

## The complaint

Mr M complains about the advice Quilter Financial Services Ltd gave to him to transfer the benefits from one of his defined-benefit ('DB') occupational pension schemes to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr M to bring this complaint. But, for ease of reading, I'll refer to the representatives' comments as being Mr M's.

The advising firm Mr M complains about is an appointed representative of Quilter. So, although it wasn't Quilter itself that gave Mr M advice, as it's responsible for responding to the complaint, in this decision, I will only refer to Quilter.

## What happened

In 2017 Mr M approached Quilter about releasing cash from his pension. Quilter did a fact-find with him gathering information about his circumstances and objectives. Amongst other things it recorded that:

- Mr M was 64 years old, he would turn 65 later that year.
- He was married, his wife didn't work or have an income of her own.
- He was still employed, earning around £20,000 a year. But he was off work sick. He was scheduled to undergo operations and thought he would be off work recuperating for around a further six months. He said he wouldn't be paid while off sick. But once back in work, he anticipated working until he was 68.
- He lived in rented accommodation, a housing association helped towards paying the rent, and Mr M paid around £500 a month himself. He said he was in rent arrears.
- He wanted a lump sum of £17,100 to clear his rent arrears and to live off for 12 months while he recuperated.
- He was a deferred member of two former employers' DB schemes.
- He could access the benefits from one of his DB schemes (which I'll refer to as S) immediately. He didn't have the option of transferring out of this scheme.
- S would pay Mr M a pension of £2,876 a year with effect from February 2016. And as that entitlement was backdated, after deducting tax, it would make a payment to him of £3,068. It would also pay him a lump sum of £8,628 in tax free cash ('TFC'). Making a total payment of £11,696.
- S would continue to pay Mr M a pension of £2,876 a year.
- He would need around £15,000 a year to live off.
- His other DB pension with an employer I'll refer to as B, had a cash equivalent transfer value ('CETV') of £115,612 if he transferred it to an alternative arrangement.
- At age 65 B's pension scheme would pay Mr M TFC of £23,951 together with a yearly pension of £3,599.
- Mr M and his current employer were continuing to contribute to his workplace pension scheme. Together they made contributions of about £1,600 a year. Mr M didn't have any other details about the funds in that scheme readily available to him.
- He expected to receive a full state pension from age 65 of £8,297 a year.

- He had an emergency fund of £820.

Quilter sent Mr M a suitability report setting out its analysis and recommendations. It recommended that Mr M should transfer out of his B scheme and invest the sums in a SIPP. Amongst other things it said that, after using the £11,696 he would receive from the S scheme, he could take £5,400 in TFC from the B scheme, to make up the £17,100 he said he needed to live off.

Quilter acknowledged that Mr M could meet his income needs by remaining in the B scheme. But, it said that wouldn't give him flexible access to the funds he wanted. Instead he could top up the income from his state and S pension by drawing down funds of £3,826 a year from his SIPP, to make up his income to the desired level of £15,000. It also said that the death benefits available from the SIPP were more favourable for Mr M's wife.

Quilter charged Mr M a fee of £3,473.90 for its initial advice with an ongoing service fee of 1% of the fund value each year.

Mr M went ahead with the transfer. I understand that was completed around November 2017 near to the time Mr M turned 65.

In 2022 Mr M complained to Quilter that its advice hadn't been suitable for him. Quilter didn't uphold Mr M's complaint. It said that, given Mr M's need for cash urgently to pay his rent arrears when he didn't have an income, a transfer met his objectives.

Mr M brought his complaint to us. One of our Investigators looked into it. He spoke to Mr M, who said that at the time of the advice he wasn't in rent arrears and had used his TFC to pay for other things.

Our Investigator recommended upholding the complaint. In brief, he didn't think Quilter's advice was suitable for Mr M. He said Quilter hadn't shown that, by drawing down income from a SIPP, the fund would last for Mr M's life expectancy. The Investigator added that Mr M could have met his income needs in retirement by remaining in the B scheme. Our Investigator said that Quilter should compensate Mr M for any losses.

Quilter didn't agree with our Investigator's assessment of the complaint. It said the evidence it held showed Mr M had told it he was in rent arrears. It added that the suitability report said that, by drawing down from the SIPP to make up his income needs, the funds would last Mr M 36 years, so would still be available once he'd turned 100 years old. It said at the time of its advice Mr M intended to carry on working and so he didn't want to take a regular income from the B scheme. Therefore it believed its advice was suitable for Mr M.

Our Investigator wasn't persuaded to change his opinion, so the complaint was 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 in replying to it both Mr M and Quilter have made a number of points. I've considered everything on file. 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 matters at the heart of Mr M'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 broadly similar reasons to those our Investigator gave.

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 recommending a transfer if it could clearly demonstrate it was in Mr M's best interests. And having looked at all the evidence on our file, I'm not satisfied it was in his best interests.

### *Was Quilter's advice suitable?*

Mr M was 64 at the time of the advice and, while he wanted to keep on working, he was very close to his 65<sup>th</sup> birthday. From then he could claim his state pension and also the full benefits from his B pension. In fact, as is common with DB transfers, as the matter took some months to conclude, the date of the transfer was close to Mr M's birthday. So if he hadn't transferred, he could have taken pension income from his B scheme at that time. But he lost the opportunity to take income from his B scheme when he transferred.

Quilter recorded that Mr M was in rent arrears and needed a sum of £17,100 to repay those and to provide an income for at least the next 12 months while he was recuperating from treatment. And it seems that when Mr M initially approached Quilter he was considering transferring from his DB scheme in order to release TFC to repay some of his rent arrears.

I note Mr M told our Investigator that he wasn't in rent arrears at the time of the advice. But the evidence on Quilter's file doesn't support that. I say so because Quilter recorded that Mr M was in rent arrears in its initial fact-find. And it referred to those arrears on at least three separate occasions within its suitability report. That's significant as, after receiving the report, Mr M sent Quilter an email agreeing he understood it and that it was factually accurate. So, if he wasn't in arrears then I would have expected him to point that out then.

But he didn't do so. So I think it's likely he did tell Quilter that he was in rent arrears. In those circumstances I think it was reasonable for it to carry out its analysis on that basis.

That said, the papers I've seen don't show the extent of Mr M's arrears. That is, from the evidence that's been presented to me, Quilter didn't make a record of exactly how much Mr M owed in rent. And, given Quilter had stressed how important paying the arrears was to Mr M, that's something I would have expected to see documented in its suitability report.

It's notable Mr M said he needed access to £17,100, which included covering his living expenses for the next 12 months. And as Mr M said he needed £15,000 a year to live off that would indicate that the rent arrears were in the region of (£17,100 - £15,000) £2,100. And while that's not an insignificant sum, it's certainly not the case that the only way in which Mr M could pay it was by giving up the guaranteed, risk free and increasing benefits from his B scheme.

As I've said above the expectation is that a DB transfer is only suitable where an adviser can clearly demonstrate it was in the customer's best interests. But, in this case, Mr M had other options other than transferring sums from his B scheme. I note that Quilter said that Mr M didn't have other means of accessing this sum of money, such as family or friends he could borrow from. And that he couldn't afford to repay borrowing from other sources.

I'll say briefly that, where a consumer is struggling with debts, there are other avenues of help available beyond commercial borrowing. And Quilter could have steered Mr M to seek advice from the Citizens Advice Bureau ('CAB'). It might have been able to help him negotiate an affordable repayment plan for his rent arrears. And given that he was no longer receiving a regular wage, the CAB could also have advised him about his potential entitlement to state benefits until he began to receive a wage again. But I've seen no evidence it did that.

However, even if Quilter did recommend that Mr M speak to a debt or benefits adviser I don't think Mr M had any need to transfer from his B scheme in order to pay his arrears and meet his income needs. When he spoke with Quilter he was about six months away from his 65<sup>th</sup> birthday. So, given that advising on and arranging a DB transfer is a complex process, it's usual for a transfer to take a number of months to complete. Therefore, Quilter should have known, at the outset, that Mr M was likely to be near to or already past his 65<sup>th</sup> birthday by the time the transfer process was completed. And from that point onwards Mr M would have entitlement to both state pension and income from his B scheme.

Had Mr M chosen to take the benefits from his B scheme that would have given him the following yearly income:

State pension:	£ 8,297
S pension:	£ 2,876
B pension:	<u>£ 3,599</u>
Total	£14,772

So Mr M's income from those three pension sources would be just £228 short of the amount he estimated he would need to live off each year. And it's worth pointing out that all three of those pensions would have received an index linked increase the following April. They'd also have continued to increase each year for the rest of Mr M's life. So those sums should have allowed Mr M to meet his income needs without transferring out of his B scheme.

But as well as a regular income, S would pay Mr M TFC and backdated pension payments amounting to £11,696. And the indication is that he would have received that sum shortly after Quilter produced its suitability report and almost certainly before the transfer completed. And he could have used those funds to address some, if not all, of his rent arrears, as well as using it as income. Further, if Mr M had taken income from his B scheme then he could have received TFC of £23,951. He could then have used those funds to support his lifestyle or, if he wanted to, to invest in something like an easy access investment product – for example a cash ISA. And that would have given him some flexible access to cash. So Mr M had no need to transfer from his B scheme in order to meet his income requirements.

It's notable that Quilter identified in its suitability report that Mr M could meet his needs while remaining in the B scheme. But it said he would like to transfer anyway as, after taking £5,400 straightaway, that would allow him access to further TFC sums in the future without taking an income. I don't doubt that's what Mr M told Quilter he'd like to do. Transferring would allow him access to £115,612, 25% of which he could take tax free. And I can see why that would be a mouth-watering prospect for most people. But Quilter's role should have been to advise Mr M on what was in his best interests, not simply to arrange what he said he wanted at that moment in time without carefully examining what his needs, rather than simply his desires, were. And while he might have said he'd like to be able to take large lump sums in the future, that doesn't mean that transferring was in his best interests.

Quilter's said that if Mr M limited his withdrawals to the £3,826 he needed each year to make up his income shortfall, even without investment growth, the fund would last him beyond his life expectancy. I accept that's the case. But that calculation doesn't allow for the effect of adviser and product charges, which would reduce his fund. It also doesn't allow for inflation increasing his income needs each year. And while that could potentially be offset by investment growth, a sustained period of poor performance or market crashes could result in losses. Also I need to think about Mr M's capacity to absorb investment losses. While he did have other pension income, that wasn't enough to meet his day-to-day expenses. And he only had around £820 in savings. So I don't think he was in a position to absorb any significant losses if the SIPP didn't perform as predicted.

Quilter also said that Mr M intended to return to work so he didn't need a regular income at that point. We now know that, as circumstances evolved, Mr M didn't return to work. But I accept Quilter couldn't have anticipated that at the time and based its advice on Mr M's intentions. I think that was reasonable. However, that doesn't make its recommendation suitable. Mr M might not have expected to need a regular income, but that doesn't mean he couldn't have benefited from it. As I've said above, it would have increased each year and, if he had a surplus, he could have saved or invested that to give him further access to funds flexibly.

Quilter also said the death benefits available from his SIPP were more favourable than those available from his B scheme. 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. So the lump sum death benefits on offer through a SIPP was likely an attractive feature to Mr M. That's because whatever was left within Mr M's SIPP at the date of his death would be passed on to his wife, whereas the B scheme would pay his wife 37.5% of his pension entitlement. But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer his B scheme to a SIPP because of this, the priority here was to advise Mr M about what was best for his retirement provision.

A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of his DB scheme Mr M was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his wife that he may not need for many years to come. And by that time, the fund could have been depleted by Mr M's withdrawals from it.

Quilter said Mr M's pension fund would last beyond his life-expectancy. So he might have thought that guaranteed a significant lump sum for family on his death. But, if the fund grew by less than Quilter expected, or suffered losses, then there would be less available as a death benefit. Further, the fund would reduce as Mr M drew down money from it and those deductions would reduce the lump sum benefit available in the event of his death. In fact every time Mr M took a withdrawal he would be reducing the amount available as a legacy for his wife.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the risks involved in giving up the guaranteed income from his B scheme.

## Summary

I don't doubt that access to TFC lump sums and potential for higher death benefits on offer through a SIPP would have sounded like attractive features to Mr M. But Quilter wasn't there to just transact what Mr M might have thought he wanted. As I've said above the adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Quilter was in a good position to have analysed, tested, challenged and advised Mr M about what was in his best interests for retirement planning. It knows valuable pension pots like Mr M's DB scheme were paid into with the intention of providing for retirement. But Mr M's chosen path was to give up that income in retirement for the chance of accessing lump sums of cash, which, while no doubt tempting, he had no obvious need for, rather than long-term planning.

Ultimately, I don't think the advice Quilter gave to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, he was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer to outweigh this. Quilter should not have advised Mr M to transfer out of the scheme just to repay debts that he could repay by other means, or to provide an income he could match while remaining in the B scheme. And the potential for higher death benefits for his wife wasn't worth giving up the guarantees associated with his B scheme.

So, I think Quilter should have advised Mr M to remain in the scheme.

Of course, I have to consider whether Mr M would've gone ahead anyway, against Quilter's advice if it had recommended he remain in the scheme. I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the B scheme, against Quilter's advice. I say this because Mr M was an inexperienced investor with at best a balanced attitude to risk. But he was taking a risk with his B pension funds by putting those in a SIPP. So, if Quilter had provided him with clear advice against transferring out of the B scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

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

### **Putting things right**

A fair and reasonable outcome would be for Quilter to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would have most likely remained in the occupational pension scheme if Quilter had given suitable advice.

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>.

For clarity, Mr M retired at age 65. So, compensation should be based on him 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 Mr M'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:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
  - its 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Quilter's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Quilter may make a notional deduction to cash lump sum payments to take account of tax that Mr M would otherwise pay on income from his pension. Typically, 25% of the loss could have been

taken as tax-free cash and 75% would have been taxed according to Mr M'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.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 require Quilter Financial Services Ltd to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Quilter Financial Services Ltd pays Mr M the balance.

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

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 30 June 2023.

Joe Scott  
**Ombudsman**