DRN-4500215

The complaint

Mr H complains about the advice given by Quilter Wealth Ltd ('Quilter') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr H approached Quilter in October 2016 to discuss his pension and retirement needs – and specifically in relation to his deferred DB pension scheme.

Quilter recorded some information about Mr H's circumstances. It noted that he was 61, married with three non-dependent children. Mr H was employed earning approximately £33,000. His wife was also employed and she earned around £46,500. And they received some rental income from a second property (unencumbered) they owned of around £6,000 a year. They had a mortgage on their home of approximately £62,000, which had a remaining term of just under four years. They had around £37,000 in savings and other than the mortgage, they had no other liabilities. Quilter also carried out an assessment of Mr H's attitude to risk, which it deemed to be 'balanced'.

Quilter issued a letter summarising its recommendation (a suitability report) on 3 February 2017. This said, while Mr H didn't know when he would retire, he wanted to have control over his pension to be able to adopt a phased retirement plan. It said he wanted flexibility – to able to take ad hoc lump sums if needed - because he felt he already had enough guaranteed income in place. It said he also wanted to leave a legacy for his family. It said Mr H wasn't in the best of health and longevity didn't run in his family.

Quilter recommended that Mr H transfer his pension to meet his stated objectives – to have control and flexibility and to protect the death benefits for his family so they could inherit any residual funds. Quilter recommended a pension provider and two investment funds that it said was in line with his attitude to risk. The suitability report also noted that ongoing advice was recommended, which would come at a further cost.

Using the services of a representative, Mr H complained in 2023 to Quilter about the suitability of the transfer advice. He said by transferring, his accrued future guaranteed benefits were put into a non-guaranteed pension fund that was too high risk for him. He said he wasn't financially experienced and he didn't fully understand the implications and risks of the recommendation to transfer.

Quilter didn't uphold Mr H's complaint. It summary it said it believed the adviser correctly followed procedures, acted in good faith and in Mr H's best interests. And in doing so, it said it provided appropriate advice and a suitable recommendation that met Mr H's needs and objectives as set out in the advice paperwork.

Mr H referred his complaint to the Financial Ombudsman Service. He disagreed with Quilter's assessment that the advice he received was suitable.

One of our Investigators looked into the complaint. They thought the advice was unsuitable as Mr H wasn't likely to improve on the benefits he was already guaranteed by transferring. And they didn't think there were other compelling reasons to indicate the transfer was suitable. They said lump sum death benefits wasn't a suitable reason to transfer. And they didn't think Mr H needed flexibility in retirement – his reasons for wanting it weren't explored, but in any event because he had a personal pension of a similar value, he could've used this to achieve flexibility. They said if suitable advice had been given to retain his DB scheme, Mr H would've likely accepted that advice.

Quilter disagreed. It said the advice paperwork was clear about Mr H's objectives. It said Mr H and his wife had guaranteed retirement income of £36,000 and rental income of £6,000. It said Mr H's health was a concern for him and he wanted to take a flexible income, which is what he is now doing. It said Mr H couldn't have achieved things by staying in the DB scheme. It said Mr H fully understood the risks and implications and his email to the adviser at the time, he reiterated how the transfer met his objectives. It said Mr H had accessed a cash lump sum since transferring – again something he couldn't have done if he'd remained in the DB scheme. It also questioned the validity of Mr H's complaint given he'd not previously raised any concerns during his annual review meetings.

The investigator wasn't persuaded to change their opinion. They said while they accepted Mr H's objectives were clear, it was the adviser's role to determine what was in his best interests – not simply follow what he wanted. They also acknowledged Mr H's health concerns, but said there was nothing to show he did have a reduced life expectancy. In relation to Mr H's lump sum withdrawal from his pension, they said this wasn't planned at the time and it would in any event be taken into account in any redress calculation. And in terms of Mr H not having previously raised concerns about the advice he received, they said this wasn't unreasonable and the fact is he has now.

Because things couldn't be resolved informally, the complaint was referred 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'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.

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 Mr H's best interests.

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

Firstly, and for the avoidance of doubt, while Quilter has questioned the validity of Mr H's complaint, I'm satisfied it is one that I can consider. Mr H might not have expressed dissatisfaction with the advice he received during past annual reviews of his pension. But it's clear he feels differently now. Ultimately he's made a written expression of dissatisfaction about the provision of a financial service and he's not out of time in doing so.

Financial viability

Quilter carried out a transfer value analysis report ('TVAS') - as required by the regulator - showing how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr H was 61 at the time of the advice and he said he didn't know when he would retire – but it would be no later than 66. In the TVAS report of 19 January 2017, the critical yield was 19.13% to match the full pension he'd have been entitled to under the scheme at age 65 – the scheme's normal retirement age. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 17.12%.

This compares with the discount rate of 2.8% per year for three years to retirement in this case. For further comparison, 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, Mr H's recorded 'balanced' attitude to risk and also the term to retirement. In my view, there would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here, given the lowest critical yield was 17.12%, I think Mr H was always likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. Indeed the suitability report noted that *“This critical yield figure is higher than the mid-rate assumption figure, which means it is unlikely to be achievable.”* The required return was also significantly above the regulator’s upper projection rate, so to have come anywhere close to achieving the returns needed would’ve required Mr H to adopt a much higher level of risk than he’d indicated he was prepared to take.

While it doesn’t alter my conclusion above that Mr H was always likely to be worse off in retirement by transferring, I have some concerns about how Quilter assessed Mr H was a ‘balanced’ risk investor. I say this because of the answers Mr H gave to what I think were key questions in the risk assessment Quilter employed. For example, Mr H said that people who knew him would describe him as being cautious; generally he looked for the safest type of investment; he had little investment experience; and he was concerned about the uncertainty of stock markets. I think these answers when viewed through the lens of Mr H’s wider circumstances, including his age and the fact he was approaching the tail end of his working life, should’ve reasonably prompted Quilter to question a ‘balanced’ risk approach. I think a more appropriate assessment was ‘cautious’ or a ‘low’ risk approach – I think this is more likely the level of risk Mr H was truly prepared to take.

And I think this is supported by the evidence. In relation to Mr H’s existing personal pension investments, the suitability report said that he was invested in a cautious managed fund - so most likely lower than a ‘balanced’ approach. And in relation to his DB pension monies, it said he was *“looking for diversity with this portion of your pension and reduced risk....”* I don’t think this supports a willingness to take a ‘balanced’ risk approach.

So I think Mr H was in fact a ‘low’ or ‘cautious’ risk investor. In any event, this doesn’t alter my view of the financial viability of the transfer, because even if he was prepared to take a ‘balanced’ approach, he wasn’t going to be better off in retirement as a result. And for this reason alone a transfer out of the DB scheme wasn’t in Mr H’s best interests. But I accept that financial viability isn’t the only consideration when giving transfer advice, as Quilter has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I’ve considered this below.

Flexibility and income needs

Quilter recommended the transfer to meet Mr H’s need for flexibility and control – to enable him to gradually retire in the future and access ad hoc tax-free cash and income.

At 61 I think it’s likely that Mr H had given some though to his retirement. But I’m not persuaded that Mr H required flexibility in retirement or that he needed to transfer his DB pension benefits at this stage to achieve things, *if* that’s what he ultimately needed.

Quilter referred to Mr H’s objective in its suitability report of wanting flexibility to gradually retire. But in the same report it also recorded that Mr H didn’t yet know when he would retire and it said, *“You do not yet know whether you will gradually retire or work full time and then fully retire.”* So it seems Mr H had no clear or firm retirement plan. Without any kind of plan, I find it difficult to understand how Mr H knew he needed flexibility.
Nothing I’ve seen suggests he had a strong need to vary his income throughout retirement and there was no apparent need for him to want to access a cash lump sum and defer taking an income. Quilter also said Mr H could access a greater tax-free lump sum by transferring. And while this was true, it didn’t record that he had a capital expenditure desire that supported a need for a higher amount than his DB scheme would provide. So it’s possible that any need could’ve been met by his DB scheme’s lump sum provision.

Mr H might have liked the idea of flexibility and the ability to access ad hoc lump sums – but it strikes me the reference to flexibility was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr H's.

But in any event, Mr H already had flexibility, if that's what he ultimately wanted in retirement. As the Investigator rightly pointed out, he already had a personal pension with a value of around £76,700. And Mr H could've accessed this by taking income and/or lump sums as he required to either support his income or for capital expenditure needs. He also had a not inconsiderable sum in savings, which he could've also used as and when he needed to achieve the same result.

Turning to Mr H's income need - Quilter recommended the transfer because Mr H didn't need any more guaranteed income, so having this pension in a more flexible format was important as it provided the flexibility he required.

Mr H said he was looking for £3,000 net per month when he retired. But firstly Quilter doesn't appear to have carried out a detailed income and expenditure in retirement analysis to interrogate this amount and determine whether it was realistic and what he actually needed. I would've expected it to have done so in the circumstances. Secondly, Quilter said Mr H's guaranteed income comprised his wife's DB pension, both their state pensions and the rental income. But while their rental income appears to have been stable, I don't think it can reasonably be considered as guaranteed income. And I'm mindful that Mr H's other private pension provision was already in 'at risk' assets because it was invested in a personal pension. So his DB scheme represented the only guaranteed private source of pension income he had.

But the fact Mr H said he didn't need any more guaranteed income in my view wasn't a good enough reason to justify the transfer as being in his best interests. Particularly when the primary reason given by Quilter for recommending he relinquish that guarantee was to provide flexibility – something I've already said I don't think he needed or was a true objective. I think it was simply a consequence of transferring.

Overall I don't think it was in Mr H's best interests to transfer for flexibility that I'm not persuaded he needed – and certainly not beyond that which he already had. Mr H's DB scheme provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. So with no real need for flexibility, I don't think it was in his best interests to transfer out of his DB scheme.

While I can see Mr H subsequently went on to access a cash lump sum from his pension, something Quilter says supports the suitability of the advice, this was subsequent to the advice given and was not planned or foreseen at the time. Mr H accessed the money because he could. If he'd remained in his DB scheme I think it's likely he would've sourced the money he needed from elsewhere. And just because Mr H did go on to access his pension this way does not, in my view, make unsuitable advice suitable.

Death benefits

Quilter recommended the transfer because Mr H wanted to leave a legacy for his family – he wanted the ability for them to inherit his residual fund upon his death.

While I understand the lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr H and he 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 – not as a legacy planning tool.

And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death. This was guaranteed and it escalated – it wasn't dependent on investment performance, whereas the sum remaining on death in a personal pension was. So while the CETV figure would no doubt have appeared attractive as a potential lump sum, because it was dependent on investment performance, the sum remaining on death following a transfer was always likely to be different. It would've also been reduced by any income Mr H drew in his lifetime. And so it may not have provided the legacy that Mr H may have thought it would.

I'm mindful that Mr H already had lump sum death benefits – he had an existing personal pension he could nominate his family members as beneficiaries of, if he hadn't already done so. He also had other assets including an investment property – so his family stood to inherit a not inconsiderable amount anyway.

But, if Mr H genuinely wanted to leave a legacy for his family, Quilter could've explored life insurance as an alternative. I appreciate Mr H's age and his health would've likely meant the premiums would be high. But given Mr H's sizeable household income as Quilter recorded in the advice paperwork, it seems likely he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be less expensive. But there's little evidence Quilter did so.

More broadly, I've thought about the fact Mr H had a health condition and so appears to have had concerns about his life expectancy. But Mr H not reaching his life expectancy was only a possibility - it was also possible that he would exceed this, in which case he'd need his pension to last longer. If Mr H transferred out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the death benefits, whereas the spouse's pension was guaranteed and escalated.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr H. I don't think that insurance was properly explored as an alternative. And ultimately Quilter should not have encouraged Mr H to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But Quilter wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. Although not large, he was giving up a guaranteed, risk-free and increasing income.
Crucially 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 and outweigh this. Mr H shouldn't have been advised to transfer out of the scheme just to have flexibility that I'm not persuaded he really needed and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Quilter should've advised Mr H to remain in his DB scheme.

And I also haven't seen anything to persuade me that Mr H would've insisted on transferring, against advice to remain in the DB scheme. It may well have been Mr H that instigated a review of his pension – but he was in my view an inexperienced investor who neither possessed the requisite skill, knowledge nor confidence to go against the advice he was given, particularly in complex pension matters. I think he relied solely on the advice he was given. So, if Quilter had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests and that he could still likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. I think he would've accepted that advice - I don't think he would've insisted on transferring out of the DB scheme.

So, I'm upholding the complaint as I think the advice Mr H received from Quilter was unsuitable for him.

Putting things right

A fair and reasonable outcome would be for the business to put Mr H as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would've 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.

For clarity, Mr H retired at age 66. So, because this is both what the advice paperwork recorded would likely happen and what actually happened, in this case I think fair 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 H'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 H redress as a cash lump sum payment,
- explain to Mr H 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 Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts Quilter's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr H 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 H's end of year tax position.

Redress paid to Mr H 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 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 H'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 £190,000, 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 £190,000, I may recommend that the business pays the balance.

My final decision

I uphold this complaint and require Quilter Wealth Ltd to pay Mr H the compensation amount as set out in the steps above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 January 2024.
Paul Featherstone
Ombudsman