DRN-3889225

The complaint

Mr B complains that Quilter Financial Services Ltd gave him unsuitable advice to transfer the benefits from two Defined-Benefit ('DB') occupational pension schemes to a self-invested personal pension (SIPP). He says the advice has caused him a financial loss.

What happened

In 2018 Quilter gave Mr B advice on the deferred benefits he held in two DB schemes from a previous employer.

As part of the advice process Quilter conducted a fact-find with Mr B to record information about his circumstances and objectives. The Fact-find noted:

- He was 63 years old and working full time.
- He owned his own home jointly with his wife which had a mortgage with around £25,000 outstanding.
- He had a car loan with approximately £8,000 outstanding.
- His DB schemes related to two periods of service with the same company. One had a transfer value of around £165,000 and the other around £73,000.
- He had a personal pension held in a flexi-access drawdown plan which was crystallised and had a value of around £80,000.
- He had savings of around £8,000.
- His objective was noted as releasing tax-free cash so that he could reduce his working week from five days to three by clearing his mortgage and other debt.
- If he reduced his working hours, he'd need to purchase a car to replace his company car.
- He had some home improvements he'd like to complete.

Quilter also did an assessment of Mr B's attitude to investment risk which they said was 'balanced'.

In April 2018 Quilter produced a suitability report outlining their recommendations to Mr B.

In the report Quilter identified the critical yields required to match the benefits Mr B was giving up in his DB schemes. The critical yields were recorded as 23.52% for the larger DB scheme benefits and 15.21% for the smaller scheme. Quilter said it was unlikely Mr B could match these returns.

Ultimately Quilter recommended that Mr B transfer both of his DB schemes to a SIPP and invest the majority of his funds into a balanced risk fund with a very small amount to be held in cash. They said their recommendation met Mr B's objectives of paying off his debts to reduce his working hours, buying a new car, and making the home improvements he wanted. They also said if Mr B were to draw down his funds they would last until he was aged 85.

Mr B complained to Quilter in 2020 via a professional representative. In summary he said Quilter's advice had been unsuitable as he was worse off financially as a result. He also said

Quilter hadn't fully explained their fees.

Quilter didn't uphold Mr B's complaint. They said their advice met Mr B's objectives of accessing his tax-free cash (TFC) so that he could reduce his working hours. So, they said it had been suitable. They also said their fees had been clearly set out and agreed by Mr B before the advice was given.

An ombudsman issued a provisional decision on this complaint. He upheld it saying that the transfer wasn't financially viable. He said Mr B could afford his debts at the time and had other means that he could have used to reduce his outgoings. And he could have claimed his full DB benefits in just two years. He also didn't think the different death benefits that the SIPP provided justified a transfer either.

In response to the provisional decision Quilter said that had Mr B used his savings it would have left him without an emergency fund and would not have allowed him to fully meet his goal. They said it wasn't their role to convince Mr B to carry on working longer hours and asked for an explanation of how Mr B could have met his goals through his other assets.

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.

To be clear, the provisional decision in this case was written by another ombudsman. I've conducted my own independent review of the available evidence and I've reached the same overall outcome as the previous ombudsman for broadly the same reasons which I'll set out below.

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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Quilter should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B’s best interests. And having looked at all the evidence available, I’m not satisfied that it was.

Financial viability

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

Mr B was 63 at the time of the advice and his scheme had a retirement age of 65. For the larger DB scheme the critical yield required to match Mr B’s benefits at age 65 was 23.52% if he took a full pension and 17.22% if he took TFC and a reduced pension. The smaller scheme had a critical yield of 15.21% if he took a full pension and 10.17% if he took TFC and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 2.5% per year for one year to retirement. I’ve kept in mind that the regulator's projection rates had also remained unchanged since 2014: 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, Mr B’s balanced attitude to risk and also the term to retirement. There would be little point in Mr B 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 yields were 17.22% and 10.17%, I think Mr B 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 his attitude to risk.

If it was Mr B’s objective to match or improve on the benefits he was likely to receive in his DB scheme then the transfer clearly wasn’t suitable. 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.

Paying off debts to reduce outgoings.

Mr B appeared to have one main objective for transferring his pension. He was looking to reduce his working hours from five days to three. But Quilter said that meant his income would reduce from approximately £2,200 per month to £1,606 per month.

Quilter had recorded that Mr B’s joint income with his wife was around £3,000 a month and they were paying around £1,311 towards their mortgage and loan. But it recorded they lived comfortably on the £1,689 that remained each month.

I acknowledge that it wasn’t Quilter’s role to convince Mr B to carry on working five days a week. But they needed to consider all of the options available to Mr B to achieve his objectives and consider these in a balanced way. And keeping Mr B’s best interests at the heart of any recommendations they made.

The regulator had made it clear that the starting point in transferring a DB scheme should always be that the transfer is unsuitable. So, I think it would have been reasonable for Quilter to explore other ways of achieving Mr B's objective through the use of his other assets and pensions before looking to transfer the valuable benefits of his DB scheme.

However, Quilter's advice seems to be focused on paying off Mr B's debts using the TFC that would have been available by transferring his pensions. The TFC would have cleared his debts and left him more disposable income each month. But I don't think Quilter's recommendation properly considered how his objectives could have been met whilst still staying in the scheme. I'll explain why.

Quilter recorded that Mr B lived comfortably on his existing income but reducing his hours would leave him around £600 a month worse off. I'm not satisfied that Quilter fully explored if this £600 a month deficit could have been made up by his existing personal pension.

By the time Quilter transferred Mr B's DB schemes in September 2018, he was only 18 months from being able to claim the full benefits of the schemes. Given the short timeframe before Mr B was able to claim his DB benefits in full, proper consideration needed to be given to using Mr B's existing pension, which was already in a drawdown arrangement, to make up his £600 a month shortfall.

Quilter have asked our service to 'outline the maths' associated with using Mr B's other pensions and assets to achieve his objectives. But my role isn't to provide alternative suitable advice to Mr B. My role is to assess whether Quilter demonstrated the transfer was in Mr B's best interests by properly considering and discounting the alternatives. And in this case, I'm not persuaded there's evidence that the alternatives were properly considered.

Regarding the personal pension the suitability report says;

In addition to the benefits with [the DB schemes] you have £80,000 in a Flexi Access Drawdown plan with LV. After you have taken Cash from your transferred [DB scheme] pensions you will have total retirement funds of some £259,000 from which to take an income. Both you and [Mrs B] will receive state pensions."

Quilter didn't provide any cash flow models or other analysis of the impact of drawing down Mr B's income deficit from the drawdown arrangement instead of transferring his DB scheme. That should have been a key consideration in Quilter's recommendation as they should have started from an assumption that transferring the DB scheme would be unsuitable. So, they needed to demonstrate that Mr B's objectives couldn't be met through his other pensions or assets.

I acknowledge that this would have been a taxable income and would have triggered his Money Purchase Personal Allowance (MPPA). But it appears that Mr B and his employer were jointly contributing around 5% which was approximately £1,800 a year to his pension. So, he was well within the allowance. And whenever Mr B decided to draw an income from his personal pension it was likely to attract income tax.

Quilter also point out that Mr B would have needed a new car to replace his company car. But Quilter haven't recorded what funds were needed for this purchase. And whether that could have been achieved through using some of Mr B's savings or further drawdown from the personal pension. Without truly knowing their clients needs, Quilter weren't able to say with any certainty whether that option could have been met by other means and was therefore in Mr B's best interests as they didn't seem to have assessed that at the time.

Mr B also wanted to complete some home improvements. But Quilter noted this was more of a 'want rather than the need'. And he'd originally planned to do this at his normal retirement age. Although I'm sure Mr B would have liked to complete these improvements earlier if he could, he had no pressing need for them to be completed at that time. And his DB schemes would have provided TFC at his normal retirement age.

Mr B was also married, and Quilter's assessment was based on his and his wife's joint income and expenditure. But there's no details recorded of any savings, assets or pensions belonging to Mr B's wife that could have also been assessed against Mr B's objectives.

Death benefits

Quilter's suitability report points out the different death benefits available through the personal pension compared to the DB scheme. And while I note Mr B was interested in how his wife would be looked after if he passed away, I haven't seen any persuasive evidence that it was Mr B's goal to improve on the death benefits available to him.

I think the different death benefits on offer were a consequence of the recommended transfer as opposed to an objective of Mr B's that could have been met through recommending the transfer. Quilter noted in the suitability report that the more flexible death benefits on offer through a transfer wouldn't in themselves be reason to transfer the DB scheme. And I agree.

Summary

I don't doubt that the immediate availability of tax-free cash on offer through a personal pension would have sounded attractive to Mr B. But Quilter wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B 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. Mr B shouldn't have been advised to transfer out of the scheme 18 months early just to pay off his debts which were affordable if he had other means with which to make up his monthly income deficit. It wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Quilter should've advised Mr B to remain in his DB scheme.

Of course, I have to consider whether Mr B would've gone ahead anyway, against Quilter's advice.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the DB scheme, against Quilter's advice. I say this because Mr B was an inexperienced investor with a balanced attitude to risk and this pension accounted for the majority of Mr B'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've accepted that advice.

I'm not persuaded that Mr B's need to access tax-free cash to pay off his debts were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If Quilter had explained that Mr B could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr B would have insisted on transferring out of the DB scheme.

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

Fees

Mr B also complained that he wasn't informed about the pension provider's charges and fees. The suitability report Quilter sent fails to clearly set out the providers fees but instead referred Mr B to an 'attached illustration' which Quilter said showed the effect of the plan's charges on Mr B's investment.

I haven't been provided with a copy of the illustration. However, as I think the advice Mr B received to transfer his DB scheme was unsuitable, I don't think I need to see the illustration to check how clear it was as the regulator's defined benefits pension transfer redress methodology will take the fees into account when putting Mr B back into the position he would have been in had he not been given the unsuitable advice to transfer his schemes.

Putting things right

A fair and reasonable outcome would be for the business to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme.

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 Mr B whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

He has chosen not to wait for any new guidance to come into effect to settle his 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 Mr B.

Quilter must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision, and 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 Mr B's acceptance of the decision.

Quilter may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B'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 B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B'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 Mr B 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 compensation amount must where possible be paid to Mr B 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 B.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr B how much has been taken off. Quilter should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

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.

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.

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.

Determination and money award: I require Quilter to pay Mr B 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 additionally require Quilter to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Quilter to pay Mr B 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 pays Mr B the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts my decision, the money award is binding on Quilter**.** My recommendation is not binding on Quilter. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

My final decision is that I uphold this complaint. Quilter Financial Services Ltd must now pay Mr B the amount as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 February 2023.

Timothy Wilkes
Ombudsman