

The complaint

Mr W complained that he was given unsuitable advice to transfer his defined benefit (DB) Occupational Pension Scheme (OPS), to a personal pension, in 2018. Mr W also complained that one defined contribution (DC) pension was transferred across to the new personal pension at the same time. Mr W says these transfers have resulted in him suffering a financial loss and weren't in his best interests.

Although trading at the time under another name, Quilter Financial Limited is now responsible for answering this complaint. To keep things consistent throughout this final decision, when referring to the business, I'll refer mainly to "Quilter".

What happened

Mr W began his relationship with Quilter in 2017. Information gathering and discussions then took place over several months until June 2018 when a suitability report was issued advising Mr W what to do about his pension planning. His circumstances of that time were as follows:

- Mr W was a deferred member of a DB scheme having previously worked for a company between 2000 and 2008. As of 2018, the cash equivalent transfer value of this DB element was around £178,982. This was inclusive of around £5,653 in additional voluntary contributions (AVCs).
- Mr W had also accrued a DC pension element, in part from the same employment. The approximate value of this at the time was around £39,832.
- By 2018, Mr W had since moved jobs and he had another DC pension with this role. Both he and his employer were currently contributing a monthly amount to this pension. The approximate value of this DC pension element was £30,474. This pension doesn't appear to have been transferred so although relevant to Mr W's overall finances, it isn't a pension being complained about here.
- Mr W was 54 years old and married when the advice was provided. He had some ongoing, but apparently controlled, health issues. His wife, Mrs W, wasn't working and was in receipt of state benefits due to poor health.
- Mr and Mrs W didn't own a property as they lived in local authority housing. They had £5,000 in a savings deposit account. According to information collected by Quilter, they had no other investments or investment experience outside Mr W's DC pensions. Mr W earned around £2,100 per month (gross) and Mrs W's benefits were around £130 per week.

Quilter set out its advice about Mr W's pensions in a suitability report it issued on 19 June 2018. It advised him to transfer out of his deferred DB scheme and invest the funds in a personal pension arrangement. Having set up this new personal pension, Quilter further recommended that the first DC pension (above) should also be transferred across to the new personal pension plan. Mr W accepted this advice and so transferred from his deferred DB scheme to a personal pension arrangement shortly after, together with the one DC element.

Mr W first complained to Quilter about its advice in late 2021. In response, Quilter denied it had done anything wrong and said it had acted on Mr W's objectives at the time. He then referred his case to our Service. One of our investigators looked into it and said the complaint should be upheld. They thought it was unsuitable that all pension elements were transferred.

Quilter still doesn't agree. So, as the complaint couldn't be resolved informally, it's come 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 am dealing with both a DB and DC pension element here. So, I've taken into account all 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'). 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.

I have further considered that 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, for the DB scheme, Quilter should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests. For the DC pension element, I've considered whether there were any reasons to transfer at all.

I've therefore used all the information we have to consider whether transferring to a new personal pension arrangement was in Mr W's best interests.

I don't think it was, so I'm upholding Mr W's complaint.

The DB scheme - the financial viability of the transfer

As required by the regulator, to demonstrate the financial comparisons between his current DB scheme and transferring out to a personal pension arrangement, Quilter referred in its transfer analysis to 'critical yield' rates.

The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same benefits as the DB scheme. It is therefore part of a range of different things which help show how likely it is that a personal pension arrangement could achieve the necessary investment growth for a transfer-out to become financially viable.

In its transfer analysis Quilter said the critical yield required to match Mr W's DB scheme benefits at the normal retirement age (NRA) of 63, was 15.5% (if eventually retiring and taking no lump sum) and 13.79% (with a lump sum and reduced annual pension). In my experience these are high critical yield rates and they should clearly have indicated that achieving enough growth to make the transfer worthwhile was highly unlikely.

The advice was also 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. At the time, Quilter assessed Mr W's attitude to risk (ATR) as balanced.

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. This was only 2.4% (for a retirement at age 63). This is substantially below the critical yield figures I've set out above and so again, it implies that exceeding the critical yield was not reasonably achievable. I've also kept in mind that the regulator's upper projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. So again, this implies that exceeding the critical yield rate of around 13% - 15% was almost certainly not achievable.

I have further considered that the transfer analysis said that in order to buy an annuity to provide benefits of equal value to the estimated benefits provided by the existing DB scheme at retirement the estimated fund required, also known as the capital value, would be £580,000 (full pension) or around £505,000 (with a lump-sum and reduced annual pension). In my view, these figures provide a revealing window into the value of the scheme Mr W was being advised to give up. Even to purchase an annuity to provide benefits of equal value to the estimated benefits of his existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the transfer analysis said the fund required would still be around £284,000. This was much more than Mr W's CETV in the DB scheme and still more than all his pensions combined.

These figures tend to show that Mr W would be materially worse off by leaving his DB scheme.

Quilter also put forward a number of financial scenarios whereby Mr W could transfer and still draw an annual pension long into his old age. However, these examples were not easy to follow in my view. They were also not comparing like-with-like as they weren't reflective of the valuable benefits he was told to give up as a result of the transfer-away recommendation. An example was given, for instance, of him buying a single annuity and what amount of pension he could expect to afford if he used his transferred funds. However, this was a significantly inferior pension to the one he'd be leaving. So I don't think this was a good example to use.

Quilter also promoted to Mr W that he could access more tax-free cash if he transferred to a personal pension plan and he could also do this either with or without starting to draw his

pension. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But extra tax-free lump sums being removed from a personal pension, potentially from the age of 55 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, I think there was every reason to think that Mr W would receive lower overall pension benefits when he took retirement as a result of transferring away from the DB scheme. There would be little point in transferring if this were the case so I think this should have showed that transferring, from a financial perspective, was not right for Mr W.

But of course, these straightforward financial comparisons aren't the full story here. This is because Quilter's recommendation that he should transfer out to a personal pension wasn't wholly based on the growth comparisons with his current scheme alone. Rather, Quilter focussed on what it saw were the wider benefits in transferring away from the scheme. It said Mr W would have achieved "*complete freedom*" by transferring and be able to choose the "*shape and format*" of the benefits when he wanted to access them.

I've considered these issues below, again in the context of his DB scheme.

Other reasons for transferring

I've used a combination of what was in Quilter's recommendation report and the various client information forms it completed about Mr W, to help determine what Quilter said were the main objectives for transferring out of the DB scheme. Quilter said the reasons for its recommendation to transfer away from his DB pension were as follows:

- Flexibility to commence an income when aged 55.
- He could then have an income 'as and when required' by leaving his job and getting a part-time role. He'd then be supplementing this income by drawing on a combination of tax-free pension cash and also pension income from the new personal scheme. This would enable him to maintain an overall annual income of £25,000 which was akin to his present-day salary. Quilter said this could then be reduced to £15,000 at state pension age. It also said this would allow him to phase in retirement gradually.
- To take direct control of his pension funds. He could draw additional capital as required.
- By transferring these two, he would amalgamate his pensions for ease of administration
- It said transferring to a personal scheme would ensure Mrs W was protected in the event of Mr W's death by ensuring she could receive the full value remaining in his pension. Quilter emphasised that he had "*stated that under no circumstances should the remaining fund be retained by the scheme on [his] and [Mrs W's] death*".

Sticking with the DB pension element, it therefore seems Quilter's recommendation to transfer this to a personal plan was broadly focused on the flexibility this offered to Mr W. Much of the flexibility referred to was based on a combination of early semi-retirement at around the age of 55. In theory, Mr W might leave his present job and take on part-time work and bolster his income by accessing his transferred pension funds quite early.

As a whole, I think it's fair to say the recommendation to transfer was underpinned by assumptions about Mr W's health (and to a lesser degree Mrs W's health). So, I'll deal with all the supporting transfer rationale in turn.

- *The case for 'income flexibility', his health issues and early retirement*

Quilter made health a significant and prominent issue in the recommendation and implied it would mean a flexible income was needed in retirement. This related not only to Mr W himself, but also to Mrs W who we know was unable to work.

However, if I start with Mr W's health, I think the case for early retirement due to ill health – and a greater income flexibility need associated with this - was exaggerated by Quilter. For example, the pre-existing health conditions Mr W had, did appear to be ones endured by substantial numbers of the wider population. My understanding is that he was on relevant medication and they were being controlled to a satisfactory standard. I've noted his job carried a responsibility to others, so perhaps not unreasonably, Mr W was required to undergo a yearly medical to retain the right to continue working in this particular role. I think Quilter referred to all this in a very negative dimension, implying that Mr W was only ever one step away from losing his job completely due to health reasons and facing an uncertain future. But there's no evidence his regular medical check-ups were reason to fear impending incapacity, it was more a matter of ensuring his responsibilities to keeping the public safe.

My understanding is that he had passed several medicals in any event. So, that Mr W's regular medical checks were such that his accreditation to deal with the public was never revoked, supports Mr W's own testimony to our Service that the above existing health conditions were not so serious as to merit any substantial or urgent changes to his pension planning. In fact, the suitability report only said that Mr W was unsure about his future employment which I think is no more than a recognition that things could change in the future as he got older. The report also makes it clear, in my view, that unilaterally leaving his current employment at the age of 55 to take on a part-time role was only a possibility, rather than part of any concrete plans which Mr W had. He had no particular part-time role in mind.

In my view then, Quilter's advice was based on a somewhat exaggerated and unevidenced expectation that Mr W would lose his job due to health conditions which at the time appeared both closely monitored and adequately controlled. Quilter's advice also wrongly promoted that Mr W would need to work less hours for less pay, as a result of failing health. And to supplement a new but undefined part-time income, he would need to flexibly use the funds from his newly transferred pension.

The suitability report said Mrs W's health also wasn't good. In fact, I think it's fair to say she faced greater health challenges than her husband and for her, current or future paid employment simply wasn't realistic. There was also mention in the report of Mr W requiring access to his pension funds to help pay for an imminent holiday, whilst Mrs W was still well enough to travel.

So, all these things led Quilter to incorporate the issues of health, early retirement, a more flexible income, and access to cash-lump sums in its recommendation to transfer from his DB scheme. In my view, this wasn't reasonable given the information we have.

I say this because I think Mr W's health was overstated in Quilter's transfer recommendation. Whilst in no way intending to trivialise his existing health conditions, there was no indication here that he'd be forced to give up working in his current role. Of course, I accept that Mr W may well have *liked* to stop working full-time as soon as he could. But Quilter's job here wasn't to simply transact what Mr W might have thought he wanted; its role was to really understand his needs, the reality of the situation and what was in his best interests. In fact,

Mr W's overall pension provisions, although better than some no doubt, were still relatively modest when considering unilaterally giving up a job at the comparatively young age of 55. And there may have been an opportunity here for the Quilter adviser to point out that being able to leave a full-time job so early just wasn't compatible with Mr W's income expectations in retirement and the overall amount he'd saved up to that point.

In reality, Mr W also hadn't made any firm retirement or semi-retirement plans and he was still only 54 years old. So, there was simply no need for him to leave his DB scheme when there was still clearly an opportunity to continue to work until these types of semi-retirement plans became more necessary or more financially viable. In my view, what Quilter was really recommending was that Mr W should exit his DB scheme on a 'whim' of semi-retirement which had neither been firmly planned or properly thought through. I think it would have been reasonable for the adviser to really test any semi-retirement aspirations, if they yet existed at all, against the more suitable option of keeping the DB scheme where it was for now. In essence, Mr W didn't really need to do anything with his DB scheme.

All tied up in the same issue was the matter of so-called income flexibility which would apparently be required due to the above changes to Mr W's working pattern and future salary. But I don't think Mr and Mrs W needed the income flexibility as implied by Quilter. And Mr W certainly didn't need to irreversibly transfer away from his DB scheme to achieve this. This is because we know that retiring early from his DB scheme was possible and in this sense he already had some limited flexibility. A pension from the age of 55 was quoted during the advice: Mr W could remain in the DB scheme and still get a tax-free lump-sum of £27,232 and an annual pension of £4,281. Of course, the longer he delayed accessing the DB scheme, the more he'd get in future years – and at points during the advice, Quilter itself said Mr W didn't need a lump-sum, so the annual pension could have been yet more.

So, I've seen nothing that shows why these other options might still not allow Mr W to retire early at some point. He could have easily remained in his DB scheme because there was clearly a limited degree of flexibility already. As I've described above, it may have been possible for him to access his benefits from the scheme early if the situation demanded in the years ahead, but it's also important to remember that his NRA was only around eight years away. For this, the transfer analysis showed that Mr W would have been able to access a pension of around £11,000 per year at retirement or almost £8,000 per year with a tax-free lump sum of over £52,000. So, Mr W still had some options that would have suited his needs and this pension was guaranteed and indexed-linked. It would have lasted for his whole life and paid half to Mrs W if he died.

I think Quilter also missed the obvious issue that, even if we assume yet more income flexibility was indeed essential to his situation, or that a lump-sum of cash was urgently needed, then Mr W's two other existing DC schemes already comprised over £70,000. As DC schemes these had all the flexibility options Quilter considered as important. He could access that money in a matter of months whereupon he could begin drawdown or take out 25% tax-free as a lump-sum. Also, if Mr W was able to delay his apparent aspirations to leave his job or reduce his hours, then we can also factor-in that he and his then employer were also still each contributing to one of these DC schemes. I therefore think it's fair to say that in just a few years, these contributions, and a wider and modest growth in both DC elements, would have easily provided enough income or cash until Mr W reached his NRA of 63. He and Mrs W were also evidently entitled to state pensions at 67 according to records from the time.

If he'd remained in his DB scheme, I therefore think Mr W would have been in a much better position. He had two DC schemes, one of which was still being added to. So he could have used these as flexibly as he liked, knowing he still had a guaranteed DB income at the age of 63, or even before if he was prepared to accept a different income trajectory.

In summary then, I think the issues of income flexibility, Mr W's health issues, and a hoped-for early semi-retirement, were all given undue weight by the adviser. There was no credible case made out for a flexible income. The suitability report itself also said only that Mr W would *consider* leaving his job when aged 55, so this shows this certainly wasn't an essential requirement or a need. Achieving so-called income flexibility therefore had to be considered against the wider and substantial risks of giving up DB pension benefits which I think Mr W would have needed in later life, given his and Mrs W's circumstances.

Mr W's health also wasn't so bad as to mean he ought to confront the real possibility of an imminent or early death. And as I've said, although there was an underlying case suggested for Mr W wanting to use some money to go on holiday while he felt Mrs W still could, this didn't justify leaving the DB scheme as he already had savings and also access to two DC pensions from where money could be shortly removed.

- *Taking control*

Quilter said that by transferring away from his DB scheme, this would enable Mr W to take control of his pension funds. It also said he'd be able to amalgamate his pension(s) for ease of administration.

The reality here was that Mr W had little investment experience. It's true to say he had two DC schemes which involved the purchase of money market funds. But the evidence is that these were most likely 'off the shelf' investment strategies as part of work-related schemes. I've seen nothing genuinely showing that Mr W had any desire or capacity to manage his own pensions or investments at all. He had no personal investments outside a pension at the time and there's no evidence he had any past experience on this scale to call upon. So what I've seen from this case is that Mr W would always need help with investing. And I think the size and complexity of his combined funds would have meant ongoing financial advice was required. Mr W's DB scheme was managed for him through trustees and as I'll explain more about later, the DC schemes he had seemed to have relatively low charges.

As for amalgamating his schemes, overall this is a somewhat trivial reason to transfer and it certainly should not have influenced the exiting from his DB element in any way. But we know he still had one DC scheme still outside this arrangement, so in effect he wasn't even amalgamating all his schemes anyway. Overall, I think saying that Mr W wanted to exercise control of his pension funds going forward was no more than a 'stock' objective used to add weight to the recommendation to transfer away.

- *Death benefits*

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension were likely an attractive feature to Mr W. He'd already expressed fears that his DB pension might be lost if he died. But whilst I appreciate death benefits are important to consumers, and Mr W 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 him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Quilter explored to what extent Mr W was prepared to accept a different retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr W was married and so the spouse's pension provided by the DB scheme would have been useful to Mrs W if Mr W predeceased her. Whilst still a deferred member and before retiring, a dependant's lump-sum would be payable; and once in retirement a pension for her life would have been payable. I don't think Quilter made the value of this benefit clear enough

and we know Mrs W herself had no prospect of working and no apparent pension of her own other than a possible state pension at 67. So a spouse's DB pension in this case would have been of great use to Mrs W and a high priority for them both, if properly explained. This pension was also guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Also, whilst it's true to say that the full amount left in a personal pension could be passed on tax-free to a nominee if Mr W died, there may not have been a large sum left in the fund anyway particularly if Mr W lived a long life. If he also started accessing the fund as early as 55, fund exhaustion could be said to be an even greater risk. In any event, Quilter should not have encouraged Mr W to prioritise the potential for higher death benefits through a personal pension over his security in retirement. Furthermore, if Mr W genuinely wanted to leave a legacy for his wife, or indeed anyone else, he still had his two DC pensions which, if he died early in retirement for example, would have ensured his whole pension provision didn't just 'die with him'.

Other issues

Quilter made a number of points which it says supports that it was acting in Mr W's best interests. It says, for instance, that it was Mr W himself who chased the adviser, the implication here being that Mr W really wanted to transfer his DB scheme to get at the money. Quilter also disagreed with our investigator when they said that they thought if advised more suitably, to not transfer away, Mr W would have kept his DB pension where it was. Quilter also highlighted what he went on to do after the transfer, which included accessing lump-sum amounts. It says this proves he needed money.

I've given these, and all the other matters raised by Quilter, a great deal of thought. I've nevertheless focussed on issues I consider relevant to my decision.

The first point I'd make is that it was Quilter which was the regulated party here. It was charging a significant amount for advice and Mr W, an inexperienced investor with only basic pensions knowledge, had every right to expect that he would be guided and advised by someone who had professional industry experience in these matters. Mr W may well have entered the process with all sorts of ideas and aspirations. But Quilter was the regulated adviser here – and it still recommended that he transfer away from his DB scheme. I think that advice was substantially flawed.

Mr W may also have gone on to do all sorts of things with his money after the transfer. But again, the only reason he's been able to do this, for the DB element, is because Quilter wrongly advised him. He was given unsuitable advice which released around £178,982 which would not have been otherwise available. Quilter is responsible for the unsuitable advice which allowed this to happen.

Finally, I don't agree with Quilter that Mr W would have simply gone to another adviser if it had recommended that he shouldn't transfer. Of course, Quilter didn't recommend this, it gave him unsuitable advice to leave his DB scheme. But I very much doubt he would have sought out another adviser anyway. According to information from the time, Quilter's fees were several thousand pounds. I'm afraid I find it implausible that Mr W would have wanted to spend a similar amount with another adviser for similar advice. As I've said, he was also very inexperienced in these matters and there were other options the adviser seemed to just fail to grasp. Therefore, if explained properly, I think Mr W would have embraced these other options.

The DC scheme transfer advice

Mr W also complained his DC pension was transferred, he says this was unsuitable for him and has caused him a financial loss. As I've said, this pension originated from the same employment and it succeeded the DB scheme which closed.

This pension plan had a transfer value of around £39,832. Its basic annual management charge was 0.1% and it was invested in a Global Equity Lifestyle Option. There was no penalty for transferring.

Quilter hasn't sent us a comparison report, showing how this plan compared to the recommended plan with the new proposed provider, or with others. The suitability report said that the reasons Quilter recommended the transfer of this pension were to consolidate his plans for ease of administration and access, to have a wider range of investment options, than available his existing DC scheme.

I agree with our investigator who said that the existing Global Equity Lifestyle Option wasn't unsuitable for Mr W. The suitability report also acknowledges that the charges of the recommended personal pension were higher and the new plan would need to see additional growth of 0.3% each year to achieve the same result. And as I've said early, Mr W wasn't consolidating all his pensions anyway because there was a DC which still remained outside this new proposed arrangement.

Based on what I've seen, I'm not persuaded that transferring this DC pension was suitable for Mr W. He was already in a plan which had low charges and the ones relating to the recommended scheme were higher. For these reasons, I'm also upholding this part of his complaint.

Suitability of investments

Quilter recommended that upon transferring DB pension element, Mr W invest in certain funds. As I'm upholding his complaint on the grounds that a transfer out of the DB scheme wasn't suitable, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr W should have been advised to remain in the DB scheme and so the investments in the funds wouldn't have arisen if suitable advice had been given.

Summary

In this decision I've first explained about Mr W's DB pension. In my view the reasons given in support of transferring this to a personal plan were flawed and based substantially on a view of possible bleak future events that lacked any real evidence.

The critical rates were high and quite clearly not achievable and so there was every reason to suppose that transferring away from the DB scheme would leave Mr W with lower benefits at retirement.

In my view, Mr and Mrs W were a couple who did not require a flexible income. I think the opposite was true and the transfer recommendation put them both at risk of an uncertain retirement. I think the loss of death benefits was a particular failure as Mrs W had no pension of her own and was unable to generate an income. In any event, the adviser failed to recognise the obvious flexibility that Mr W's overall pensions already had anyway. The advice, in my view, was largely based on 'stock' objectives designed to add weight to the advice to leave the DB scheme, rather than based on the real evidence which was much more supportive of Mr W leaving the pension exactly where it was.

Quilter makes the case that it was Mr W who pressed for the transfer. However, in my view, this is to abrogate its responsibility. Quilter was being paid a significant amount for this advice and its job was to provide advice which was in Mr W's interests. It advised him to transfer away from his DB scheme – and that advice was clearly unsuitable.

As for also transferring one of his DC schemes to the same new personal pension plan. All this really did was to incur further charges for Mr W. The rationale for this advice was unclear. Quilter says it was amalgamating his pensions, but this wasn't exactly the case, as he still had another in a different scheme.

I think Quilter ought to have advised him against transferring out of his DB scheme. I also think it was wrong to recommend a transfer of the DC scheme to another provider.

In light of the above, I think Quilter should compensate Mr W for the unsuitable advice. For the DB element, it should use the regulator's defined benefits pension transfer redress methodology. For the DC element, I explain below what Quilter needs to do.

Putting things right

1. The DB scheme

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

Compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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 W's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Quilter should:

- always calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather

than receiving it all as a cash lump sum,

- if Mr W accepts Quilter's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Quilter may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr W'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.

2. The DC scheme - fair compensation

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr W would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr W's circumstances and objectives when he invested.

What must Quilter do?

To compensate Mr W fairly, Quilter must:

- Compare the performance of Mr W's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Quilter should also add any interest set out below to the compensation payable.
- Quilter should pay into Mr W's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Quilter is unable to pay the total amount into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr W is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr W would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Royal London Pension Plan	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

Notional Value

This is the value of Mr W's investment had it remained with the previous provider until the end date. Quilter should request that the previous provider calculate this value.

Any withdrawal from the Royal London Pension Plan 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Quilter totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Quilter will need to determine a fair value for Mr W's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr W wanted Capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- 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.
- I consider that Mr W's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr W into that position. It does not mean that Mr W would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr W could have obtained from investments suited to his objective and risk attitude.

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 I direct Quilter Financial Limited to pay Mr W 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 also recommend that Quilter Financial Limited pays Mr W the balance. If Mr W accepts this decision, the money award becomes binding on Quilter Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 Mr W to accept or reject my decision before 13 July 2023.

Michael Campbell
Ombudsman