was left in his pension pot. I appreciate death benefits are important to consumers. And Mr G might have thought it was a good idea to transfer his DB scheme to a personal pension because of this. But the priority here was to advise Mr G about what was best for his retirement provisions.

It's worth noting that the death benefits available from the SIPP would likely decrease over time. So the funds available for Mr G's family on his death would continue to reduce as he drew down sums for his income needs. And that amount would likely be further reduced the longer he lived for. So, depending on his lifespan and the funds he'd taken from the SIPP, the fund might not have a large – if indeed any – sum left at the time of Mr G's death. In any event, Quilter should not have encouraged Mr G to prioritise the potential for a higher sum at his death through a personal pension over his security in retirement.

I acknowledge that Mr G had a health condition and it would be understandable to have concerns about life expectancy. But Mr G not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr G would need his pension to last longer. By transferring out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the SIPP to provide the death benefits. In contrast the spouse's benefit from his DB scheme was guaranteed and escalated.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr G.

Transferring Mr G's personal pension

Mr G's personal pension would allow him to take 25% of it as TFC, which was around £8,000. But the personal pension didn't allow him to simply draw down further funds without taking some form of annuity. So, assuming Mr G paid £8,000 TFC towards clearing his £15,000 IVA, in order to access the other £7,000 to pay off the rest Mr G would have needed to transfer the personal pension to another product. Quilter's recommendation was that he should transfer it into the named SIPP.

I've noted that the investments Quilter suggest Mr G held in this SIPP were in line with its assessment of Mr G's attitude to risk being dynamic. It said dynamic investors will generally have significant levels of financial knowledge and they will usually be experienced investors, who have used a range of investment products in the past that have contained high levels of equity. But, while Mr G did have some investment experience, this had been on a "*small scale*". So I don't think he had anything like the level of investment experience that matched an assessment of a dynamic risk taker.

However, investment experience isn't the only gauge for assessing attitude to risk. And it's clear from the answers Mr G gave to Quilter's risk questionnaire that he did have some appetite for risk. But some of his answers indicate that risk wasn't as high as Quilter assessed it. In particular his answer to two questions, in italics below, call that assessment into doubt, as follows:

- *When it comes to investing I'd rather be safe than sorry*. Mr G said he agreed.
- *I'd rather take my chances with high risk/high return investments than have to increase the amount I am saving*. Mr G said he disagreed.

Those answers indicate that Mr G didn't want to risk seriously depleting his retirement fund. So I'm not persuaded that Quilter accurately assessed Mr G's attitude to risk. And in any event I think it's also important to consider Mr G's capacity for investment loss. Mr G had no other savings or investments. He'd had debt problems which had led him to enter into an IVA. And he was already at an age where he could draw a pension. So I think his capacity for loss was minimal, as, if he suffered significant losses, he wouldn't have had the time required to allow his investments to grow to their previous level. For this reason, I think Mr G's attitude to risk ought to have been assessed as 'medium' at most. So I think that the investments Quilter recommended for him weren't suitable for his risk profile.

That said, I do agree that it was likely that Mr G would have wanted to transfer funds from his personal pension in order to allow him to pay off his IVA. He couldn't access his funds in that way through the existing pension, so he would've needed to move his personal pension funds to a new flexible scheme. On balance, I don't think Mr G needed to take out a SIPP, particularly as this was likely to cost him more and I don't think he needed access to the wider range of specialist investments a SIPP could hold. Instead, I think his needs could've been met by a low-cost stakeholder pension plan, which would've given him the flexibility he required for his personal pension funds.

It follows that I think that, given appropriate advice, Mr G would've most likely transferred his personal pension funds to a stakeholder pension plan and invested his funds in line with his medium attitude to risk. So I think Quilter needs to, as far as possible, return Mr G to the position he would have been in but for its unsuitable advice.

Is Quilter responsible for Mr G losing his funds in 2018?

Mr G's said that Firm L persuaded him to take his funds out of his SIPP and to reinvest them. Mr G has now lost the majority of those funds. Mr G argues that if he hadn't transferred the DB scheme funds in the first place then they would still be held within the scheme and he wouldn't have lost those. But while I have enormous sympathy for the position Mr G finds himself in, I don't think it would be fair to hold Quilter responsible for the actions of Firm L, I'll explain why.

While I don't think Quilter's advice to transfer the funds out of the DB scheme was suitable, once that had happened the decision couldn't be reversed. And from that point forward those funds were Mr G's to do with as he wished. It follows that it wouldn't be Quilter's fault if Mr G chose, without Quilter's involvement, to spend that money unwisely or if he was otherwise led astray. And by the time Firm L approached Mr G Quilter was no longer advising him – he had appointed a new financial adviser to service his pension. So Quilter had no involvement whatsoever in the events that led directly to Mr G losing the majority of his pension funds. And I don't think it would be fair or reasonable to find that Quilter was responsible for those losses.

For the purposes of calculating redress, I think it is fair to hold Quilter responsible for the value of Mr L's SIPP funds up to the point immediately before Firm L persuaded him to take withdrawals from it. For the avoidance of doubt that is up to the point immediately prior to him depleting those funds in 2018. This is because Mr G had only invested in the SIPP as a result of Quilter's advice, and so any losses his funds suffered, up to that point happened because of that advice.

Summary

I can understand that Mr G would benefit from paying off his IVA. But at the time of Quilter's advice he could have done so without accessing his DB scheme funds. He had no pressing need to access those at all. And I think Quilter should have made that clear to him and advised him accordingly. It's important to note that Quilter wasn't there to just transact what Mr G might have thought he wanted. The adviser's role was to really understand what Mr G needed and recommend what was in his best interests.

Ultimately, I don't think the advice Quilter gave to Mr G was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, he was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this at that time. Quilter shouldn't have advised Mr G to transfer out of the scheme to raise funds for a house deposit when he still didn't know how much he would need or whether or not he could secure a mortgage.

So, I think Quilter should've advised Mr G to remain in his DB scheme. But I think Quilter's advice that Mr G switch his personal pension to a flexible product was suitable for him. Although I don't think the SIPP it recommended was.

Of course, I have to consider whether Mr G would've gone ahead anyway, and transferred his DB scheme against Quilter's advice. I've considered this carefully, but I'm not persuaded that Mr G would've insisted on transferring out of the DB scheme, against Quilter's advice. I say this because I think Mr G would have understood that transferring from a DB scheme was an irreversible action and so not one that should be taken unless it was absolutely necessary. And, at the time of the advice, that wasn't the case. Also Mr G was an inexperienced investor with at best a medium attitude to risk and this pension accounted for the majority of Mr G's retirement provision. So, if Quilter had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, I think Quilter should compensate Mr G for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. Additionally, as I think the unsuitable advice has been a source of distress and inconvenience for Mr G I think Quilter should pay him £300 compensation to address that.

Putting things right

A fair and reasonable outcome would be for Quilter to put Mr G, as far as possible, into the position he would now be in but for Quilter's unsuitable advice. I consider Mr G would have most likely remained in his DB scheme if suitable advice had been given.

What should Quilter do?

To compensate Mr G fairly, Quilter must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

Actual value

This means the actual amount payable from the SIPP. However, as Mr G has since depleted that fund, Quilter should take the value at the point immediately before Firm L persuaded Mr G to deduct funds from his SIPP in 2018 and subject to any other deductions as described under the heading "*fair value - step two"* below.

Fair value – step one

If Mr G had been given suitable advice, I think he would have remained in the DB scheme. Quilter must therefore calculate the value of the benefits Mr G lost as a result of transferring out of his DB scheme in line with the regulator's pension review guidance as updated by the FCA in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr G whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to be published. He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for any new guidance.

I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr G.

The calculation should be carried out as at the date of my final decision, using the most recent financial assumptions at the date of this decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr G's acceptance of the decision.

Quilter may wish to contact the Department for Work and Pensions ('DWP') to obtain Mr G's contribution history to the State Earnings Related Pension Scheme ('SERPS or S2P'). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr G's SERPS/S2P entitlement.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Quilter to carry out a calculation in line with the updated rules and/or guidance in any event.

fair value – step two

Quilter must compare the total value of the personal pension funds it transferred to the SIPP with that of the benchmark shown below to determine the fair value Mr G's personal pension would likely have been had it given suitable advice.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mr G's transferred personal pension funds	Still exists (potentially with a different provider than recommended by Quilter	FTSE UK Private Investors Income Total Return Index	Date of investment	The point immediately before Firm L persuaded Mr G to deduct funds from his SIPP in 2018	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Quilter totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

If the redress calculation demonstrates a loss, the compensation should, if possible, be paid into Mr G's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP if it would conflict with any existing protection or allowance.

If a payment into the SIPP isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. The compensation amount must, where possible, be paid to Mr G within 90 days of the date Quilter receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Quilter to pay Mr G.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above. In that case any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr G wanted capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr G's circumstances and risk attitude.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Quilter Financial Services Ltd to pay Mr G the compensation amount as set out in the steps above.

If Mr G accepts this decision, the money award becomes binding on Quilter Financial Services Ltd.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 16 November 2022.

Joe Scott
Ombudsman