DRN-3670561

The complaint

Mr R complains about the advice given by Quilter Financial Services Ltd ('Quilter') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr R's employer announced that it would be examining options to restructure its business, including decoupling the employer's DB scheme (the 'BSPS') from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined benefit scheme (the 'BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

Mr R was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He wasn't sure what to do so he got in touch with an independent financial adviser, who was an appointed representative of Quilter. Mr R met with Quilter on 31 August 2017 and it gathered information about his circumstances and objectives. It noted Mr R was aged 57 and was married with non-dependent children; that Mr R and his wife owned their own home which was mortgaged. Quilter recorded that Mr R had a loan with an outstanding balance of £6,000 and a credit card balance of £8,700. And that Mr R had savings of £3,500. An expenditure analysis showed Mr and Mrs R's combined salaries covered their outgoings.

It was recorded that Mr R had a 'balanced' attitude to risk and an 'acceptable' capacity for loss. And that he wanted to retire at 60 with an income of £26,400 between him and Mrs R. Quilter noted Mr R would ideally like to pay off his debts, including the mortgage, before this, which would free up annual income of around £10,000. So, it noted Mr R wanted to take his tax-free cash ('TFC') immediately to pay off his debts, make some home improvements and leave the remainder as an emergency fund. It was further noted Mr R had joined his employer's new defined-contribution ('DC') pension scheme, though it didn't record what amount Mr R or his employer were contributing towards it.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options – they could stay in BSPS and move with it to the PPF; join the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

In November 2017 Quilter advised Mr R to transfer his BSPS benefits to a SIPP and invest the proceeds in a balanced fund. It said this would allow Mr R to take TFC immediately to clear his debts but leave his remaining funds invested until he retired at age 60. It said transferring would achieve his objectives of control and flexibility of income (which he'd need to reduce when his state pension became payable) and better death benefits for his wife. Mr R accepted this advice and £348,027.63 was transferred from the BSPS to his new SIPP.

In 2021 Mr R complained to Quilter, via the Financial Ombudsman Service, about the advice. He said he was unhappy he'd been advised to transfer his pension because he'd lost guaranteed and safeguarded benefits. He now believed the advice to be unsuitable.

In its response to Mr R's complaint, Quilter said the transfer was suitable as the benefits immediately available to Mr R through the BSPS wouldn't have provided sufficient TFC to clear his debts. It also wouldn't have provided enough income to meet his needs from age 60. Mr R had also expressed concerns about the PPF and the scheme trustees so he didn't want to move to the BSPS2. Overall, it said the transfer was suitable as it allowed Mr R to access his pension flexibly and pass on the remaining pension to his wife and children in the event of his death.

Unhappy with Quilter's response, Mr R referred his complaint to our Service to investigate.

One of our Investigators looked into the complaint and said it should be upheld. He thought the advice was unsuitable as Mr R was likely to receive benefits of a significantly lower overall value at retirement. He said Quilter didn't do any analysis of the benefits Mr R could take from the DB scheme at age 60 and it didn't do any meaningful analysis of how his income needs would be met from that age. He didn't think Mr R could likely afford to retire at 60 given his desired income need, which was supported by the fact that he was now almost 62 and hadn't retired. On balance, he thought Mr R would've likely joined the BSPS2 had suitable advice been given, so he should be compensated based on him having joined this scheme.

Quilter didn't agree. It said the Investigator's starting point in considering the complaint was flawed – it said the 'presumption of unsuitability' was guidance, not a rule, and that the overarching consideration was whether the adviser had taken reasonable steps to ensure the advice was suitable. It added that a third party had reviewed the advice given, using the Defined Benefit Advice Assessment Tool ('DBAAT') developed by the regulator, the Financial Conduct Authority ('FCA'), and found the advice to be suitable.

Quilter also said the Investigator's assessment focused too narrowly on whether Mr R could improve on or match his BSPS benefits – it said this was contrary to the guidance the FCA had issued in 2017 (Consultation Paper 17/16 'CP17/16') that firms should not be overly reliant on the critical yield when giving advice as this was leading to poor outcomes for customers. Quilter said the Investigator needed to take the DBAAT into account to determine whether the advice was suitable overall. And it maintained the advice was suitable as the transfer met Mr R's objectives.
The Investigator didn't change his opinion so the complaint was referred for a final decision.

Mr R's representative later made some comments about the retirement age that the redress calculation recommended by the Investigator should be based on. It said although Mr R had taken his TFC and cleared some debts, he didn't repay his mortgage. And Mr R didn't need to take his TFC when he transferred his pension, he only did it because he could. It also told us that although Mr R said he wanted to retire at age 60, he said that wasn't a fixed plan, it was something he said the adviser told him was achievable. But he didn't retire at age 60 because he didn't think he had a large enough pension pot.

Ahead of providing my final decision to Quilter, I explained that if Mr R had been advised to join the BSPS2, as I thought he should have, I didn't think he would've retired at age 60. I explained this was because he couldn't afford to do so – the income he could take from the BSPS2 wouldn't have met his income needs. On balance, I explained I thought Mr R would've remained in the scheme and only sought to take his benefits at age 65. So, I said when Quilter carried out the calculation, it is the benefits available to Mr R through the BSPS2 at age 65 which should be used for comparison purposes, as per the usual assumptions in the regulator's guidance. I said I wasn't persuaded Mr R would have accessed his benefits before his normal retirement age. Quilter acknowledged this.

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.

Having done so, I'm upholding the complaint for largely the same reasons as the Investigator.

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.

Quilter says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr R. It says that COBS 19.1.6G is simply guidance, not a regulation that firms are required to follow and that the Investigator erred by only considering this. I agree that under COBS, Quilter was required to take reasonable steps to ensure that its personal recommendation to Mr R was suitable for him (COBS 9.2.1R). However, additional regulations and guidance applies to advising on transferring out of DB schemes. And COBS 19.1.6G says the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr R's best interests.

Whilst I accept this is guidance, I don't think the importance of it can be overlooked. It is intended to reflect the FCA's view (which it has maintained ever since) that retaining safeguarded benefits is in the best interests of most customers – so it is an important guiding principle for any firm giving advice. And in any event, the FCA still requires that an adviser acts in accordance with the best interests of its client under COBS 2.1.1R. And I think that this reinforces that advice to transfer out of a DB scheme should only be given if it is in the customer's best interest to do so.

So, I've considered all of the applicable regulations and guidance here. And having looked at all the evidence available, I'm not satisfied Quilter took reasonable steps to ensure the advice to transfer was suitable for Mr R or that it was in his best interests. I'll explain why.

Financial viability

Quilter carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr R's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). However, this was based on his existing scheme benefits and Mr R didn't have the option of remaining in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF. Mr R had received his "time to choose" pack by the time the advice was given in November 2017. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual revaluation pre-retirement and escalations post-retirement would've been lower.

Although the suitability report seems to suggest Mr R wasn't interested in joining the BSPS2 because he didn't trust the scheme trustees, I think the benefits available to Mr R through the BSPS2 should've been factored in with Quilter's advice so that he was able to make an informed decision and understood exactly what he was giving up.

According to the fact-find and suitability report, Mr R wanted to be able to retire at age 60, although I note Mr R says this wasn't a fixed plan. However, the TVAS only provided the critical yields at age 65. It was 12.58% if he took a full pension or 8.92% if he took TFC and a reduced pension. The critical yield required to match the benefits provided through the PPF was 5.45% if Mr R took a full pension or 4.91% if he took TFC and a reduced pension. But as I've said above, Mr R remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

As I've said above, Mr R was interested in retiring at age 60. So, Quilter should've provided the critical yields at this age so that Mr R was in a fully informed position. Based on my experience, I think the critical yields at age 60 were likely to be higher than those at age 65. That's because the transferred funds would have a shorter investment horizon and would be required to pay for benefits for longer.

The advice was given after the regulator gave instructions in Final Guidance 'FG 17/9' as to how businesses could calculate future 'discount rates' 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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

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 was 3.4% per year for 7 years to retirement. 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% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr R's balanced attitude to risk and also the term to retirement. The lowest critical yield was 4.91%, which was based on Mr R taking TFC and a reduced pension through the PPF at age 65. The critical yield if Mr R took the same benefits through his existing scheme at age 65 was 8.92% So, if Mr R were to opt into the BSPS2 and take the same benefits at age 65 the critical yield would've been somewhere between those figures, and likely closer to 8.92%. And at age 60, this was likely to be higher than 8.92%.

Given the discount rate of 3.4% and the regulator's middle projection rate of 5%, I think Mr R was most likely to receive benefits of a significantly lower overall value than those provided by the BSPS2 as a result of investing in line with that attitude to risk, particularly if he retired at age 60. I recognise it's possible Mr R could've matched the PPF benefits at age 65 particularly if he took TFC. But I think there would be little point in Mr R giving up the guarantees available to him through a DB scheme only to achieve, at best, the same benefits he could've achieved through the PPF. That's particularly the case given the BSPS2 was likely to be confirmed as going ahead, so Mr R would most likely have avoided moving to the PPF in any event.

Quilter says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings on the discount rate on its own, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would've been considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr R's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

I'm also mindful that in the suitability report Quilter said it didn't think the BSPS critical yields were likely achievable. So, I think it understood Mr R wouldn't be able to match, let alone improve on his BSPS benefits. But Quilter argues that the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. And Quilter says Mr R didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required Quilter to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, I think the critical yield was a relevant measure as it demonstrated the growth needed to provide a fund big enough to secure a guaranteed income for Mr R and his spouse.

It doesn't appear that Quilter carried out a cash flow forecast that would otherwise demonstrate the financial viability of the transfer. However, I can see in the suitability report that Quilter stated:

"You have indicated you may require an income of £26,400 a year from age 60, falling to £18,200 from age 66 when your State Pension starts. Your current fund value (after your tax free cash and my fee is taken) is £250,579.90. To keep the comparison simple, I will assume there will be no further growth or losses on your fund between now and when you are 60. I have also assumed there will be no further growth or losses after the income has started. On this simplistic basis the income would last for 9 years, and so the fund would be eroded completely at age 69."

This appears to be the only analysis Quilter carried out that reflected the plans on which the advice was based. However, I would've expected Quilter to have carried out other analysis in line with the regulator's projected growth rates so that Mr R understood the effect of growth on his pension fund. There are examples of this in the TVAS, but they aren't useful comparisons here as they don't reflect what Quilter was advising Mr R to do – they are based solely on Mr R taking benefits at age 65.

But based on this analysis alone, it’s difficult to see how this supported the advice to transfer. In my view, it demonstrated that Mr R’s hope to retire at age 60 on his target annual income of £26,400 wasn’t likely achievable, even if he transferred out of the scheme. And in the worst case scenario of no growth whatsoever, his funds would run out very quickly and a long time before he reached his life expectancy.

Given Mr R was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don’t think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn’t the only consideration when giving transfer advice. And Quilter has argued that the FCA made clear in CP17/16 that relying on the critical yield alone produces poor outcomes for customers. While I’m mindful that this was a consultation paper and not new rules, I’ve taken into account that there might be other considerations which mean a transfer is suitable and in Mr R’s best interests, despite providing overall lower benefits. I’ve considered these below.

Flexibility and income needs

It seems one of the main reasons why Quilter recommended this transfer was for the flexibility and control it offered Mr R. While Mr R could retire early through the DB scheme, and take TFC and a reduced annual pension, Mr R had to take those benefits at the same time.

I note Mr R had personal loan and credit card debt amounting to around £14,700 that he was keen to pay off immediately to free up some extra income. The suitability report also refers to Mr R having a mortgage balance of £48,665 that he also wanted to repay, though in the fact-find the balance is also given as being £38,665. Quilter says that the only way to clear these debts was for Mr R to transfer his pension to a SIPP and take the maximum TFC immediately, equating to around £87,006.90. It had looked into Mr R instead accessing his DB scheme benefits, but he would’ve only been entitled to TFC of £42,461.

I accept that Mr R was likely interested in repaying these debts. But Quilter’s role wasn’t simply to facilitate what Mr R wanted; it had to act in his best interests and provide suitable advice. And I don’t think advising Mr R to access his pension early in order to repay debts that were otherwise affordable, was suitable advice. Not least because withdrawing such a significant sum from Mr R’s pension meant that he had far less to live on in retirement – and Quilter didn’t provide any analysis (other than the worst case scenario above) of how Mr R’s remaining pension funds might last him throughout retirement.

If Quilter had been acting in Mr R’s best interests, I think it would have explored what benefits would’ve been available to Mr R through the BSPS2 at age 60, including the level of TFC he could take. This may have been sufficient to repay his debts at that point. However, it’s possible some of those debts would’ve already been repaid – I don’t know because Quilter didn’t record any details of the loan end dates. Had it also done this analysis it could’ve given Mr R a realistic view of whether retiring at age 60 was achievable. It’s evident that Mr R hasn’t retired at age 60 and continues to work for his employer because he doesn’t feel his pension pot is large enough to support this. And I think that demonstrates that he wasn’t committed to retiring at age 60 come what may, it was always based on whether he could afford to do so.

Quilter recorded that Mr R wanted an income of £26,400 from age 60, although I note there was no detailed financial analysis, so I don’t know whether this was accurate. And once Mr R and his wife were in receipt of their state pensions at age 66, amounting to around £16,000 per year, Quilter said he would reduce this to £10,400 per year.

Under the BSPS, at 65 Mr R could take an annual pension of £17,339 or TFC of £76,611 and a reduced annual pension of £11,491. Under the PPF Mr R could take an annual pension of £15,031.40 or TFC of £77,409.90 and a reduced annual pension of £11,597.10. So the BSPS2 figures would've been somewhere in between. I don't know what benefits Mr R could've taken from the BSPS2 at age 60 but I think they would've been higher than the benefits Mr R could've taken from the BSPS immediately, which Quilter said was a full pension of £9,091 or TFC of £42,461 and a reduced pension of £4,546.

It's clear that Mr R wouldn't have been able to meet his desired annual income need of £26,400 from age 60 through the BSPS, BSPS2 or the PPF. So Quilter may argue that Mr R could've only met this objective by transferring out of the BSPS to a SIPP. But as I've said above, although Mr R could've likely met this income need until his state pension became payable, I don't think Quilter has demonstrated that the remaining funds would sustain him until he reached his life expectancy, particularly when factoring in the effects of inflation, investment fees and periods of poor growth. So, I think a fair analysis of Mr R's needs and objectives would've led Quilter to explain to Mr R that his desire to retire at age 60 was likely unachievable.

Mr R had joined his employer's DC scheme and his employer was contributing to it – this was likely to be at a rate of 6% or 10% of Mr R's salary based on what I've seen in other cases. Mr R may have also been contributing to it. However, Quilter didn't record any details of this so it's difficult to know what level of funds he may have had to draw on at retirement from the DC scheme. Based on Mr R's salary, and assuming total contributions of 10%, the contribution would be in the region of £3,000 per year. If Mr R retired at age 65 this could be worth up to £30,000 if he achieved net growth of 2%. So, even if Mr R deferred his retirement to age 65 it's clear that his DC scheme wouldn't form a significant part of his overall retirement provision and that Mr R would be heavily reliant on his DB scheme.

Overall, I think Mr R could likely best achieve his retirement income needs by remaining in the DB scheme and taking his benefits at his normal retirement age. This provided him with a risk-free, escalating income for life. Mr R could've used the funds in his DC scheme to bridge the gap between age 65 and 66, and once his and Mrs R's state pension became payable they'd have sufficient guaranteed income to meet their needs. So, I don't think it was clearly Mr R's best interests to transfer out of the DB scheme in order to have flexibility, when this could've put him in the position of having insufficient retirement funds to meet his needs later in life.

Death benefits

Quilter says that one of Mr R's key objectives was to be able to pass on the value of his pension on his death. 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 R. But whilst I appreciate death benefits are important to consumers, and Mr R might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr R about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. And I don't think Quilter explored to what extent Mr R was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr R was married and so the spouse's pension provided by either the BSPS2 or the PPF would've been useful to his spouse if Mr R predeceased her. The spouse's pension was guaranteed and it escalated – and under the BSPS2 the spouse's pension would be calculated as if no TFC had been taken. Furthermore, this benefit was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as I've said above, the fund may have been exhausted much sooner than Mr R expected. So, there may have been little or nothing at all to pass on when he died in any event.

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

Control or concerns over financial stability of the DB scheme

It's clear that Mr R, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund. It seems Mr R also had concerns about the BSPS2 because of the way his employer had changed the benefits in the past. So it's quite possible that Mr R was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF.

It's well documented that this was a period of uncertainty for people like Mr R. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So it was Quilter's obligation to give Mr R an objective picture and recommend what was in his best interests.

As I've explained, by the time the advice was given details of BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr R through the BSPS2 into account and I think this should've alleviated Mr R's concerns about the scheme moving to the PPF. And if Mr R's concerns about his employer's influence on his pension remained, I think it should've been explained that his employer and the pension scheme trustees were not entirely one and the same. So Mr R's employer didn't have the control over the pension Mr R thought it did.

In the suitability report, I can see that Quilter noted:

"You are concerned that staying in any scheme will affect your benefits because you have simply lost all trust in the trustees. Whilst this is your view, it is the view of my network, [Quilter] that the move to the new scheme would not be too detrimental for you as the increases are simply a change from RPI to CPI. They do not feel that you should have anything to worry about by moving into the new scheme, but of course, your view is different."

But I don't think it was reasonable for Quilter to simply accept Mr R's view and use it to support the advice to transfer. I think it ought to have made it clear to Mr R that it considered he should join the BSPS2, as it didn't materially change his position, rather than noting it as a difference in opinion. Overall, I don't think Quilter challenged Mr R's negative perceptions of the scheme trustees enough – they were ultimately in place to act in the interests of the scheme members. Instead, I think Quilter allowed Mr R to believe that his position was reasonable and that it was the right thing to transfer out of the scheme.

Furthermore, even if there was a chance the BSPS2 wouldn't go ahead, I think that Quilter should've reassured Mr R that the scheme moving to the PPF wasn't as concerning as he thought. The starting benefits available to Mr R through the PPF were actually higher through the PPF at age 65 if he took TFC. And he wasn't likely to be able to improve on these by transferring out. Although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to Quilter recommending Mr R transfer out of the DB scheme altogether.

I also think Mr R's desire for control over his pension benefits was overstated. Mr R was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on their own. So, I don't think that having control was a genuine objective for Mr R – it was simply a consequence of transferring away from his DB scheme.

DBAAT Tool

Quilter says that the advice needs to be looked at as a whole and that the output of the DBAAT tool should be an important consideration here. While I am satisfied I have already considered the suitability of the advice as a whole, taking account of Mr R's objectives, I've also considered this.

The assessor who completed the DBAAT tool concluded that the advice was compliant. Quilter maintains this was completed correctly and in line with the regulator's guidelines. However, I note that the assessor answered "Yes" to the following example of unsuitability:

1) The client is, or will be reliant on income from this scheme.
9) The firm's transfer analysis does not support a recommendation to transfer.

As a consequence, the DBAAT flagged the transfer as being potentially unsuitable, but ultimately the transfer was deemed suitable overall. However, the assessor erroneously stated that Mr and Mrs R each had other DB pensions they could rely on in retirement. But that wasn't the case; they each had DC schemes – Mr R's was his employer's new DC scheme, valued at less than £5,000 and Mrs R's had a value of less than £2,000 at the time of the advice. So, they were even more reliant on Mr R's BSPS pension than the assessor believed.

Furthermore, the assessor considered that because Mr R needed immediate access to TFC, the transfer was suitable overall. However, I've explained at length above why I don't consider that transferring in order to pay down affordable debts was in Mr R's best interests, particularly when this would have a significant impact on his remaining funds. And I note the assessor also flagged that Quilter failed to do any cash flow analysis showing whether or not Mr R would be able to sustain his lifestyle in retirement if he retired at 60.

Overall, for the reasons given, I'm not persuaded that using the DBAAT tool demonstrates that the advice was suitable for Mr R.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr R. But Quilter wasn't there to just transact what Mr R might have thought he wanted. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr R was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a SIPP Mr R was, in my view, likely to obtain lower overall retirement benefits. And if he retired at age 60 as per his plan, I think he was likely to run out of funds well before his life expectancy. I also don't think Mr R should've been encouraged to pay off debts that were affordable, given this would leave him significantly less funds to live on as he got older. So, I don't think it was in Mr R's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of joining the BSPS2.

I appreciate that the BSPS2 hadn't been fully confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. I don't think that it would've been in Mr R's interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. Also, Mr R was married, and under the BSPS2 his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr R chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Quilter should've advised Mr R to opt into the BSPS2.

Quilter may say that regardless of the advice given, Mr R made an informed choice to proceed with the transfer and Mr R would've transferred in any event. I accept that Quilter disclosed the risks of transferring to Mr R, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr R to transfer out, and I think Mr R relied on that advice.

I'm not persuaded that Mr R would've insisted on transferring out of the DB scheme, against Quilter's advice. I say this because Mr R was an inexperienced investor and this pension accounted for all of his retirement provision at the time. I think Quilter should have made it clear that if Mr R transferred his pension, retired at 60 and commenced drawdown taking £26,400 per year he would likely run out of funds, particularly if he lived a long life. And I think that would've convinced Mr R that joining the BSPS2 was in his best interests. So, if Quilter had provided him with clear advice against transferring out of the DB scheme, I think he would've accepted that advice.

In light of the above, I think Quilter should compensate Mr R for the unsuitable advice, by undertaking a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice.

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 Mr R would most likely have opted to join the BSPS2 if suitable advice had been given.

Quilter 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.

Quilter should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr R and our Service upon completion of the calculation.

Compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance. That's because I don't think Mr R would've retired at age 60 because he couldn't afford to do so.

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, Quilter should:

- calculate and offer Mr R redress as a cash lump sum payment,
- explain to Mr R before starting the redress calculation that:
    - the 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 the redress prudently is to use it to augment his DC 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 Quilter's offer to calculate how much of his 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 his 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 includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Quilter may make a notional deduction to cash lump sum payments to take account of tax that Mr R would otherwise pay on income from his 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 £160,000, 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 £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Quilter Financial Services Ltd to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I will also recommend that Quilter Financial Services Ltd pays Mr R the balance.

If Mr R accepts my final decision, the money award becomes binding on Quilter Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr R can 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 any final decision.

Quilter Financial Services Ltd should provide details of its calculations to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 November 2023.

Hannah Wise
Ombudsman