

The complaint

Mrs S complains about the advice given by Quilter Financial Planning Solutions Limited T/A Positive Solutions to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension plan. She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

In 2015, Mrs S was going through a divorce and was advised by her solicitor to seek independent financial advice. Mrs S met with an independent financial adviser ('IFA') but he told her he wasn't authorised to transact DB pension transfers so he referred her on to an adviser at Quilter. In early October 2017, Quilter conducted a telephone meeting with Mrs S and completed a brief fact-find to gather information about her circumstances and objectives. Quilter established the following:

- Mrs S was 55 years old and recently divorced. The marital home had recently been sold and the proceeds split between Mrs S and her husband; Mrs S had received £128,000 in the settlement.
- She was employed part-time earning £10,000 per year plus commission which she thought would increase her total annual income to between £15,000 and £18,000 which was sufficient to cover her outgoings. Mrs S thought she had 11 years of earning potential remaining before her state retirement age of 66.
- Mrs S had three pension plans: a stakeholder pension plan with a fund value of £3,408, her DB scheme which had a cash equivalent transfer value of £132,566 and a pension that had belonged to her former husband that was granted to her by the court under a pension sharing order and which had a fund value of £26,130. Her total pension benefits were therefore worth £162,104.
- Mrs S needed money to purchase a flat. She anticipated needing a total of £195,000 – but didn't want to take on a mortgage because of her age.
- Mrs S didn't need an income from the pensions because she felt that her income from her employment would cover her outgoings.
- If Mrs S took her DB scheme benefits immediately she would receive tax-free cash (TFC) of £22,538 and a pension of £3,380 per year (that included a 50% spouse's pension).
- Mrs S didn't want to take the early retirement option from the DB scheme because the TFC she would get was less than what she could achieve if she transferred her benefits out of the scheme. She also didn't want a pension with the benefit of a 50% spouse's pension.
- No investments, assets or debts were noted.

Shortly after, Quilter sent Mrs S its letter of recommendation and its suitability report in which it advised Mrs S to transfer both her DB scheme and the two other pension plans she had into a personal pension plan (also provided by 'M'). It then advised her to take TFC of approximately £41,000 from the new plan and drawdown a further (taxed) amount of £30,000 in order to cover the cost of purchasing a property. Having carried out an assessment of Mrs S's attitude to risk (ATR), which it deemed to be 'moderate', it advised she invest the balance of the proceeds in a moderately cautious fund.

The suitability report said Mrs S's sole objective was to purchase a property valued up to £195,000 without taking on any debt. That formed the basis of its reasons for recommending the transfer from her DB scheme.

Quilter also provided Mrs S with a transfer value analysis (TVAS) report. This assessed that the estimated annual investment return (also known as the 'critical yield') the new pension plan would need to attain in order to provide benefits of an equal value at Mrs S's normal retirement date (NRD) of 65 was 9.29% if no TFC was taken and all benefits were taken as a pension.

Quilter's charge for arranging the transfer was 3% of the fund value (cited as £162,556) which equated to £4,876. Quilter also recommended that Mrs S agree to an annual review of her retirement plans for which there was a 0.75% annual charge to be deducted from the fund value.

Mrs S proceeded with Quilter's recommendation and the transfers took place in November 2015.

In September 2021 Mrs S complained to Quilter about the suitability of the transfer advice she had received. She said that she had received negligent advice and had suffered a financial loss as a result. More specifically she complained:

- That Quilter had failed to collect enough information about her on its fact-find.
- That the transfer was unsuitable and wasn't in her best interests.
- That Quilter inadequately analysed the suitability of the transfer and whether her objective of purchasing a property could be achieved in other ways.
- The significant value of the DB scheme benefits weren't adequately compared against the uncertain benefits associated with a personal pension.
- Quilter hadn't explained that whilst an immediate cash lump sum was attractive it might be less valuable than a guaranteed future income scheme.
- The risks of the transfer and the loss of the guaranteed benefits weren't explained.
- There was a conflict of interest in Quilter being incentivised by a large fee to recommend the transfer in circumstances where it wasn't in Mrs S's best interests.

Quilter looked into Mrs S's complaint, issuing its final response on 30 September 2021. Quilter disagreed that it had done anything wrong. It said that it had completed a fact-find and an ATR questionnaire and had carried out extensive research to compare the benefits of the DB scheme with the transfer to a personal pension. It said this had all been summarised in the suitability report it sent Mrs S in October 2015 where it noted her main objective now she was single, and so close to retirement, was to purchase a property unencumbered by debt.

Quilter said it had adequately assessed Mrs S's needs and objectives and challenged her thoughts about achieving them in other ways. It also said it had discussed the advantages and disadvantages of the transfer but that Mrs S, whilst she understood these, wanted to take advantage of the new 'pensions freedoms' to purchase a property unencumbered. So Quilter said there'd been no failure to collect information from Mrs S as it had established her objectives, her ATR and explored all the other available options before concluding the only way to achieve her objective was to transfer her DB scheme.

Quilter said it had provided Mrs S with appropriate advice and a suitable recommendation taking into account her needs and objectives. It also said that Mrs S had enough clear, fair

and not misleading information to make a fully informed decision and had been made fully aware of the risks associated with the transfer.

Unhappy with the outcome of Quilter's investigation, Mrs S complained to this service. Our Investigator looked into her complaint and recommended that it was upheld. He said that the transfer wasn't financially viable in that she was likely to receive benefits of a materially lower overall value than she would have done by remaining in her DB scheme as a result of investing in line with her ATR. He also thought that alternative ways of achieving her objective of purchasing a property weren't explored in enough detail. And he thought there had been no discussion about what Mrs S's retirement needs were likely to be. Our Investigator recommended that Quilter undertake a redress calculation for Mrs S in line with the regulator's pensions review guidance. He added that Quilter should pay Mrs S £300 compensation to address her distress and inconvenience caused by Quilter's unsuitable advice.

Mrs S replied to our Investigator asking some questions about how any redress would be calculated and paid.

Quilter said it disagreed with our Investigator's findings. It said too much emphasis was placed on the critical yield. It said that alternative ways to facilitate a property purchase were discussed with Mrs S and that it had carried out mortgage sourcing which had shown she could use the TFC from her DB scheme and take out a mortgage of £40,000. It said this would cost £350 per month which it had proposed was funded by the income that would have been paid from the DB scheme. Quilter said that Mrs S had discounted this as an option.

Quilter also said that the other possibilities suggested by our Investigator were clearly not viable for Mrs S given she had since fully encashed the entire pension. It said the uncrystallised funds pension lump sums (UFPLS) Mrs S took in the 2016/2017 tax year didn't form part of the DB transfer advice she had complained about. It said the original advice had been to release TFC from the three transferred pensions (totalling £41,000) along with a further sum of £30,000 taxed at the basic rate of income tax in order to assist with the property purchase as documented in the suitability report. But Quilter said in February 2016 Mrs S asked to encash the full amount (£116,000) remaining in the pension.

Quilter said it had produced a further suitability report in February 2016 where it noted that Mrs S had £145,543 in the bank which she intended to use to purchase a property and that she intended to take out a small mortgage of £35,000 to cover the difference. So it said Mrs S's needs had significantly changed from those cited in 2015. It said the £83,320 she received from the full pension encashment (after tax was deducted) added to what she had in the bank and the mortgage she intended to obtain meant she had £263,000 to purchase a property. Quilter agreed Mrs S had indeed paid a significant amount of tax in 2016/2017 but the fact she did shouldn't be considered against the original advice.

The investigator thought about what Quilter had said but wasn't persuaded to change his opinion. He said it was still the case that Mrs S's income needs in retirement hadn't been discussed. And he said that just because the new pensions freedoms enabled Mrs S to withdraw cash from her pension if she transferred it didn't mean that doing so was suitable for her. Our Investigator remained of the view that Quilter had facilitated what Mrs S had told it she wanted to do rather than what was in her best interests.

The complaint was passed to me for 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.

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 largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G 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 Mrs S's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability of the DB scheme transfer

I understand that Mrs S's solicitor suggested that she obtain some independent financial advice following her divorce. And I accept that, for her at the time, the priority was finding a home. So it may have been the case that Mrs S approached her IFA, and subsequently Quilter, with the idea that she could use her pensions to help her purchase a property. But Quilter wasn't there just to transact what Mrs S thought she wanted to achieve; it was there to act in her best interests. But I don't think her stated objective for wanting to transfer outweighed or justified the loss of her valuable, guaranteed DB scheme benefits. I'll explain why.

Quilter carried out a transfer value analysis ('TVAS') report (as required by the regulator) showing how much Mrs S's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme (the critical yield).

The advice was given 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.

Mrs S was aged 55 at the time of the advice and wanted to retire at 66 (her state retirement age). The critical yield required to match Mrs S's occupational pension benefits at age 65 (her NRD) was 9.29% if she took a full pension and no TFC. This compares with the discount rate of 4.2% per year for 10 years to retirement in this case. 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%.

I've taken this into account, along with the composition of assets in the discount rate, Mrs S's moderate attitude to risk and also the term to retirement. There would be little point in Mrs S giving up the guarantees available to her through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yield was 9.29%, I think Mrs S 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.

And I think that Quilter's suitability report acknowledges that to be the case as well because it says that the underlying investment growth needed to attain the same benefits as those offered by the DB scheme at NRD was unlikely to be achieved.

I've thought too about Mrs S's capacity for loss. I note that the suitability report didn't comment on Mrs S's capacity for loss, merely stating that she was willing to give up better retirement benefits in return for access to TFC at the time of the advice. But that wasn't having regard for Mrs S's information needs. The DB scheme was Mrs S's main source of retirement income and given at the time of the advice she had no assets (aside from the money in the bank from her divorce settlement that she intended to use for her property purchase) or other anticipated sources of income in retirement (except for her state pension entitlement and the other two small personal pensions she had) I don't think she had any capacity to absorb a loss on the pension transfer. If it was acting in her best interests, I think Quilter should have made that clear to Mrs S when it was advising her.

So, for this reason alone a transfer out of the DB scheme wasn't in Mrs S'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 this below.

Flexibility and income needs

I don't think Mrs S required flexibility in retirement. This is because based on the evidence I've seen, I don't think she had a genuine need to access her TFC earlier than the normal scheme retirement age so she could have left her funds invested until a later date. I say this because Mrs S's sole objective was to access money to purchase a property unencumbered by debt.

Because Quilter didn't carry out a full fact-find on Mrs S's financial circumstances I don't know what her monthly outgoings and financial commitments were. I don't know if she was servicing any loans or how affordable any potential monthly mortgage payments were.

Nor do I think that Quilter considered what income Mrs S wanted and needed in retirement as required by the regulator. The industry regulator – the FCA – has made it clear within its

guidance that advisers need to have understood a consumer's investment objectives before making a recommendation. A request or preference made by the consumer for a particular course of action does not, of itself, amount to an objective. Advisers are required to interrogate the consumer's actual investment objectives to determine if they are realistic or not or achievable through other means and so that they can provide suitable advice on whether they can be met.

So whilst Mrs S sought advice about using her pensions to help her purchase a property this didn't absolve Quilter from the requirement to provide suitable advice, even if, in so doing, it challenged Mrs S's pre-conceived intentions. Mrs S had no experience of making an investment decision of this sort and consequently had no means of knowing if her intended actions were in her best interests or if her objective could be met by some other means. I think it's worth repeating that Quilter wasn't there to just transact what Mrs S might have thought she wanted. The adviser's role was to really understand what Mrs S needed and recommend what was in her best interests.

So Quilter should have provided Mrs S with information that allowed her to make a fully informed decision about what was in her best interests. That included giving Mrs S advice about the cost of a low interest mortgage compared to the cost of losing a guaranteed, index-linked retirement income. That's especially the case as – once transferred – her reinvested pension would need attain an annual return of 9.29% just to be able to provide the same benefits as those she was giving up. So whilst I accept that Mrs S may have approached Quilter with the idea that she didn't want to take on any debt at that point in her life, the true and real cost of giving up her valuable DB scheme compared with the cost of a low interest mortgage should have been explained to her.

But I can't see that Quilter fully explored the alternative options with Mrs S for dealing with the principal objective of the transfer, namely, to raise the remaining money she needed to purchase a property debt-free. Quilter has provided us with evidence to show that it carried out mortgage rate comparisons for Mrs S based on her borrowing £40,000 over 11 years, the cost of which was approximately £350 per month. And I can see from the suitability report that it states that Mrs S's need for a property was paramount and of much more importance to her than her retirement income. It also states that she didn't want to take on a mortgage because she was now single and so close to retirement.

But the mortgage rate comparisons Quilter carried out were based on variable rates. I can't see that Quilter explored any fixed rate options for Mrs S which, in 2015, were typically cheaper than the variable rates lenders offered. At the time of the advice, the Bank of England base rate was 0.5% and there were mortgage deals available with interest rates from 1.25%. I think Quilter, if it was acting in Mrs S's best interests, should have explored other types of mortgage deals that were available as they could well have been more affordable for her. So it isn't known whether Mrs S was actually transferring her valuable, guaranteed DB benefits merely to access lump sum un-necessarily and whether the transfer ought to have been a last resort.

Instead, Quilter advised Mrs S that she should transfer her three pensions, a transfer that offered poor value for money given the high critical yield and the tax she incurred on the £30,000 she took as an UFPLS. And I can't see that it explored other means of Mrs S purchasing a property either such as one with a lower value or one that benefited from a shared ownership scheme. I think there were alternatives that would have allowed Mrs S to achieve her objective of purchasing a home without needing to transfer her DB scheme which Quilter should, if it was acting in Mrs S's best interests have explained to her in full.

And if Quilter had had full regard to Mrs S's information and communication needs I think it should have explored her actual retirement plans and what was important to her. I've

certainly seen no evidence that there was any discussion about what level of income Mrs S needed in retirement or how it might be achieved. I've seen the 'retirement – supplementary questions' document that was completed at the time of the advice where it was noted that Mrs S's current annual income was £15,000 and her current annual expenditure was £11,000. It also notes that Mrs S expected to work to age 65 and that she would receive a basic state pension of £7,593 at age 66.

I can see that Mrs S's DB scheme would have provided her with an annual income of £8,462 at NRD (age 65) meaning from age 66 her annual income would have been £16,055. This was an income that would have been guaranteed for life and which increased annually. So whilst I've seen no record of what Mrs S's income needs were in retirement, her projected income at the time of the advice – excluding the two smaller personal pensions – was greater than her then current income. So it's not unreasonable to assume that this projected income at age 66 would have been more than adequate for her needs.

Yet no discussion about Mrs S's income needs in retirement seems to have taken place. There is a question on the form that asks; *"what are/will be the client's expected sources of income in retirement?"* alongside which it is noted: *"client has taken new job and expects income to be £15,000"*. But this comment relates to Mrs S's income at the time, not her retirement income.

So it's reasonable to assume that Mrs S was more likely to have met her income needs in retirement by remaining in her DB scheme and taking the scheme benefits at age 65. Had Mrs S's DB scheme been left in place, she would now be in the position whereby most, if not all, of her retirement income needs were capable of being met. Instead she now has only her state pension and any pension provision she may have accrued since starting her job in 2015 to rely on. As Mrs S would have been reliant on her DB scheme for her retirement income, I can't agree that it was in her best interests to recommend that she transfer it in order to access TFC and an UFPLS so she could purchase a property debt free.

And whilst the advice Mrs S received from Quilter in 2015 referred only indirectly to the possibility of her taking further cash out from the new pension the following tax year, the fact remains that the transfer itself facilitated the further withdrawals Mrs S went on to make. If she had been suitably advised she would not have been in a position to make the subsequent withdrawals.

Mrs S was reliant on the advice she was given by Quilter and it needed to encompass a suitable recommendation that was in her best interests communicated in a way that was clear, fair and not misleading. Unfortunately for Quilter I don't think it discharged its obligations to Mrs S in this respect.

Suitability of investments

As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mrs S, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mrs S should have been advised to remain in the DB scheme and so the investment recommendation wouldn't have arisen if suitable advice had been given.

Summary

Being able to access the tax-free cash on offer through a personal pension would have sounded attractive to Mrs S. But Quilter's role was to find out what Mrs S's wants and needs were and why and to recommend what was in her best interests. Its role wasn't simply to do what she wanted without appropriate analysis and challenge.

It follows that I don't think the advice given to Mrs S was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs S 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. Mrs S shouldn't have been advised to transfer out of the scheme so she could access TFC and a UFPLS to purchase a property. That's because there were alternative means for her to achieve her objective without giving up the guarantees associated with her DB scheme.

So, I think Quilter should've advised Mrs S to remain in her DB scheme.

Of course, I have to consider whether Mrs S would've gone ahead anyway, against Quilter's advice. I've considered this carefully, but I'm not persuaded that Mrs S would've insisted on transferring out of the DB scheme, against Quilter's advice. I say this because Mrs S was an inexperienced investor with a moderate attitude to risk and her DB scheme pension accounted for the majority of her retirement provision. So if Quilter had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice. It is also worth stating that I've seen no evidence that Mrs S would've insisted on going against such advice had it been given.

In light of the above, I think Quilter should compensate Mrs S for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Personal pension transfer

Quilter also advised Mrs S to transfer her two personal pensions into the new personal pension with M alongside her DB scheme so she could consolidate her pensions in one place and meet the objective I've set out above. Quilter hasn't provided any information to suggest it carried out financial comparisons of the benefits attached to Mrs S's personal pension. I have no information about the pensions themselves save for their values. But I do know that Mrs S would have had to have paid Quilter 3% of her funds' values just to make the transfer. And it is reasonable to assume that the ongoing cost of a stakeholder pension was likely to have been less than a personal pension. So given the charges associated with transferring the pensions along with the ongoing annual fees, I think it likely that Mrs S's personal pensions would be less valuable on retirement after the transfer and she therefore should have been advised to leave her personal pensions where they were.

Mrs S was advised to transfer on the basis that she could access tax free cash, reducing her income during retirement that I simply don't think she could afford. It's for this reason that I think the advice to transfer the personal pensions alongside the DB pension was unsuitable. Mrs S should have been advised to leave all three pensions with their existing providers. And as a result of not being advised to do this, I believe her retirement provisions have been financially impacted.

Compensation

I appreciate that the realisation that she had been unsuitably advised to transfer her DB scheme – which accounted for the majority of her retirement provision – will have caused

Mrs S some significant distress and inconvenience. Where a financial business causes a consumer avoidable distress and inconvenience this service can recommend that it compensate the consumer. For the reasons I've given above, I don't think the transfer Quilter recommended Mrs S make was in her best interests. The consequent distress and inconvenience caused to Mrs S was avoidable had she been suitably advised. I therefore agree with the recommendation made by our Investigator that Quilter pay Mrs S compensation of £300 for the trouble and upset she was caused.

Putting things right

A fair and reasonable outcome would be for Quilter to put Mrs S, as far as possible, into the position she would now be in but for its unsuitable advice. I consider Mrs S would have most likely remained in her DB scheme and kept her personal pension arrangements if suitable advice had been given. I say this because the transfer wasn't financially viable and wasn't in her best interests.

What should Quilter do?

To compensate Mrs S fairly, Quilter must determine the **combined fair value** of her 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.

fair value – step one

If Mrs S had been given suitable advice, I think she would have remained in the DB scheme. Quilter must therefore calculate the value of the benefits Mrs S lost as a result of transferring out of her 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 set out its proposals in a consultation document - <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

In this consultation, the FCA 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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - <https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

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 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mrs S whether she preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

Mrs S has chosen not to wait for any new guidance to come into effect to settle her complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mrs S.

For clarity, Mrs S has no plans at present to retire any earlier than age 65. So, compensation should be based on her normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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

Quilter may wish to contact the Department for Work and Pensions ('DWP') to obtain Mrs S'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 A'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 value of Mrs S's personal pensions transferred to her new personal pension with M with that of the notional value from the previous providers shown below to determine the fair value of Mrs S's personal pensions if suitable advice had been given. I consider that there was no reason for Mrs S to have moved her personal pensions.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Value of the personal pension fund transferred	No longer exists	Notional value from previous providers	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Notional Value

This is the value of Mrs S's investments had they remained with the previous provider until the end date. Quilter should request that the previous provider calculate these values. Any additional sum paid into the personal pension with M should be added to the notional value calculation from the point in time it was actually paid in.

If the previous provider is unable to calculate a notional value, Quilter will need to determine a fair value for Mrs S's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Any withdrawal, income from the personal pension with M should be deducted from the notional value calculation 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 Mrs S's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs S as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid.

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs S 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 her 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'. This amount must where possible be paid to Mrs S within 90 days of the date Quilter receives notification of her 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 Mrs S.

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 - and so 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.

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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs S wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, then I consider the

measure below is appropriate.

- 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's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called an 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 Mrs S's circumstances and attitude to risk.

For the reasons given above, I also require Quilter Financial Planning Solutions Limited T/A Positive Solutions to pay Mrs S compensation of £300.

My final decision

Determination and money award: I uphold this complaint and require Quilter Financial Planning Solutions Limited T/A Positive Solutions to pay Mrs S the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Quilter Financial Planning Solutions Limited T/A Positive Solutions to pay Mrs S any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Quilter Financial Planning Solutions Limited T/A Positive Solutions to pay Mrs S any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Quilter Financial Planning Solutions Limited T/A Positive Solutions pays Mrs S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs S.

If Mrs S accepts this decision, the money award becomes binding on Quilter Financial Planning Solutions Limited T/A Positive Solutions.

My recommendation would not be binding. Further, it's unlikely that Mrs S can accept my decision and go to court to ask for the balance. Mrs S may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 April 2023.

Claire Woollerson
Ombudsman