DRN-4618349

Financial Ombudsman Service

The complaint

Mr W has complained about the advice given by Quilter Financial Services Ltd ('Quilter') to transfer his occupational defined benefit ('DB') pension scheme into a self-invested personal pension ('SIPP').

Mr W has stated the advice was unsuitable and has caused financial loss.

What happened

As part of the advice process Mr and Mrs W underwent a fact-finding exercise with Quilter to establish their financial circumstances and their future objectives. This fact-find confirmed:

- Mr W was 64, in good health, employed with a desired retirement age of 65. Mr W explained that he did not wish to work past his state retirement age.
- Mrs W was 61, in good health, employed with a retirement age of 62. Notes confirmed Mrs W wanted to retire immediately to help with their new grandchild.
- The couple had £10,000 in cash savings; a holiday residence valued at £40,000, and the family home valued at £800,000. A residential mortgage of £42,000 was in place.
- Other debts included a £8,800 loan and £42,000 car finance. The car finance was a PCP arrangement which ended in approximately four years. Notes confirmed Mr W was unlikely to make the balloon payment at the end of the arrangement and was likely to seek to purchase a new car at that time.
- Fact-find notes also confirmed Mr and Mrs W had a desire to provide a legacy to their dependents in the event of death.

The fact-find also included details of Mr and Mrs W's pensions. In addition to a full state pension of around £8,300 each these were:

- Mr W - The DB scheme with a current transfer value of £325,000.
- Mr W - current employers' scheme with a value of £8,500.
- Mr W - personal pension with a value of £24,000.
- Mrs W - A DB scheme expected to pay income of £2,303 a year from age 65.
- Mrs W - A personal pension with a value of £63,000.
- Mrs W - A group personal pension with a value of £32,000.

Mr W's attitude to risk ('ATR') assessment resulted in him being assessed as a balanced risk investor.

An early retirement quote (with retirement at the time of advice) from the DB scheme showed income of £10,773 a year, or £57,630 in cash and income of £8,664 a year was available.

A further quote from the DB scheme showing benefits at the normal retirement age of 65 showed income of £11,405 a year, or a lump sum of £60,811 with income of £9,121 a year.

Quilter documented their advice in the suitability letter dated 29 August 2017.

This reconfirmed Mr W's circumstances and detailed his balanced ATR. The letter included information on all of Mr W's pensions but explained that the only pension under consideration that the time was Mr W's DB scheme.

The benefits payable by the DB scheme were included, with Quilter explaining how much it would cost Mr W to purchase similar benefits on the open market.

The recommendation to transfer was then explained. Quilter said that the advice was based upon the increased flexibility offered by a SIPP including the option to take a higher income than would be provided by the DB scheme, the death benefits that would be provided by transferring, and higher tax-free cash which was to be used to repay debt and buy a car once the current PCP arrangement came to an end.

The pension provider recommended by Quilter was confirmed as Old Mutual Wealth ('OMW') with the transferred funds to be invested in the Cirilium Balanced portfolio.

The charges applicable to the transfer and new OMW pension were a 1.9% advice fee, an ongoing advice fee of 0.88% a year, a platform charge of 0.21% a year, and a fund charge of 1.24% a year.

Mr W agreed to the advice and the transfer was completed as recommended.

Having become aware that the advice received may not have been suitable Mr W registered his complaint with Quilter on 17 April 2023.

Quilter issued its complaint response on 12 June 2023. This did not uphold the complaint.

Quilter stated that a full fact-finding process had been completed to understand Mr W's needs, objectives, and ATR. The response said that the advice to transfer was considered the only way Mr W could meet his objectives and that the suitability letter issued at the time fully explained the guaranteed benefits which would be lost upon transfer, with the new pension and underlying investments also being deemed suitable.

Unhappy with the Quilter complaint response Mr W referred his complaint to this service in July 2023.

Our investigator looked into things and upheld the complaint.

The investigator concluded that the transfer was not in Mr W's best financial interests and would leave him worse off in retirement. Additionally, regarding the non-financial reasons given in support of the transfer our investigator stated that these were insufficient to justify the transfer given the valuable benefits given up.

Quilter did not agree, stating that had Mr W retained the DB scheme he would not have had the flexibility provided by the OMW pension, would not have been able to benefit from the higher tax-free cash available, and would not have been in a position to potentially provide

his children with benefits upon his death. Quilter also noted that Mr W had made significant withdrawals (over and above those recommended by Quilter) and said that this showed Mr W did need the additional flexibility provided by the transfer. Quilter also stated that they believed Mr W would have sought to transfer his DB pension regardless of any alternative advice they may have given to retain the scheme.

Our investigator considered the points raised by Quilter but did not believe these warranted a change in the outcome reached. As no agreement could be found, the case has been passed 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.

Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 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 largely the same reasons given by the investigator.

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

Financial viability

Quilter did not complete a transfer value analysis report showing how much Mr W's pension fund would need to grow by each year to provide the same benefits as his DB scheme (the critical yield) as he was intending to retire within twelve months of the advice being given.

Quilter did however look at the benefits which would be provided by the DB scheme and how much it would cost Mr W to purchase these on the open market.

To match £60,811 tax-free cash and the £9,121 annual income provided by the DB scheme at age 65, Quilter calculated that it would cost Mr W £485,000 plus the £60,811.

Given the transfer value offered by the scheme trustees was £325,00 the transfer value would need to be around £220,000 higher for it to be of the same value as the scheme benefits. For this reason alone, it can be shown that the transfer was likely to lead to Mr W being worse off in retirement because of the advice.

Quilter did complete and have referred to cash flow modelling within both the suitability letter and in their response to our investigator's findings. This modelling included a Retirement Options Report and Voyant cash flow modelling reports.

However, I have concerns with the modelling completed and the clarity with which it explained Mr W's position and future options.

The suitability letter stated:

" . . . using a cash flow modelling tool for calculating all your pensions including your wife Elaine's, I have an investment growth rate of 5% and included your joint expenditure. On this simplistic basis the fund would last to age 82. However, the model does not account for readjusting required income. For example, when Elaine's defined benefit pension and state pension commences so the pension fund realistically should last even longer than to age 82. We will take the most tax efficient option in regards to withdrawing the money which will be a mixture of tax free cash and income."

Whilst a growth rate of 5% has been used within the modelling, pension, and adviser charges of 1.45% and 0.88% a year would also need to be covered, with the Voyant modelling completed not including any assumptions for ongoing SIPP / advice charges and the Retirement Options Report assuming charges lower than the actual ones levied.

Also, the advice was in part justified based on the higher access to tax-free cash being used to repay debt and fund a new car purchase, however this does not seem to have been factored into the Voyant modelling, with the tax-free cash remaining invested and being used to fund income payments over time.

Mr W had a stated retirement income need of £37,000 a year. Given state pension income of £8,300 Mr W needed to withdraw around £29,000 a year for the four years until Mrs W's pensions became payable. Mrs W's guaranteed pension income equated to around £10,000 a year meaning the couple would need an additional £17,000 a year for the remainder of their lives.

The £325,000 transfer value less tax-free cash would leave around £244,000 (plus the additional £127,500 in other pension provision held by Mr and Mrs W), and factoring in the fact that significant withdrawals would be made in the early years, I have reached the same conclusion as our investigator – that the transfer exposed Mr W to the risk of exhausting his retirement provision.

I appreciate Quilter's point that the retention of the DB scheme would not have allowed Mr W to meet his retirement income goal, however the transfer simply allowed Mr W to meet short term income needs whilst placing his long-term financial security in retirement at risk.

Overall, the documentation on file shows that there was likely to be insufficient retirement

provision in place to allow Mr W to realistically meet his £37,000 a year retirement income objective. Whilst Quilter did make Mr W aware that significant withdrawals in the early years would increase the possibility of the entire fund being exhausted, the provision of such information does not make the transfer advice suitable.

Also, as Quilter will know, past performance is no guarantee for future performance and so I consider the annuity comparison to be a more realistic comparison of the value of the DB scheme in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

The adviser should have had a detailed discussion with Mr W about his income needs in relation to the pension provision in place and given Mr W the opportunity to readjust his future budgeting to ensure the pension provision would have lasted throughout retirement.

With concerns over the cash flow modelling, and having concluded the annuity comparisons completed by Quilter show the transfer was likely not in Mr W's financial interests, I have gone on to consider the non-financial reasons given in support of the transfer.

Flexibility of income in retirement

Flexibility to access funds as and when desired is an attractive option for many pension holders and the transfer did indeed allow Mr W to access more of his capital

As I have explained above, I accept that Mr W's desired retirement income of £37,000 could not have been met by retaining the DB scheme. However, again as detailed above, whilst the transfer allowed Mr W to access more income early in his retirement than would have been provided by the DB scheme, this came at a long-term cost and raised the risks of Mr W exhausting his pension provision.

I have considered the fact that Mr W has gone on to access a significant amount of the transferred pension monies, and that this has been more than the withdrawal amounts recommended by Quilter. Quilter have stated that these increased withdrawals prove Mr W needed flexible access however I do not consider this to be a safe conclusion.

Once Quilter's advice enabled the transfer, Mr W had full access to the £325,000 transfer value (subject to taxation) and as such it is just as likely this access altered Mr W's plans and resulted in spending levels that had not previously been considered.

Overall, I consider the flexible access provided by the transfer came at a substantial future risk to Mr W with the ability to access increased levels of capital not sufficient to mitigate this issue.

Benefits payable on death

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 Mr W however the primary purpose of a pension is to provide income in retirement.

Given Mr W's desire income and plans for any available tax-free cash it is unclear how much of the pension fund would be remaining to provide any inheritance. This is especially the case given both Mr and Mrs W were recorded as being in good health and this pension represented the most significant proportion of their retirement provision.

Furthermore, if Mr W genuinely wanted to leave a legacy for his children, which didn't

depend on investment returns or how much of his pension fund remained on his death, I think Quilter should've instead explored life insurance.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr W. And I don't think that insurance was properly explored as an alternative.

Higher tax-free cash

The file does note clearly that Mr W would like to make use of the higher tax-free cash that a transfer would allow. This was to be used to repay outstanding liabilities and provide a surplus lump sum that would allow a new car to be purchased when the current finance agreement ended in around four years' time.

I accept that the tax-free cash available after transfer was higher than that which would have been provided by the DB scheme had it been retained. The £325,000 transfer would facilitate £81,250 with the DB scheme providing £60,811.

However, the lump sum available from the DB scheme would still have allowed Mr W to repay his mortgage and loan, leaving only the car finance outstanding. Whilst the transfer would have allowed Mr W to retain a higher cash balance after the mortgage and loan were repaid to fund a new car purchase in around four years' time, there is little detail about how much Mr W expected to pay for a new car or whether this expense could have been met using the tax-free cash available from the other pension pots in place.

Given the cash provided by the DB scheme would have allowed Mr W to repay the mortgage / loan, and benefit from the associated reduction in his outgoings, I do not consider the higher surplus tax-free cash provided by the transfer to be a strong justification for Quilter's advice.

Would Mr W have transferred anyway

Whilst I have concluded that suitable advice would have been to recommend the retention of the DB scheme, before I can hold Quilter responsible for any losses Mr W may have incurred, I must establish if Mr W would have followed alternative advice to keep the DB scheme had Quilter provided it.

I note that Mr W had already requested a transfer value before engaging with Quilter and that Mr W's short term income needs were in excess of the income which would have been provided by the DB scheme. I have also considered the fact that Mr W has acted outside of Quilter's advice in relation to withdrawal levels since the transfer was completed.

However, I do not believe that this is sufficient evidence to conclude that Mr W would have rejected advice to retain the DB scheme, had it been given.

Summary

Overall, I have reached the same outcome as our investigator and for broadly the same reasons.

The annuity quotes completed at the time of advice show the true value of the DB benefits being given up with the non-financial reasons given in support of the transfer considered insufficient to justify the transfer.

Whilst I accept that Mr W could not meet his short-term income goals by retaining the DB

scheme the transfer placed him into a position where he risked exhausting his pension provision entirely. In this case more detailed analysis and discussions should have taken place in order to try and manage Mr W's expectations and re-evaluate what level of ongoing retirement income was achievable given the pension provision in place.

Whilst the transfer did provide access to more tax-free cash, Mr W could still have repaid his mortgage and loan using the lump sum payable from the DB scheme, with a new car purchase some four years in future.

I additionally accept that the retention of the DB scheme would not provide any benefits to Mr W's children should both Mr and Mrs W pass away, however, have concluded that the primary aim of the pension was to provide for Mr W's retirement, with other options (such as life insurance) not appropriately considered.

As such I am upholding this complaint.

I have not considered the suitability of the OMW pension or the underlying Cirilium investment fund as I have concluded the funds should have been retained within the DB scheme.

The redress instructions below reflect this outcome.

Putting things right

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

Quilter should 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.

For clarity, Mr W planned to retire at age 65. So, compensation should be based on Mr W taking these 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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W's acceptance.

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

- calculate and offer Mr W redress as a cash lump sum payment.
- explain to Mr W before starting the redress calculation that:
  - 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 the redress prudently is to use it to augment the current defined contribution pension.
- offer to calculate how much of any redress Mr W receives could be used to augment the pension rather than receiving it all as a cash lump sum.
- If Mr W accepts Quilter's offer to calculate how much of the redress could be augmented,

request the necessary information, and not charge Mr W for the calculation, even if he ultimately decides not to have any of the redress augmented, and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid directly to Mr W 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 allow for income tax that would otherwise have been paid. Mr W's likely income tax rate in retirement is presumed to be 20%. However, if Mr W would have been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

My final decision

In line with the rationale above I am upholding this complaint and require Quilter Financial Services Ltd to calculate and pay redress in line with the methodology outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 July 2024.

John Rogowski
Ombudsman