

The complaint

Mr B complains that an appointed representative of Quilter Financial Services Ltd delayed in giving him advice about transferring the benefits from one of his defined-benefit ('DB') occupational pension schemes to a personal pension. He believes that delay has caused him a financial loss.

Mr B complained about the actions of Quilter's appointed representative rather than Quilter itself. But as Quilter is responsible for the complaint, for ease of reading I will refer to the appointed representatives' actions as being Quilter's.

What happened

Mr B was a deferred member of his current employer's DB scheme; he was also a member of his current employer's money purchase pension scheme. I'll refer to his current employer as C. He was also a deferred member of a former employer's DB scheme. He also had other pension provision. Quilter had been giving Mr B financial advice since 2018. It reviewed his position each year.

In March 2021 Mr B contacted Quilter to explain there had been some developments concerning his pension provision. Mr B said he was hoping to retire in 2025 when he turned 57. Quilter replied that this was something they could discuss in the annual review later that year. It said that at that review they should probably "go for" a cash equivalent transfer value ('CETV') from Mr B's DB pension schemes and an early retirement quote.

Mr B and Quilter agreed to meet in November 2021. When arranging that meeting Mr B said he had two specific issues he wanted to discuss: life insurance and his pension. He repeated that he anticipated retiring in 2025 but said it could be a year later or earlier. Before that meeting, on 17 November 2021, Mr B received a CETV quote of around £700,000 if he chose to transfer from C's DB scheme. The CETV was guaranteed until 16 February 2022.

Mr B had a video conference meeting with Quilter on 19 November 2021. He emailed it the following day. He said that by transferring the funds from C's DB scheme he could afford to retire at age 55, which was in around 17 months' time. Quilter emailed him on 21 November 2021 to confirm it would request a CETV from Mr B's former employer's DB scheme. But it said that if the scheme administrators took too long replying it could still advise him on the merits of transferring out of C's scheme. Mr B replied the next day (22 November 2021). He said:

"yes we Must [sic] do the C[...] pension"

Quilter wrote to Mr B on 23 November 2021 with a summary of their meeting on 19 November 2021. Amongst other things Quilter said it had requested information about Mr B's DB schemes which it was reviewing. It said it would keep Mr B updated.

On 10 January 2022 Quilter rang Mr B. It didn't record the call and the precise exchange is disputed. Mr B says Quilter told him it had made a mistake in noting his birth date and that as he wasn't within 12 months of turning 55 – the earliest date he could claim his pension

from – it couldn't give him advice to transfer his DB scheme funds. In contrast Quilter disputes that it said it made a mistake as to Mr B's birth date, but it agrees it did tell Mr B it wouldn't be able to recommend a transfer. That day Quilter checked with its compliance team whether or not Mr B's age would prevent it from giving advice to transfer. The compliance team replied that – in Mr B's circumstances – it wouldn't recommend a transfer until he was within 12 months of his 55th birthday.

Mr B appointed another advising firm to process the DB transfer for him. He complained to Quilter on 12 January 2022. Amongst other things he said it had made a mistake in noting his birthday, so its adviser believed him to be a year older than he was. He said he believed he might have lost out as a result of this mistake.

Quilter replied to Mr B's complaint in February 2022. It didn't uphold it. It said it hadn't charged Mr B for advice. Amongst other things it said that a transfer wasn't feasible for Mr B and that it didn't note any inaccurate facts. It added that it couldn't guarantee to conclude the advice process within a certain timeframe and that it had asked for information from the DB scheme administrators which it still hadn't received. Mr B continued to correspond with Quilter but it didn't change its opinion.

On 15 April 2022 the original CETV was invested in Mr B's personal pension because the DB scheme administrators agreed to honour the value even though its guarantee expired in February 2022.

Mr B brought his complaint to us. In brief he said that by not advising him at the outset that he wasn't within the right age-band to allow Quilter to make a positive recommendation to transfer his DB scheme funds, he had wasted 52 days. He said he found it stressful as the CETV was only guaranteed until 16 February 2022 so he was concerned that the value could go down if the transfer didn't progress in the time available. Mr B said he'd had to find and appoint another advising firm in order to go ahead with the transfer.

One of our investigators looked into Mr B's complaint. He issued two assessments and updated his recommendation for redress in the second one. He didn't think Quilter had dealt with Mr B fairly. The investigator said that if Quilter had advised Mr B that it couldn't recommend a transfer straightaway, due to Mr B not being within 12 months of his 55th birthday, then he could have begun the process of appointing another adviser that day. And, had that happened, Mr B could have paid the funds into his personal pension by 22 February 2022. So our investigator said that Mr B had potentially lost out on investment returns from 22 February 2022 until the funds were transferred. He said Quilter should calculate a loss assessment to establish if Mr B had lost out and to compensate him if he had. He also said Quilter should pay Mr B £400 to address his distress and inconvenience.

Quilter didn't agree with our investigator's assessment of the complaint and Mr B didn't agree with our investigator's method of redress. So the complaint's been referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In bringing this complaint and responding to it both Mr B and Quilter have made a number of detailed points. But, in this decision, I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key issues at the heart of Mr B's complaint and the reasons for my decision.

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

The applicable rules, regulations and requirements

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

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

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

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

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

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

Should Quilter have realised that it wouldn't give Mr B a recommendation to transfer sooner?

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 made it clear to Mr B at the outset that, unless there was compelling evidence that a transfer was suitable for him, it was likely that its recommendation would be that he shouldn't transfer. In fact it's notable that when Quilter was looking into Mr B's complaint, the adviser concerned said that he'd given this information to Mr B. But Mr B denies this.

Of course I wasn't there when the conversation took place, so I can't know exactly what was and wasn't said. But having looked at all the evidence very carefully, for reasons I explain below I prefer Mr B's version of events.

Quilter has internal guidance which says that it won't recommend the transfer of a DB scheme's funds unless the consumer concerned was within 12 months of being able to claim their pension. Quilter gave Mr B that advice on 10 January 2022. But, I think it should have given him that information when it met with him on 19 November 2021. It's clear that this is a hard and fast *rule* for Quilter and that unless Mr B met some very specific criteria, for example if he was terminally ill, then Quilter wouldn't advise him to transfer until he turned 54. Quilter should have been aware that Mr B didn't meet that criterion. And that's something it should have been aware of from its meeting with Mr B in November 2021. But Quilter didn't tell him about its rule which would prevent it from recommending a transfer at the outset. It went away and made enquiries of the DB scheme's administrators, it also requested information from Mr B's other DB pension so it could give him full advice, although it already knew that the advice would be not to transfer.

Mr B was clear that he wanted to transfer. As he said in his email of 22 November 2021 that they “*Must*” do the transfer. So Mr B clearly thought the transfer was going ahead. Mr B has explained that, some years earlier for a fee, Quilter had arranged a transfer from one personal pension to another. Mr B told us that he assumed the process would be similar and he didn’t realise that the regulatory process is different for DB transfers. So he expected the adviser to simply sort this out for him in much the same way he had concerning the transfer of the personal pension previously. And I think Mr B’s email saying that they “*Must*” do the transfer is not something he would have sent if Quilter had let him know that it was quite likely it wouldn’t recommend the transfer.

Further, when Mr B emailed Quilter prior to the November 2021 meeting he said there were two things he wanted to discuss: the DB transfer and life insurance. Mr B’s said that he had a term life insurance policy that was due to expire. So he wanted Quilter to recommend replacement cover. But, after he received the CETV, which was for £700,000, Quilter told him that in the event of his death then the full pension pot would pass to his family. And in those circumstances he wouldn’t need a replacement life insurance policy as the pension funds would provide enough cover. It’s notable that Quilter didn’t raise the issue of life insurance with Mr B again following the meeting. And given that this was one of only two topics Mr B wished to discuss, I think that supports his evidence that Quilter indicated that the CETV would provide the life cover he wanted. So I think Mr B left the meeting believing that the transfer would be going ahead and that would take care of two problems at once. That is it would allow him to retire early at age 55 and also give some financial security to his family in the event of his death.

As I’ve said above the age restriction on Quilter recommending a DB transfer is clearly a hard and fast rule. This is Quilter’s own rule and not a regulatory requirement the FCA applies to all DB transfers. So, given that it’s its own rule and is very specific, I think the adviser should have been aware of it. But it’s apparent that he didn’t bring this to Mr B’s attention at the time of the meeting. A DB transfer is a relatively complex process that often takes many weeks to complete. And given that Quilter should have known, at the outset, that it wouldn’t recommend a transfer, I think this is something it should have brought to Mr B’s attention at the earliest opportunity. But it didn’t do so. In fact some 52 days passed by before Quilter told Mr B about its age rule.

Quilter’s said that it was waiting for information from Mr B’s DB scheme which it still hadn’t received when it told him, on 10 January 2022, that it wouldn’t recommend a transfer. In other words by that time it had no more information than it did when Mr B told it that he wanted transfer advice. So it’s not the case that in the meantime Quilter had discovered some new information that meant it wouldn’t recommend a transfer. It was always the case that it wasn’t going to make that recommendation. And I think it should have brought that to Mr B’s attention at the outset. That would have allowed him to go through the process of appointing another adviser, at the earliest opportunity, who didn’t have a hard and fast rule preventing a transfer recommendation. But because Quilter didn’t do that until some 52 days had passed by, that was time that Mr B lost out on in the process. That was entirely avoidable, so I don’t think Quilter dealt with Mr B fairly.

Quilter’s also said that Mr B was simply exploring his pension provision rather than looking for a definitive pension transfer. But I don’t agree that’s the case. The evidence on file is that Mr B had believed he would retire at age 57, although he’d said it could be a year either side. Those plans changed once he received the CETV quote. Mr B’s explained that the CETV was two and a half times more than the previous CETV quote he’d received around three years earlier. And the increased sum meant that he could rethink his retirement and bring that forward to age 55. Also when Quilter asked its compliance team for advice, the adviser said that Mr B “*definitely wants to retire*” at age 55. So Quilter was clearly aware that

Mr B had brought forward his planned retirement to 55. And I'm satisfied that was a definitive goal and that he wasn't simply exploring his pension provision.

Should Quilter have advised Mr B to transfer his DB funds?

Quilter's pointed out that it didn't actually provide Mr B with regulated advice, as it ceased the process before providing advice. I agree that's the case but it did start Mr B down the advice road and only told him some weeks later that it wasn't going to make a recommendation. Quilter's also said that given the FCA's presumption that a DB transfer isn't suitable it was acting in Mr B's best interests by doing that. As I've said above the FCA requires advising firms to start from the point that a transfer is not suitable. And Quilter clearly has its own criteria which, if consumers don't meet, then it won't recommend a transfer. DB transfers won't be suitable for most people. So having a rigorous process that would otherwise prevent it from giving unsuitable advice seems reasonable. It follows that I think it was fair for Quilter to tell Mr B that it wouldn't recommend a transfer. But I think it was unfair that it didn't do so sooner.

The impact on Mr B

Quilter has implied that Mr B's newly appointed advising firm shouldn't have recommended the transfer. I haven't assessed the suitability of the advice Mr B's new adviser gave to him, as that's not something Mr B has complained about. But, not every DB transfer is unsuitable. I don't know if that's the case here. However, it wouldn't be appropriate for me to comment on whether the new adviser's recommendation to transfer was reasonable or not without doing the necessary analysis. But what I can say for certain is that the advising firm managed to complete the transfer process, which is what Mr B wanted. So, if it had started that process sooner it could have finished it earlier and Mr B's fund would have been invested sooner. But because of Quilter's delay in telling Mr B that it wouldn't make a positive recommendation under (almost) any circumstances, Mr B couldn't do that at the earliest opportunity. So, potentially, he's lost out on investment returns for the period of delay.

Mr B also told us that he found the whole process immensely stressful. He said that after his November 2021 meeting with Quilter, he started to put the wheels in motion to prepare for retirement at age 55. That included letting his employer know that he was intending to retire in around 17 months' time, rather than over three years away. But, in telling him that it wouldn't recommend a transfer, Quilter essentially pulled the rug from underneath Mr B. He saw the prospect of early retirement slipping away from him. As it happened he was able to engage another adviser relatively quickly. His DB administrators also agreed to honour the original CETV, even though its guarantee expired in February 2022 before his new advisers could complete the advice process. But I understand that until that happened, Mr B was concerned that the CETV could go down. And if the administrators had applied the original expiry date then Mr B would have had to pay £250 for a further CETV. And I can understand that these concerns would have added to his worries at that time. So I think Quilter should pay Mr B £400 to address that.

Putting things right

A fair and reasonable outcome would be for Quilter to put Mr B, as far as possible, into the position he would now be in but for Quilter's delay. From identifying that he needed to engage another advising firm to the completion of the process took 88 days. So, if Quilter had told Mr B at the outset that it wouldn't make a recommendation to transfer, Mr B could have started the process of appointing a new adviser at that point. And, if it had taken 88 days the process would have completed on 22 February 2022. So Mr B's fund would have been invested from that date into his personal pension.

Therefore, in order to put things right I think Quilter should carry out a loss assessment to work out if Mr B has lost out by not investing his fund from 22 February 2022.

In order to calculate the loss assessment Quilter will need to calculate the notional value of Mr B's fund if he'd transferred the CETV on 22 February 2022 up until the date of my final decision. If the notional value is greater than the actual value of Mr B's pension on the date of my decision, then Mr B has suffered a loss. Quilter should allow for the impact of charges and any withdrawals or contributions. It should pay the difference into Mr B's personal pension.

If a payment into the pension isn't possible or has protection or allowance implications, it should instead be paid directly to Mr B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. It's reasonable to assume that Mr B is likely to be a higher rate taxpayer at the selected retirement age, so making a reduction of 30% takes account of this.

If Quilter is unable to ascertain the way that Mr B's pension was invested, then it should use the benchmark I've set out below, which I consider to be relevant for Mr B's recorded attitude to risk.

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

Pay Mr B £400 compensation for his distress and inconvenience.

Quilter must pay the compensation within 90 days of the date on which we tell it Mr B accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

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.

The loss assessment would require Quilter to liaise with Mr B and his personal pension provider. Mr B's told us that he doesn't want Quilter involved in any way with his financial affairs. Instead he's suggested that Quilter pays him £5,000 representing any losses and a sum for his trouble and upset. But I think an actual assessment of whether or not Mr B has lost out is fairer. And my award of £400 compensation recognises the considerable distress and inconvenience he suffered as a result of Quilter's actions.

It Mr B doesn't want anything more to do with Quilter then he doesn't have to accept my decision if he chooses not to. But I need to point out that he either accepts my decision in its entirety or not at all. So he couldn't, for example, just accept the distress and inconvenience award without also accepting the loss assessment.

My final decision

For the reasons given above I uphold this complaint. Quilter Financial Services Ltd should now take the steps I've set out above under the heading of "putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 March 2023.

Joe Scott
Ombudsman