DRN-4499097

The complaint

Mrs B complains about the advice given by Quilter Financial Services Ltd to transfer the benefits from her two defined-benefit ('DB') occupational pension schemes to a personal pension and take out a fixed term annuity. She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

I issued my provisional decision on 28 November 2023, this included the background to the complaint and my provisional findings. This forms part of this decision and is set out below:

Mrs B approached Quilter in mid-2018 to discuss her pension and retirement needs. Mrs B was aged 61 and considering retirement as her licence to carry out her job was expiring at the end of the year. Mrs B has since said this could be renewed easily enough if she needed to.

Quilter completed a fact-find to gather information about Mrs B's circumstances and objectives on 11 September 2018. Quilter also carried out an assessment of Mrs B's attitude to risk, which it deemed to be risk averse. The fact-find recorded that:

- *She was 61 years old, in good health, married but with no financial dependents.*
- *Employed part time, earning £10,200 gross a year or £850 a month net as a nil rate taxpayer.*
- *Other household income included her husband's £650 a month pension income, this would reduce to £2,400 a year at his state pension age*
- *Monthly expenditure was £1,450, there was no surplus income.*
- *In total she and her husband had £88,000 in cash-based savings, to which the couple contributed £200 a month.*
- *They owned their home unencumbered by a mortgage.*
- *Mrs B held a current NHS pension and two deferred defined benefit pensions;*
- *The NHS pension was currently estimated to pay around £800 a year from age 66.*
- *Her state retirement age was 66, her projected state pension £8,525 a year – her husband was also due to receive the same in the next few years.*
- *Mrs B's risk profile was risk averse*
- *She wished to stop working in December 2018 when her registration expired.*
- *The couple wanted to keep their savings, as they would potentially be required for elderly parents care costs and to fund holidays.*

A few days later on 13 September unfortunately Mrs B's daughter was taken seriously unwell and hospitalised. Mrs B has told us she was in hospital for a number of months and Mrs B visited daily as well as looking after her grandchildren. It was that at this point that Mrs B knew she wouldn't be able to return to work – due to the severity of her daughter's ill health.

On 18 September 2018 Mrs B informed Quilter she wanted to go ahead with her pension review.

On 2 October, referring to the meeting on 11 September in the recommendation, Quilter advised Mrs B to transfer her pension benefits into a personal pension and take-out a fixed annuity for five years. The suitability report said the reasons for this recommendation were that it would allow Mrs B to take early retirement. The fixed annuity would cover the loss of Mrs B's income until her state pension kicked in. The annuity was due to pay her £10,200 which was protected for five years and at the end she would receive a maturity value of £7,525.

The suitability report didn’t reference Mrs B’s change in circumstances between the fact-find being completed and the report being issued. Mrs B’s told us she did tell Quilter about the situation with her daughter.

Mrs B complained in 2022 to Quilter about the suitability of the transfer advice. She’s told us that she was contacted by a Claims Management Company who said she could’ve had a lump sum for a year’s salary and ongoing income and that she’d lost out on thousands. She explained they had only just bought her husband's parent's bungalow at a reduced rate. And if anything happened to them in the next seven years, such as needing to go into care the asset could have been considered as part of their financial assessment. So they were deliberately holding funds back.

Quilter didn’t uphold Mrs B’s complaint. It said it had reviewed its advice and found it to be suitable, it met Mrs B’s requirements whereas other options such as taking her benefits from the scheme did not.

Mrs B referred her complaint to our service. An investigator upheld the complaint. The investigator said that she thought Mrs B would be worse off in retirement due to the advice. And Quilter hadn’t done enough to explore whether Mrs B was prepared to give up income in later retirement for the ability to have her short term income needs met by her pension. The investigator said Quilter should’ve done more to explore Mrs B’s circumstances, such as the need or want to keep savings in place for potential future care costs. The investigator felt that Mrs B could’ve used her savings in the mean-time and if these costs arose, she could then look to use the transfer values from the two DB schemes to fund this at the time. And in this way her DB benefits would be preserved.

Quilter said in response that it disagreed with the investigator’s findings, it still felt the advice it had given was suitable. It also said the investigators’ suggested course of action was not without risk either. Transfer values can and have reduced in value since the advice was given and so waiting longer to access the benefits could’ve reduced the value received from them.

The investigator wasn’t persuaded to change their opinion, so the complaint was referred to me to make a final decision.

Before I continue to discuss the merits of the complaint, I’d like to express my sympathies to Mrs B regarding the passing of her daughter.

My provisional findings

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 Businesses (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'm minded to reach a different conclusion to that of our investigator. After considering Mrs B's circumstances and the advice given by Quilter, I'm not persuaded that it was unsuitable. It met the requirements Mrs B had at the time, and whilst Mrs B's savings could've been used instead. I think there were potential disadvantages with this route. And I think the evidence is persuasive that Mrs B and her husband had a strong preference for retaining their savings and for compelling reasons.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Quilter should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs B's best interests. And having looked at all the evidence available, I'm satisfied it was in her best interests.

Financial viability

Mrs B was looking to retire immediately. And as she's said herself as circumstances transpired, she knew she wouldn't be returning to work. So, the viability of the transfer isn't particularly relevant here. Quilter set out that Mrs B would be worse off in terms of the overall value of benefits likely received in retirement by transferring and taking her benefits immediately compared to retaining them until 65. And that Mrs B was giving up a guaranteed income for life, for a higher income but only for a short period of five years.

Overall, I'm satisfied that the requirement for early retirement was Mrs B's key priority. And that the income required by Mrs B in the short term to allow her to retire immediately couldn't be met by her two DB pensions. So the key question is the way in which this could be achieved and was the method recommended by Quilter suitable? I've considered this in more detail below.

Flexibility of income and the need to take early retirement

Based on the evidence I've seen, I'm satisfied Mrs B required flexibility in retirement. Mrs B wanted to retire early, at 61, and the income/expenditure recorded showed there was little excess income. And therefore, they would need to replace the income that Mrs B would lose by retiring.

Mrs B needed to replace the approximate £10,000 per year in income until her and her husband's state pension kicked in, according to the information gathered by Quilter. The two state pensions and other small pensions held by Mr B and Mrs B would meet their expenditure once they became payable in approximately five years. But until then there was a big shortfall in income compared to expected expenditure.

From the two DB schemes, if Mrs B took benefits immediately at age 61, she would be entitled to an annual income of approximately £2,000 escalating and a tax-free cash sum around £8,000 – this would not have met their income needs in retirement as noted in the fact-find. Her first year with no income would be covered in full but in the remaining years the household would've been short of approximately £8,000 a year for four years. So, I think Mrs B had a strong need for variable income in retirement. Taking benefits immediately from the DB scheme was not a viable option on its own to meet the shortfall.

The other option on transfer, would've been to take the 25% tax free sum and the remainder as a lifetime annuity. The tax-free cash sum would've likely been around £14,000 which would've met a year and a half's worth of income approximately. But the annuity alongside it would've been much smaller than the fixed term annuity, and wouldn't have provided enough income to meet expenditure for the period between the advice and other benefits kicking in.

Had Mrs B taken either of these options compared to the fixed annuity, she would've been provided with additional income in retirement to enjoy after her and her husband's state pension had kicked in. But it would leave them quite considerably short in the five or so years before this. And I think its important to state that even if the benefits were taken at the normal retirement age the value of the benefits were relatively small and so I don't think they would've made a big difference to the quality-of-life Mr and Mrs B enjoyed in retirement.

The fixed annuity meant that Mrs B received a considerably larger sum of money comparatively across the first five years of her retirement compared to the option of taking benefits from the scheme. The annuity provided approximately £10,000 a year for five years and about £7,000 as a maturity value at the end that could be taken as a lump sum, annuitized or re-invested.

So the rationale for the advice was that Mrs B would receive the value of her DB benefits upfront across the five years to cover a large shortfall and then other sources of income would meet the expected expenditure after that point. The alternative was to instead have the income at a much lower starting value but drip-fed across the years in retirement and to plug the gap with savings. If Mrs B lived to a reasonable age the income drip-fed approach would've caught up to the value of the upfront fixed annuity and then as she got older the deficit would increase. This was a risk involved with the advice approach but I can see that Quilter did explain this to Mrs B.

However, using savings to plug the income gap could've kept Mrs B's guaranteed income in place giving a larger potential value from the plans.

I've thought about this carefully and I don't think the advice was unsuitable despite the potential to use Mr and Mrs B's savings. I say this because Mr and Mrs B told the adviser they wished to keep their savings and gave what I feel is quite a compelling reason to do so. Mr and Mrs B had purchased Mr B's parents' house at a preferential rate. And they were informed and aware that if Mr B's parents needed residential care they may need to fund the cost of care from their savings. Furthermore, there is the possibility that inheritance tax charges could also apply in the future.

There is an argument more could've been done/recorded about the potential pitfalls of the arrangement regarding the house and the likelihood of future costs/tax implications. But not long after the initial fact-find Mrs B told us her daughter was hospitalised (and sadly later passed away). She said at that point she'd told Quilter about this and that's why she wanted to go ahead with the transfer review. And she's said she wasn't in a position to think about it further and wanted Quilter to sort *things out for her as she now needed to stop working to look after her daughter. Quilter ought to have recognised this change of circumstances in the recommendation as it was a very important aspect to the advice process, but it did not. However, I don't think this would've made a material difference to events had it done so. And I think further in-depth conversations about Mrs B's circumstances probably wouldn't have been desired by Mrs B at the time.*

To take early retirement from the scheme or tax-free cash and a lifetime annuity, would've meant a substantial amount of the income gap would've needed to be met from savings. Somewhere in the region of £35,000 would've been required. Whilst Mr and Mrs B had access to this and would've still had significant savings left, I think due to the situation with the house purchase and the fact Mr and Mrs B diligently saved even though income versus expenditure was tight, Mr and Mrs B placed quite a significant value on having substantial savings available in retirement.

Our investigator spoke to Mrs B and asked what she would do if she hadn't had access to enough income in retirement from her pensions and she said their only option would've been their savings, but this appeared to be a reluctant option. And the option recommended by Quilter allowed them to keep the savings intact which I think would've given them peace of mind whilst also having their income needs met in retirement. Had Quilter done all that they could to investigate the position with the house and discussed using their savings instead – I think Mr and Mrs B would've still favoured keeping their savings by having their income needs met in the short-term by the fixed annuity.

It appears Mrs B's reason for the complaint was she was told a better option existed. Believing a lump sum and income from the schemes would've met her needs in the years before her state pension – and she would've still had income in place afterwards. However, this isn't the case – this solution would've meant a shortfall in income in the early years that would've required significant use of their savings.

Overall, I think the recommendation made by Quilter met Mrs B's needs and requirements, so I don't think it acted unfairly or unreasonably. And I think the alternative option of using a combination of savings and a smaller lifetime income, likely wouldn't have been the preferred option for Mr and Mrs B in the circumstances.'

In response to the provisional decision Mrs B said:

'There is plenty of evidence presented by the Ombudsman's report which clearly state that Quilter did not act in accordance with the best interest of its client. As the Ombudsman openly admits:

"Quilter ought to have recognised this change of circumstances in the recommendation as it was a very important aspect to the advice process, but it did not. However, I don't think this would've made a material difference to events had it done so."

Our change in circumstances was a very important aspect to the advice process. The assertion that *"I don't think this would've made a material difference to events"* has absolutely no founding, and the whole point is that Quilter should have reassessed my needs at this point but failed to do so.

I find the Ombudsman's statement that "*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"* inconsistent with the content of the report, and little more than another way of saying *"there's good evidence to uphold the complaint, but I'm going to make lots of assumptions that make the opposite argument."*

I don't have any further evidence to offer at this stage, but would like to place on record how inconsistent and fundamentally flawed I find the Ombudsman's report; particularly when it is at odds with the conclusions previously reached by the Investigator'.

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.

And having done so I see no reason to depart from the findings set out in my provisional decision and which form part of this decision.

I understand it must've been upsetting for Mrs B to initially have her complaint upheld, only for me to disagree with that outcome. But I'm afraid that is sometimes a consequence of our two-stage process.

Mrs B has said my provisional decision is contradictory as I've agreed Quilter didn't act in the best interests of its client (her) but not upheld the complaint. However, I think this is a misunderstanding of the point she refers to above.

Mrs B's circumstances when she came to seek advice were that she was considering retiring early due to the expiry of her licence needed for her career. But by the time Quilter issued its recommendation her circumstances had changed. She now had, as she's told us, a *need* to retire early due to the serious ill health of her daughter. Quilter's recommendation didn't set out that Mrs B's contemplation of early retirement had changed to a need. There was now a far more pressing reason. But its recommendation was based on allowing Mrs B to retire early in any event. Whilst it didn't record the far more compelling reason to provide the solution it did, its recommendation met Mrs B's needs in terms of having to retire early regardless.

Had it reassessed Mrs B's needs, the need for early retirement would've been even stronger. And so I think its recommendation was suitable for Mrs B (for all the reasons set out in my provisional decision). Mrs B states she told Quilter about her change of circumstances and it was aware as it had responded empathetically. So, I am satisfied it was aware of this change but it seems either its recommendation was already written at that point and it didn't amend it. Or that it simply didn't reflect this in its recommendation and stayed with the reasons gathered at the fact find either due to an oversight or inaction. But as its recommendation met Mrs B's needs to retire early, it follows that this made no impact on the outcome of its advice or Mrs B's decision to follow the recommendation.

I've reconsidered my findings in light of Mrs B's comments, but I don't agree that they are flawed or inconsistent. Its simply that I disagree with the recommendation made by our investigator. And I set out my reasons for this in my provisional decision.

I appreciate my decision will be disappointing for Mrs B. But for the reasons explained I don't think Quilter has acted unfairly or unreasonably when it recommended Mrs B transfer her DB pension and take out a fixed annuity to meet her income needs in the short term.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 10 January 2024.

Simon Hollingshead
Ombudsman