

The complaint

Mrs G complains about the advice given by Quilter Financial Services Ltd ('Quilter') to transfer the benefits from her two defined-benefit ('DB') occupational pension schemes, along with a defined contribution ('DC') and an Additional Voluntary Contribution ('AVC') plan to a self-invested personal pension ('SIPP'). She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

I issued my provisional decision saying that I intended to uphold Mrs G's complaint and award compensation. A copy of the background to the complaint, and my provisional findings, are below in italics and form part of this final decision.

What I said in my provisional decision

What happened

Mrs G met with Quilter in March 2018 to discuss her pension and retirement needs.

Quilter completed a fact-find to gather information about Mrs G's circumstances and objectives. Amongst other things this recorded that Mrs G was not married but she was living with her partner; she wasn't working; she and her partner owned their own home; and their household income of around £1,450 a month met their household expenditure of around £1,370 a month. Quilter also carried out an assessment of Mrs G's attitude to risk, which it deemed to be 'balanced'.

On 20 August 2018, Quilter advised Mrs G to transfer her pension benefits into a SIPP and invest the proceeds in an investment fund, which it deemed matched Mrs G's attitude to risk. The suitability report said the reasons for this recommendation were to enable Mrs G to gain greater flexibility and control over her pension – to allow her to take a tax-free cash lump sum to repay her mortgage and to increase the death benefits both prior to and after retirement.

Mrs G duly accepted the recommendation and her pension benefits – both DB scheme benefits plus her DC pension and AVC plans - were transferred to her new SIPP.

In 2021, using the services of a representative, Mrs G complained to Quilter about the suitability of the transfer advice – she believes the advice was wrong and it has resulted in a financial loss.

Quilter didn't uphold Mrs G's complaint. In summary it said the advice given to Mrs G was suitable and she was provided with sufficient clear information to be able to make an informed decision. It said the advice met Mrs G's objective of being able to access her tax-free cash to be able to give up work full-time and to potentially leave a significant lump sum to her children in the event of her premature death.

Mrs G then referred her complaint to our service. An investigator upheld the complaint, in

part and required Quilter to pay compensation. In summary they said they didn't think the transfer was suitable from a financial viability point of view because the critical yields required to match Mrs G's DB scheme benefits meant she was likely to receive benefits of a substantially lower overall value at retirement as a result of investing in line with a balanced attitude to risk. But they said they didn't think Mrs G was a balanced risk investor – her attitude to risk ought to have been lower given her circumstances.

The investigator went on to explain that despite the above, in their view, it was in Mrs G's best interests to gain access to funds to ease the pressure on her. They said Mrs G had little income of her own and she had financial dependants, so her capacity for work was low. But they said it wasn't in Mrs G's best interests to transfer both her DB schemes. They said she could've met her objectives by only transferring just one of her DB schemes – the lower of the transfer values. They said Mrs G could've repaid half the mortgage and by leaving the other DB scheme intact, she had important guaranteed income payable less than four years later at age 60. So they recommended Quilter pay Mrs G compensation.

Quilter disagreed. In summary it said that Mrs G's scheme's normal retirement age was 65 not 60 as the investigator concluded. They said to wait nine years for her benefits wouldn't have been a viable option for Mrs G. They said they believed the advisor's assessment of Mrs G's risk tolerance was correct – she intended to invest over the longer term and was seeking capital growth. They said by retaining the DB scheme with the larger transfer value, Mrs G wouldn't have met her objective of wanting to pass on her benefits to her children upon her death. They said it was not Mrs G's intention to repay half her mortgage – she wanted to be debt free even if the investigator concluded it wasn't necessary. Overall they said transferring just one of Mrs G's DB schemes would not have met her needs at the time.

The investigator acknowledged their mistake about the normal retirement age of Mrs G's DB scheme, but they weren't persuaded to change their opinion - so the complaint was referred to me to make a decision.

What I've provisionally 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 intend to uphold the complaint in full. I'll explain why.

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 G's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

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.

Mrs G was 56 at the time of the advice. And while on the fact-find document it recorded Mrs G's target retirement age of 60, the most up to date analysis produced by Quilter was based on Mrs G's schemes' normal retirement age of 65. The critical yields, or growth rate required to match Mrs G's schemes' benefits at age 65 if she transferred to a personal pension arrangement were as follows:

- For the DB scheme with the higher transfer value - 5.46% if she took a full pension and 5.53% if she took a tax-free cash lump sum and a reduced pension*
- For the lower transfer value scheme - 9.91% and 7.64% respectively.*

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 3.5% per year for eight years 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, Mrs G's assessed 'balanced' attitude to risk and also the term to retirement. In my view there would be little point in Mrs G giving up the guarantees available to her through her DB schemes only to achieve, at best, the same level of benefits outside the scheme.

But here, given the lowest critical yield was 5.46%, I think Mrs G was likely to receive benefits of a substantially lower overall value than the DB schemes at retirement, as a result of investing in line with a 'balanced' attitude to risk. The returns needed were in excess of the discount rate and in all cases in excess of the regulator's middle projection rate. The highest rate of 9.91% was far in excess of the regulator's upper projection rate and more than two and a half times the discount rate. And these were the returns required to match Mrs G's DB scheme benefits – so effectively the returns required just to stand still. To improve on the benefits available would require higher returns, which in my view, would

require Mrs G to take a greater level of risk than she was prepared to take.

And on the subject of attitude to risk - Quilter assessed Mrs G's attitude to risk as 'balanced.' It has argued that Mrs G was seeking capital growth over the longer term, so this was an appropriate assessment of her risk tolerance. But I'm not persuaded that it was. I say this because looking at the attitude to risk questionnaire Quilter completed as part of its assessment, Mrs G's answers to some of the key statements, in my view, clearly showed that Mrs G's risk tolerance was lower. And I think Quilter ought reasonably to have placed greater weight on these. For example, the first statement Mrs G said 'Yes' to was: 'People who know me would describe me as a cautious person'. I think the use of the word 'cautious' here is important and in my view this alone ought to have given Quilter an immediate indication of Mrs G's risk tolerance. But in addition to this, Mrs G also indicated that she generally looked for safer investments even if that meant lower returns; she didn't find investments easy to understand; she didn't have much experience investing; and she tended to be anxious about the investment decisions she'd made. So taking all of these key answers together, I think it reasonably describes someone who was prepared to take a 'low', or 'cautious' attitude to risk. And I think this ought reasonably to have been the conclusion Quilter reached.

In addition to this, I think Mrs G's capacity for loss was low. Her DB pensions accounted for her entire private pension provision and there's no evidence that Mrs G had any other significant assets she could draw on to provide or supplement her income in retirement. So I don't think she had the capacity to absorb losses on the pension transfer.

For this reason alone a transfer out of Mrs G's DB schemes was not in her best interests. But I recognise that financial viability isn't the only consideration when giving transfer advice – there might be other considerations, which mean a transfer is suitable, despite providing overall lower benefits. And this is something Quilter acknowledged in its suitability letter where it said that it wouldn't ordinarily recommend a transfer because it didn't think the returns required were achievable but felt Mrs G's other objectives outweighed this. So I've considered these below.

Flexibility - access to tax-free cash and income need

It seems to me that the key reason for Quilter recommending that Mrs G transfer out of her DB pensions, despite its conclusion that the required returns to match her DB scheme benefits were likely unachievable, was to have the flexibility to access a tax-free cash lump sum to allow her to repay her debts. It's recorded that this would enable Mrs G to reduce her monthly outgoings so she could either retire or work part-time – albeit she was undecided which.

But I'm not persuaded that it was necessary in the circumstances for Mrs G to repay her mortgage and other debts at this time – so I don't think transferring out of her DB pension schemes to provide flexibility to access a lump sum to facilitate this was a compelling reason to transfer or in her best interest. I'll explain why.

It's clear that Mrs G was not working at the time. I understand she'd been made redundant around 2017 and had relatively recently moved home and relocated to the countryside. While Mrs G was only in receipt of benefits at the time, she lived with her partner who was working full-time. And looking at what's recorded in the fact-find Quilter completed with Mrs G in their meeting of March 2018, the income and expenditure analysis section shows that Mrs G's partner's income covered their household expenditure and there was a surplus income of around £80 a month. The expenditure recorded appears to include Mrs G's

mortgage payment of around £600 a month as well as her credit card monthly payment of around £125. It appears to cover other essential expenditure and I note there was also an amount entered under the heading 'lifestyle'.

So there is nothing here to indicate that Mrs G and her partner could not afford and weren't able to meet both their household / living expenses and debt obligations. There is no evidence to suggest the mortgage was in arrears or in my view any evidence to show that Mrs G was under, or likely to shortly come under, significant financial pressure such that she needed to reduce her monthly outgoings. In my view there's no evidence to show that there was a pressing need for Mrs G to repay her mortgage.

Furthermore Quilter recorded that Mrs G's mortgage interest rate was just over 2%, so not a high rate. It's also the case that Mrs G's partner was more than 10 years younger than her, so his capacity for work and his ability to earn to maintain the mortgage repayments until the end of its term was in my view high.

So taking all of this into account, I'm not persuaded that Mrs G needed or that it was essential for her to repay her mortgage at this time. So it follows that I don't think she needed to transfer her pensions and access a lump sum to do so.

But I can see that Quilter's recommendation letter of 20 August 2018, and also a file note recorded by the adviser at the time, suggest there was more to the story. These say that Mrs G's partner's earnings covered the essentials, but in order to make giving up work a reality, she needed to reduce her outgoings. It said that by repaying her mortgage, this would reduce Mrs G's household outgoings by around £740 a month, which in turn meant that she would only need a small amount of income – £377 a month net – which could be achieved through part-time work or a low level of income (presumably drawing from her pension fund.) It said Mrs G was undecided on what she wanted to do – she liked the flexibility but did not need the income immediately.

Quilter did not explain in its advice paperwork, and it wasn't immediately apparent to me, how it arrived at the conclusion that Mrs G's income need was £377 a month once the mortgage was repaid. As I said above, the income and expenditure analysis Quilter undertook showed that there was a monthly income surplus even with the mortgage payment included. But I think the figure of £377 a month Quilter arrived at is based on a 50/50 split of Mrs G's household monthly expenditure once the mortgage cost is removed.

So in my view this appears to be a notional income need – it was not a true income need because Mrs G had a greater level of expenditure than was recorded on the income and expenditure analysis for example. It seems to me this was a desired position where both Mrs G and her partner equally contributed to their household expenses. I think this explains why Mrs G said she didn't need the income immediately – there was no immediate financial pressure here.

I've not seen anything to suggest that Mrs G's partner wasn't prepared to continue to meet a greater share of the household costs as he was currently doing. But if I accept that Mrs G wanted to contribute, even if Mrs G retained her mortgage, her share of the total household budget was around £680 a month.

And while I can see from the file note I referred to earlier that Mrs G didn't anticipate being able to earn the same salary she earned prior to her move, it doesn't appear that she needed to. It seems that at most, and assuming an equal 50/50 share of their expenditure with her partner, she would need an income of £680 a month, which I think could reasonably be achieved through part-time work. Mrs G indicated that she was prepared to work part-time and she appears to have been in good health to allow her to do so. So I think this was a

viable option.

I'm also mindful here that through immediate early retirement from her DB schemes, the level of income Quilter indicated she could receive from these was around £10,800 a year combined. And this was on the basis of reduced pensions and Mrs G also receiving around £73,000 tax-free cash from both schemes. In my view this would've provided more income than Mrs G likely needed at this time. That said, I'm not persuaded that Mrs G would've more likely than not taken her DB scheme benefits this way at this stage – I think it's clear that Mrs G was undecided as to what she wanted to do - whether to retire or to work part-time – at this stage. And based on what I've seen, there was no urgency for Mrs G to make any decision about things. Nevertheless, in my view, Mrs G's desire to retire early was achievable by remaining in her DB schemes - it was a viable consideration for the future.

I can see that the investigator concluded that Mrs G wasn't in a position to work and earn an income at the time of the advice because she had financial dependants she was caring for at the time. Mrs G's representative has also indicated this was the case. But the evidence from the time of the advice does not support this – the fact-find records that Mrs G had no financial dependants and as I've explained above, there was clearly a discussion about Mrs G working part-time. It's possible she was caring for them at this time – but there's nothing to indicate that at this time it prevented her from working. But it is clear that Mrs G did have financial dependants later on in 2019, which meant she had to care for them full-time and so wasn't able to work. I'll refer to this later on.

Turning to Mrs G's retirement income need – I can see that Quilter recorded Mrs G needed £15,000 a year once the mortgage was repaid. If Mrs G took her DB scheme income from both schemes they would provide an income of around £11,000 each, or a reduced pension of around £9,400 and £8,000 respectively with tax-free cash amounts of around £63,000 and £53,000 respectively. So I'm satisfied Mrs G could've met her income needs in retirement through her DB schemes.

Overall, I don't think Mrs G required flexibility from her pension. Based on what I've seen, I don't think she had a genuine need to access her tax-free cash earlier than the schemes' normal retirement age to repay her mortgage and leave the remaining funds invested until later on. As I said above, Mrs G does not appear to have been under any financial pressure: her partner was meeting their expenditure needs including their mortgage, and there's nothing to suggest this wouldn't or couldn't continue. In my view, Mrs G's assessed income need was a notional one, which was reasonably achievable through part-time work, which Mrs G indicated she was willing to do. If that didn't work out, she had the viable option later on, if necessary of taking early retirement from her DB schemes. I don't think Mrs G needed to make an irreversible decision to transfer her pension at this stage to facilitate the repayment of her mortgage when there doesn't appear to have been an immediate or compelling need to do so. For these reasons I don't think it was in Mrs G's best interests to transfer out of her DB pension schemes.

Death benefits

The other reason why Quilter recommended Mrs G transfer her pension was to enable her to leave her pension to her family, including her non-dependent children. Mrs G wasn't married, so she didn't want her pension to die with her.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mrs G given the circumstances. But whilst I appreciate death benefits are important to consumers, and Mrs G might have thought it was a good idea to transfer her DB scheme benefits to a personal

pension arrangement because of this, the priority here was to advise Mrs G about what was best for her retirement provisions.

A pension is primarily designed to provide an income in retirement – not as a legacy planning tool. So I don't think the potential for different or greater death benefits should have been prioritised over this and Mrs G's security in retirement. And I say potential, because the sum left on Mrs G's death was dependent on investment returns – so if she lived a long life, and/or investment returns were lower than expected, there may not have been a large sum to pass on anyway.

I'm mindful too that while Mrs G was not married to her partner at the time, there was the potential that she might get married in the future. In which case the spouse's pension provided by both DB schemes would've been useful to her spouse. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Overall, and in any event, I don't think different death benefits available through a transfer to a personal pension arrangement justified the likely decrease of retirement benefits for Mrs G.

Suitability of investments

Quilter recommended that Mrs G invest in a balanced risk fund, which I consider was unsuitable based on what I think Mrs G's true attitude to risk was. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mrs G, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mrs G should have been advised to remain in the DB schemes and so the investments in the unsuitable balanced risk fund wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, access to a cash lump sum and the potential for higher or different death benefits on offer through a personal pension arrangement would have sounded like attractive features to Mrs G. But Quilter wasn't there to just transact what Mrs G might have thought she wanted. The adviser's role was to really understand what Mrs G needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Mrs G was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs G was very likely to obtain lower overall retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. In my view Mrs G should not have been advised to transfer out of both schemes to access a lump sum to repay her debts, which for the reasons I've given above, were affordable both now and likely into the future. Any income need Mrs G had could've likely been met through part-time work or ultimately early retirement from her DB scheme – neither of which required Mr G to repay her mortgage at this time. Also, I don't think the potential for higher death benefits was worth giving up the guarantees associated with her DB schemes.

So, I think Quilter should've advised Mrs G to remain in her DB schemes as well as her DC and AVC plans.

Of course, I have to consider whether, if things had happened as they should have, Mrs G would've gone ahead anyway against Quilter's advice.

I've considered this carefully - but I'm not persuaded that Mrs G would've insisted on transferring out of the DB schemes, against Quilter's advice. I say this because Mrs G was an inexperienced investor, who in my view possessed neither the requisite knowledge, skill nor confidence to go against the advice they were given. As I explained above, I think Mrs G was a cautious investor and it's clear that these two pensions (plus the smaller DC elements) accounted for all of Mrs G's private retirement provision.

So, if Quilter had provided her with clear advice against transferring out of the DB schemes, explaining why it wasn't in her best interests, I think she would've accepted that advice. I'm not persuaded that Mrs G's concerns about her death benefits were so great that she would've insisted on the transfer knowing that a professional adviser, whose expertise she had sought out and was paying for, didn't think it was suitable for her or in her best interests. If Quilter had explained that Mrs G could meet her primary objectives without risking her guaranteed pensions, I think that would've carried significant weight. So, I don't think Mrs G would've insisted on transferring out of the DB schemes.

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

Putting things right

My aim in awarding redress is to put Mrs G as far as possible in the position she would be in now if Quilter had given her suitable advice. I think Mrs G would've remained in both DB scheme. And in terms of the defined contribution and AVC plans, I think with suitable advice Mrs G would've likely undertaken an internal fund switch in line with a 'low' or 'cautious' attitude to risk.

What should Quilter do?

To compensate Mrs G 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.

actual value

This means the actual amount payable from the SIPP at the date of the calculation

fair value – step one

*If Mrs G had been given suitable advice, I think she would've remained in both DB schemes. Quilter must therefore calculate the value of the benefits Mrs G lost as a result of transferring out of her DB schemes 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>.*

For clarity, I understand that Mrs G started to take an income from her pension in August 2020 (aged 58) as a result of her caring for her financial dependants full-time.

This meant that she was unable to work or be available for work. Given this is what actually happened, I think it is fair that the calculation should be based on Mrs G taking benefits at this age.

This calculation should be carried out as at the date of any subsequent final decision and 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 Mrs G's acceptance of that decision.

fair value – step two

Quilter must use the benchmark shown below to determine the fair value of Mrs G's DC plans if suitable advice had been given.

<i>Investment name</i>	<i>Status</i>	<i>Benchmark</i>	<i>From ("start date")</i>	<i>To ("end date")</i>	<i>Additional interest</i>
<i>Value of (the defined contribution plans transferred)</i>	<i>Still exists</i>	<i>For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds</i>	<i>Date of investment</i>	<i>Date of my final decision</i>	<i>8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)</i>

To arrive at the fair value when using the fixed rate bonds as the benchmark, Quilter should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value 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, as explained in policy statement PS22/13 and set out in DISP App 4, Quilter should:

- always calculate and offer Mrs G redress as a cash lump sum payment,
- explain to Mrs G before starting the redress calculation that:
 - their 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 Defined Contribution pension

- offer to calculate how much of any redress Mrs G receives could be augmented rather than receiving it all as a cash lump sum,*
- if Mrs G accepts Quilter's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mrs G for the calculation, even if she 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 Mrs G's end of year tax position.*

Redress paid to Mrs G 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 Mrs G'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.

The tax rate assumption is not an actual payment of tax to HMRC but an adjustment to ensure that Mrs G receives fair compensation. If Mrs G or Quilter disputes the tax rate assumption they should let us know in response to this Provisional decision. It won't be possible to change this assumption after any final decision is issued on the complaint.

The payment resulting from all the steps above is the 'compensation amount'. The compensation amount must, where possible, be paid to Mrs G within 90 days of the date Quilter receives notification of her acceptance of any subsequent final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess of 90 days, that it takes Quilter to pay Mrs G.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs G wanted Capital growth with a small risk to her capital.*
- 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 Mrs G's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs G into that position. It does not mean that she would have invested 50% of her 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 Mrs G could have obtained from investments suited to her 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 Quilter pays the balance.

My provisional decision

Determination and money award: *I intend to uphold this complaint and direct Quilter Financial Services Ltd to pay Mrs G 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 Services Ltd to pay Mrs G 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 Services Ltd to pay Mrs G 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 Services Ltd pays Mrs G the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs G.*

If Mrs G accepts any subsequent final decision, the money award becomes binding on Quilter Financial Services Ltd.

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

Mrs G accepted my provisional decision and she said she had nothing further to add.

Quilter replied and said that it had received my provisional decision and it was aware of the deadline for responses.

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 can see that Quilter said it received my provisional decision and it was aware of the deadline for responses. Because that deadline has now passed, I think it's reasonable to assume that if Quilter had wanted to respond to my provisional decision, it would've done so by now.

Because I've not been given anything new to consider, I see no reason to change my mind. So I've reached the same overall conclusion and for the same reasons as set out in my provisional decision – I uphold this complaint and direct Quilter to put things right.

Putting things right

My aim in awarding redress is to put Mrs G as far as possible in the position she would be in now if Quilter had given her suitable advice. I think Mrs G would've remained in both DB schemes.

And in terms of the defined contribution and AVC plans, I think with suitable advice Mrs G

would've likely undertaken an internal fund switch in line with a 'low' or 'cautious' attitude to risk.

What should Quilter do?

To compensate Mrs G 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.

actual value

This means the actual amount payable from the SIPP at the date of the calculation

fair value – step one

If Mrs G had been given suitable advice, I think she would've remained in both DB schemes. Quilter must therefore calculate the value of the benefits Mrs G lost as a result of transferring out of her DB schemes 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>.

For clarity, I understand that Mrs G started to take an income from her pension in August 2020 (aged 58) as a result of her caring for her financial dependants full-time. This meant that she was unable to work or be available for work. Given this is what actually happened, I think it is fair that the calculation should be based on Mrs G taking benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and 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 Mrs G's acceptance of the decision.

fair value – step two

Quilter must use the benchmark shown below to determine the fair value of Mrs G's DC plans if suitable advice had been given.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest

Value of (the defined contribution plans transferred)	Still exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)
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To arrive at the fair value when using the fixed rate bonds as the benchmark, Quilter should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value 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, as explained in policy statement PS22/13 and set out in DISP App 4, Quilter should:

- always calculate and offer Mrs G redress as a cash lump sum payment,
- explain to CONSUMER before starting the redress calculation that:
 - their 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 Mrs G receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs G accepts Quilter's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mrs G for the calculation, even if he/she/they 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 Mrs G's end of year tax position.

Redress paid to Mrs G 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 Mrs G'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.

The payment resulting from all the steps above is the 'compensation amount'.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs G wanted Capital growth with a small risk to her capital.
- 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 Mrs G's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs G into that position. It does not mean that she would have invested 50% of her 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 Mrs G could have obtained from investments suited to her 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 Quilter pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Quilter Financial Services Ltd to pay Mrs G 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 Services Ltd pays Mrs G the balance.

If Mrs G accepts this decision, the money award becomes binding on Quilter Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mrs G can accept my decision and go to court to ask for the balance. Mrs G 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 G to accept or reject my decision before 7 June 2023.

Paul Featherstone

Ombudsman