DRN-4643911

The complaint

Mr B complains about the outcome of the review carried out by Quilter Financial Services Ltd ("Quilter") in connection with the FCA's consumer redress scheme for the British Steel Pension Scheme ("BSPS") – to make my findings easier to follow, I'll refer to this as the "redress scheme".

What happened

The sequence of events isn't in dispute, so I've only set out a brief summary of what happened.

Mr B had built up 11 years and 8 months' pensionable service in the BSPS during two separate periods of service between April 1978 and October 1986, and July 1992 and September 1995. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. By June 2017, Mr B's total revalued annual pension in respect of both periods of service was £4,615.42. The BSPS issued to Mr B two separate cash equivalent transfer values in respect of both periods of service – the total transfer value available was £105,382.81.

In July 2017, an Appointed Representative of Quilter, Tag Wealth Management, advised Mr B to transfer the value of £105,382.81 to an existing self-invested personal pension ("SIPP") provided by LV. The SIPP funds were then to be managed on a discretionary basis by Rathbones. Mr B's circumstances at the time can be summarised as follows:

- He was aged 56, married and in good health. He had adult children who weren't financially dependent on him. Details about his wife including her age, state of health, employment status and retirement provision weren't recorded;

- He was employed by an engineering company and paid gross annual income of around £130,000 but was due to be made redundant. His pension provision comprised the following: (1) entitlement to a full state pension from age 67; (2) his preserved DB pension in the BSPS which had a transfer value of £105,382.81; (3) a SIPP valued at around £938,000 which started in June 2017 to receive a transfer value from another DB pension scheme provided by this then employer;

- His assets comprised his main residence valued at £380,000, a second property valued at £160,000 (which he intended to sell within the next 10 years), cash savings of about £125,000 and other equity-based investments valued at about £15,000. In addition he was expecting to receive a redundancy payment of £70,000 after tax in the near future;

- He didn't have any debts or liabilities;

- His basic cost of living was £10,800 per year and his lifestyle expenditure was £9,600 per year, making his total non-discretionary expenditure around £20,400 per year;

- He had significant investment experience both in a personal and professional capacity including acting as a trustee of his then employer's DB pension scheme;

- His risk profile was initially determined to be *'Adventurous'* but he felt uncomfortable investing the majority of his retirement provision on a high-risk basis and so it was agreed to invest his SIPP in line with a *'Moderate'* risk profile;

- His objectives were recorded as:

  "1. Extract elevated CETV whilst available as this will facilitate early retirement (client is being made redundant)

  2. Extract from fund in a tax-efficient manner, using liquid funds to supplement income

  3. Maximise death benefits

  4. Retire immediately without having to realise significant drop in the value of the DB income"

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BSPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme are set out in CONRED 4 Annex 21. Section 7.6G makes reference to the FCA's starting assumption in COBS 19.1.6G that firms should assume the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

The redress scheme rules require firms to identify scheme cases following certain criteria. Once identified, firms need to review the advice they gave to former BSPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms must use the FCA's BSPS Defined Benefit Advice Assessment Tool ("DBAAT"). The review can lead to one of two outcomes:

- The advice is rated as "suitable" and the case is closed; or

- The advice is rated as "unsuitable" – if so, the case progresses to a calculation and the payment of redress if it's shown the consumer suffered a financial loss

If the consumer disagrees with the outcome, they can ask the Financial Ombudsman Service ("FOS") to look at whether the review was carried out correctly in line with the redress scheme rules.

Mr B's case

Quilter completed its review of the advice it gave to Mr B. The DBAAT generated a suggested suitability rating of "potentially suitable" based on Quilter's answers. It finalised the rating as "suitable" and closed Mr B's case.

Quilter confirmed the review outcome to Mr B and told him that it wouldn't be taking any further action.

FOS's assessment

Mr B disagreed with Quilter's assessment of his case. So he referred the matter to us.

One of our investigators recommended that this complaint be upheld because she had concerns Quilter hadn't followed the FCA's redress scheme rules. She explained the reasons why in her assessment. To put things right, our investigator recommended that Quilter amend the review outcome on Mr B's case under the redress scheme to "unsuitable" and then go on to calculate and pay any redress due to him in line with the redress scheme rules.

Quilter acknowledged receipt of our investigator's assessment. It briefly explained why it remained satisfied that it had provided a suitable recommendation to transfer. It also thought that its answers on the DBAAT were correct and supported its view that the advice was suitable. It requested time to provide a more detailed response but didn't provide any further comments or evidence.

This complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

Scope of this final decision

I'd like to clarify to the parties that the scope of this final decision is limited to evaluating the adequacy of Quilter's assessment of Mr B's case under the redress scheme.

I note that in its most recent correspondence with this service in February 2024, Quilter stated it intended to provide a more detailed response to our investigator's assessment. As at the date of this decision, this service hasn't received any further comments or evidence from Quilter. I'm satisfied that it has had sufficient time to respond. So, to avoid any further delay, I think it's fair and reasonable to proceed and issue my decision based on the available evidence.

The FCA's BSPS DBAAT

As noted above, the redress scheme rules require firms to use the FCA's BSPS DBAAT. In summary, the tool helps firms assess the suitability of pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 examples of unsuitability are present. For each example, the firm, in its role as assessor, should simply answer "yes" or "no" to indicate whether or not the example is present considering the consumer's circumstances and FCA guidance at the time of the advice.

If an example is present on the consumer's file it may indicate failure to comply with the FCA's suitability requirements for pension transfer advice. Once all 12 suitability questions are answered, the tool suggests a rating. If one or more examples are present, the tool will suggest that the advice is "potentially unsuitable" and the pension transfer isn't likely to be in the consumer's best interests. If no examples are present, the tool will suggest that the advice is "potentially suitable". But the tool only provides a suggested rating. It's for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain its reasoning for the final judgment.

Quilter's review of the advice it gave Mr B

In its role as assessor, Quilter answered that none of the 12 examples of unsuitability applied to Mr B's case in respect of both periods of service in the BSPS. This generated a suggested rating of "potentially suitable". Quilter finalised the advice rating as "suitable" based on the following rationale:

> *"We consider the pension transfer advice to be suitable for the following reasons:*
>
> *The client's basic annual cost of living was £10,800. Although he wanted a lot more to meet his lifestyle expenses, we consider these were not essential and his annual lifestyle expenses before retirement were £9,600 (total annual expenditure £20,400). As the client was aged 56 and due to receive an annual state pension of £8,020 from the age of 67, majority of his income need would have been met by the state pension.*
>
> *The client had £938,569 in his LV money purchase pension, £125,000 in deposit-based savings, £20,000 in shares and £5,000 in a VCT. His primary residence had a value of £380,000 and his secondary residence had a value of £160,000, both unencumbered and he had no other liabilities. Therefore, the defined benefit schemes being advised on were surplus to requirements and we consider that the client can bear the risks of transfer as required by COBS 9.2.1R.*
>
> *The client's objectives included wanting to have flexibility and a key was to be able to leave a generous fund to his family on his death to provide a legacy for his wife and adult children.*
>
> *Therefore, we consider the client's objectives were reasonable and achievable. Taking all the factors into account, we conclude that the advice to transfer both schemes is suitable, in line with the requirements of COBS 9.2.1R(1)(a), the overarching requirement for the firm to take reasonable steps to ensure suitability."*

I've reviewed the answers on the completed DBAAT. For largely the same reasons, I agree with our investigator's view that Quilter didn't follow the redress scheme rules when it assessed Mr B's case. In my view, I think Quilter, in its role as assessor, should've answered "yes" to the following examples of unsuitability based on the redress scheme instructions in CONRED 4 Annex 21:

Example 2: The aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under this question the assessor is required to consider whether the pension transfer was required to achieve Mr B's death benefit objective and – if so – whether he was able to bear the risk of the transfer. Under reference 10.5R (3), the assessor is required to identify whether there was an alternative way to meet the objective without giving up comparator scheme benefits.

It was recorded that one of Mr B's objectives was to *"maximise death benefits"* and that he wanted *"to leave a generous fund to your family upon your death to provide a legacy for your wife and adult children".* So it's not disputed that passing on the value of his BSPS pension upon his death was important to Mr B. However, the question here is whether there were alternative options and if the consumer could bear the risk of transfer to achieve the objective.

In my view, there's insufficient contemporaneous evidence that any or a combination of the following alternative ways to meet the death benefit objective were adequately considered and discounted by Quilter to meet the objective:

- Using level or decreasing term life cover to meet the same objective of leaving a lump sum on death. Mr B was then age 56 and in good health meaning the cost of life cover may have been inexpensive based on a sum assured that mirrored the transfer value and for an appropriate term; or

- using the value of any death benefits available under Mr B's existing SIPP then valued at around £938,000; or

- using the value of Mr B's other non-pension assets such as his second property valued at £160,000 (which he intended to sell within the next 10 years), cash savings of about £125,000 or redundancy payment of £70,000 after tax.

I think it's clear that lower risk suitable alternative options were available to achieve Mr B's death benefit objective. But it's my view that Quilter failed to adequately consider these.

With reference to 10.5R (4), the assessor is required to decide whether the firm has a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on death met the consumer's investment objectives and if the consumer was able to financially bear any transfer-related risks.

Mr B was aged 56 and in good health at the time. So he could reasonably expect to live well into his 80s based on average life expectancy. It's fair to say that immediately following the transfer to the SIPP and for the period until Mr B started to withdraw retirement benefits, the death benefits available would be significant (subject to investment performance) until such time as he accessed and depleted the fund value. But once he started withdrawing money from the SIPP to meet his income and lump sum needs, it would mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. This doesn't appear to have been considered by Quilter and explained to Mr B.

The TVAS report showed that based on taking a similar level of benefits in retirement as the BSPS, the SIPP fund value would be exhausted as early as age 85 if taken from age 65 assuming a medium rate of return. The TVAS report clearly shows – specifically in respect of his BSPS benefits – the likelihood of Mr B exhausting his pension savings during his lifetime, meaning there will be minimal death benefits available based on his average life expectancy. Taking into account the above, it's my view that Quilter didn't have a reasonable basis for believing that the recommendation met his death benefit objective.

Mr B had no financial dependents or debts. The value of his existing SIPP and other non-pension assets were well in excess of £1m and available to his nominated beneficiaries. So it's questionable whether there was a clearly defined advantage in relinquishing valuable benefit guarantees under the BSPS to provide additional death benefits over and above what was already available from other sources.

Even though the objective was to leave a legacy for Mr B's wife, details about her age, state of health, employment status and retirement provision weren't recorded. Therefore it's difficult to draw any inferences on whether the existing assets would meet the need and, indeed, whether the transfer of BSPS benefits was necessary. This wasn't addressed by the assessor when completing the DBAAT.

Under reference 10.6E, the assessor is directed to answer “yes” to Example 2 when the available evidence demonstrates that:

- (2) a lower risk suitable alternative was available to achieve this objective; and/or
- (3) it was likely that the consumer would exhaust their pension savings during their lifetime and so there will be minimal death benefits available; and/or
- (4) the firm has not obtained the necessary information in both of the Information Areas 5 and 6 of the Information Section and so it is not possible to complete the assessment in 10.4R because the firm has not demonstrated that it has a reasonable basis for believing that the consumer is able to bear the risk of the pension transfer to achieve this objective.

Given the above points, it’s my opinion that the assessor should’ve answered “yes” to Example 2.

Example 3: The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under reference 10.9E, the assessor is required to answer “yes” to this question where the following apply:

- (2) there is an alternative way for the consumer to meet their objectives using other assets instead of transferring their BSPS scheme.

It was recorded that Mr B wanted to transfer so that he could, *“Extract from fund in a tax-efficient manner, using liquid funds to supplement income”.* In other words, take his benefits flexibly regarding how and when he withdrew his pension benefits.

Flexibility of income might sound attractive, but I cannot see that Mr B had any concrete need for it *specifically* in connection with his DB pension in the BSPS. The evidence indicates that Mr B required a minimum level of core income in retirement (covered in Example 6 below). And so the provision of a guaranteed and escalating income stream from the BSPS is likely to have been something he valued when he retired. If he did require flexibility, there were alternative, lower risk options available:

- using the value of Mr B’s existing SIPP then valued at £938,000 which had materialised as a result of Quilter advising him to relinquish another DB pension; or
- using Mr B’s second property then valued at £160,000 which he intended to sell in the future to release capital; or
- using his cash savings of about £125,000, other equity-based investments valued at about £15,000 or his expected redundancy payment of £70,000 after tax.

So it’s clear that Mr B already had access to substantial, liquid funds that could’ve been used to meet any flexible income needs – this would’ve enabled him to retain his BSPS pension so that the guaranteed and escalating income it provided contributed towards his core retirement income needs. I don’t believe that the transfer from the BSPS to the SIPP provided any clearly defined advantage over and above the flexibility that already existed from other sources. This wasn’t addressed by the assessor when completing the DBAAT.

Overall, it's my view that Quilter failed to adequately consider and discount alternative, lower risk options to achieve any flexible needs rather than relinquishing a guaranteed lifetime income under the BSPS.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 3.

Example 6: the consumer wants to retire early but can meet their objective(s) in the comparator scheme(s)

Under this question the assessor is required to consider whether the pension transfer was needed to achieve Mr B's early retirement objective. Under reference 10.19R (4), the assessor is required to identify whether there was an alternative way to meet the objective without giving up comparator scheme benefits.

It was recorded that Mr B wanted to, *"Retire immediately without having to realise significant drop in the value of the DB income".* In the suitability report, Quilter stated that if benefits were taken early under the BSPS that these would be reduced. In my view, Quilter portrayed the reduction applied to a DB pension paid earlier than age 65 as a penalty. But it wasn't a penalty. Rather, the reduction was applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally. And so, based on what Quilter stated, it's likely Mr B incorrectly believed he would be treated unfairly if he took benefits early under the BSPS.

Quilter also portrayed the SIPP option as allowing for early retirement earlier than age 65 without penalty. I think this was misleading. The reality was of course that the SIPP would've had less time to grow if accessed earlier than age 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr B so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65. So I think he made the decision to transfer from an uninformed position in this regard.

At the time of the advice, Mr B's basic cost of living was £10,800 per year and his lifestyle expenditure was £9,600, making his total non-discretionary expenditure as around £20,400 per year. In the suitability report, Quilter recorded that Mr B's retirement income need was identified as £52,800. It was noted that he would withdraw £24,000 per year from his SIPP to age 60 and then increasing his withdrawals to £52,800 per year. It's not explained in the suitability report why Mr B's retirement income need was significantly higher than his then expenditure. I note that in the DBAAT, the assessor appears to have disregarded the reference to £52,800 and concluded that Mr B's basic income need was around £11,000, the majority of which would be met by his state pension from age 67.

Mr B's existing SIPP and other non-pension assets were well in excess of £1m. So I think it's fair to say that his basic income need of around £11,000 could've comfortably been met by an alternative way without giving up the comparator scheme benefits as set out in 10.19R (4). In other words, Mr B could've left his DB pension in the BSPS until the normal retirement age of 65 and – in the meantime – relied upon other existing assets to meet his retirement income need. And then take unreduced benefits from the BSPS at age 65. This was a lower risk suitable alternative option to achieve the objective rather than transferring to the SIPP which exposed Mr B to a higher level of risk – the transfer to the SIPP led to the investment, inflation and longevity risks associated with providing the pension income transferring from the BSPS to Mr B for no clearly defined benefit. Overall, I cannot see why that was a suitable outcome for Mr B when his income objective could be met by a lower risk suitable alternative option that already existed.

Under reference 10.20E, the assessor is required to answer "yes" to this question where the following apply:

- (3) a lower risk suitable alternative was available to achieve this objective;

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 6.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

Under reference 10.27E (1) (a), the assessor is required to answer "yes" to this question when the firm hasn't demonstrated that the transfer analysis supports the recommendation to transfer, for example because: (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the consumer's attitude to investment risk; or (ii) the capitalised value of death benefits (where this is a priority objective) is significantly higher under the comparator scheme(s) than that available from the proposed arrangement.

In Mr B's case, it was noted that he planned to *"Retire immediately without having to realise significant drop in the value of the DB income".* If that was the case then I would've expected Quilter to calculate the critical yield figure at his planned retirement age to enable Mr B to make an informed decision. But it didn't. Rather, it calculated the critical yield at ages 60 and 65. And then, in its suitability report, it only made reference to the critical yield at age 65. I think this was a material oversight because the critical yield figure at younger ages would've been greater than at age 65 due to the shorter investment timeframe and impact of the initial advice charge on the required growth rate. This meant that Mr B wasn't provided accurate information about the level of investment growth required in the SIPP to match the scheme pension if he took benefits earlier than age 65.

The critical yield figures at age 60 (the closest available to Mr B's target retirement age of 56) ranged between 20.24% and 27.29% if all benefits were taken as a pension (I've focused on this because maximising the tax-free lump sum wasn't stated as one of Mr B's objectives in transferring to the SIPP). Quilter recommended that Mr B invest the value of his SIPP into a discretionary portfolio that aligned with a *'Moderate'* risk profile. At the time of the advice, the regulator's upper projection rate was 8%, the middle projection rate 5%, and the lower projection rate 2%. So taking into account Mr B's *'Moderate'* risk profile and investment time frame, It's my view that the critical yield figures ranging between 20.24% and 27.29% were likely to be unobtainable.

Furthermore, according to the TVAS reports for both periods of service, the capitalised value of death benefits under the BSPS were higher than the SIPP for the first two years. And as noted above, the TVAS report showed that based on taking a similar level of benefits in retirement as the BSPS, the SIPP fund value would be exhausted as early as age 85 if taken from age 65 assuming a medium rate of return. So in addition to the starting value of the death benefits being reduced by the transfer, they could be expected to reduce further throughout his retirement and potentially reduce to nil by the time of death. So it wasn't true to say that the transfer would achieve Mr B's objective of leaving a legacy for his wife and children as there was a risk, as shown by the transfer analysis, that there would be no fund to leave, particularly if he lived beyond average life expectancy.

I think these factors showed that it was likely Mr B would be financially worse off as a result of the pension transfer.

Given the above points, it's my opinion that the assessor should've answered "yes" to

Example 9, particularly given my view that Mr B didn't need to transfer to achieve his death benefit objective (Example 2), didn't require flexibility from these benefits (Example 3) and his early retirement income need could be met by leaving benefits in the BSPS (Example 6).

Conclusion

Based on the above considerations, it's my opinion that Quilter failed to follow the FCA's redress scheme rules when it assessed Mr B's case. Specifically, for the reasons explained above, it's my view that had it followed the guidance correctly, it would've answered "yes" to unsuitability examples 2, 3, 6 and 9 in the DBAAT. The tool would've then generated a suggested rating of "potentially unsuitable". Considering the evidence in the round, I cannot see any compelling reason why a suggested rating of "potentially unsuitable" should be overturned to "suitable".

Causation

I've considered the points under reference 11.7G (1) to (9) in the Causation Section under the redress scheme rules to decide whether I think it's more likely than not that Quilter's non-compliant conduct was the effective cause of Mr B's decision to transfer. This was a complex transaction involving many factors. In my view, Mr B was reliant on Quilter, as the professional party in the transaction, to take those factors into account and provide balanced and suitable advice regardless of his own views.

Overall, it's my view that Quilter's conduct is more likely than not to have caused Mr B to transfer to the SIPP when this wasn't clearly in his best interests. Given Mr B's reliance on Quilter to provide suitable advice, I think it's unlikely he would've still decided to transfer to the SIPP against its advice had it advised him to retain his benefits in the BSPS instead.

Putting things right

Quilter must do the following:

1. Calculate and pay any redress due to Mr B in line with the redress scheme rules; and
2. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr B's case.

My final decision

I uphold this complaint. I direct Quilter Financial Services Ltd to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 July 2024.
Clint Penfold
Ombudsman