Financial Ombudsman Service

The complaint

Mr B is represented. He has two complaints in this service, to which Quilter Financial Services Ltd ('Quilter') is the respondent. The present complaint relates to pension transfer advice given to him in 2018. The other is about pension transfer advice given to him in 2020. This decision is only about the 2018 advice.

An Appointed Representative of Quilter advised Mr B, in 2018, to transfer his Phoenix Life ('PL') Personal Pension ('PP') to a Liverpool Victoria ('LV=') Self-Invested Personal Pension ('SIPP').

His representative says the advice was unsuitable, because the AR did not properly assess his investor profile (so the advice on the SIPP and its underlying investment mismatched his objective, investment experience, risk appetite and capacity for loss); the AR's advice was not independent; Mr B did not need the SIPP and its high costs were not properly considered (or explained to him); the recommended underlying investment was non-standard, this (including its risks) was not explained to him; and he was not told there were no guarantees with the investment.

Quilter disputes the complaint.

What happened

One of our investigators looked into the complaint and concluded that it should not be upheld. He made the following main findings:

- Mr B met the AR in April 2018 and discussed improving growth in his pension arrangements over the medium to long term, based on the balanced risk profile he was assessed to have specifically for his pension arrangements.

- He was 64 years old at the time, he had just become retired (following a redundancy), he had no debts/liabilities, his redundancy payment/emergency fund was to cover his income needs until his state pension payments began, and he did not want income from his pension at the time. He had no plans to access the pension until he reached age 75. He wanted an investment term of 10 years, ongoing advice throughout and the option of a Flexi-Access Drawdown ('FAD') facility at the end of the investment term.

- The PP's Transfer Value ('TV') was £26,184.83 at the time of advice; the initial advice fee was 1.51% of the TV and the annual fee for ongoing service was 0.5% of the pension's value; no guarantees or protected benefits were lost in the transfer; there was a loyalty bonus (increased allocation rates linked to monthly and annual contributions); but Mr B was prepared to lose this, and he had no intention to make any further contributions to the pension.

- The SIPP was recommended because it allowed the cost of ongoing advice to be paid from within it, the ongoing service allowed annual reviews of his circumstances, Mr B would gain from diversification and flexibility in the SIPP's underlying multi asset

class fund, and he would benefit from its cheaper charges. A stakeholder pension was considered and discounted because it was viewed as having a limited range of available funds.

- The recommendation was to invest the SIPP completely in a Balanced Passive Portfolio ('BPP'), which was deemed to match Mr B's balanced risk profile.

- The SIPP was a low cost type of SIPP, which was suitable for the size/TV of Mr B's PP. His representative says he was inexperienced in investments. However, the SIPP recommendation included an ongoing advice service recommendation, which stood to mitigate any lack of investment knowledge and experience on his part. Other options, including a stakeholder pension and leaving the PP as it was (and altering it from within), were considered and discounted with reasons. Recommendation of LV= as the provider arose from the AR's restricted advice service, which limited the product providers it could recommend and which was explained to Mr B in the suitability report.

- Evidence of Mr B's attitude to risk assessment at the time, and of the risk questionnaire he completed, supports the balanced profile used in the advice. The BPP held 46% in equities, 53.8% in fixed income securities/bonds and 0.2% in cash, and its Trustnet factsheet gave it a risk score of 54 out of 150 (with scores above 100 being for more volatile funds). This matched his balanced profile. The BPP also does not appear to have held any non-standard investments. No guarantees were given with this recommendation and the suitability report gave notice of that to Mr B.

- In terms of his finances, he did not need additional income (due to the income he had at the time, the emergency fund, impending state pension and evidence from across the two complaints showing that a couple more sources of income were due to exist around a year after the transfer/investment).

- In terms of costs, the adviser related charges made the recommendation more expensive than Mr B's previous arrangement. However, ongoing advice was an objective for him, and the additional cost (for this purpose) was comparatively reasonable.

- The loss of the loyalty bonus was inconsequential. It was linked to contributions and Mr B did not intend to make any further pension contributions.

- For the above reasons, the 2018 recommendation was not unsuitable.

The investigator invited comments from both parties. Mr B's representative asked for additional time to make submissions. The investigator granted the request, but no submissions were received. Around six weeks thereafter, the complaint was referred to an Ombudsman – to me – and I noted that the submissions remained outstanding. The investigator reminded Mr B's representative about this, and it was given additional time to respond with the submissions, but, to date, they do not appear to have been received.

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.

Having done so I have reached the same conclusion as the investigator for reasons broadly the same as those he gave.

It is in both parties' interests for a decision on the complaint to be progressed without undue delays. I am satisfied that Mr B's case has been well presented by his representative and that both of them were given the opportunity to exhaust their arguments and submissions prior to the investigator's view, which they did. I also consider that they have been given ample opportunity and extended time to respond to the view. It is not clear why they have not sent any such response, despite the investigator's request and the recent reminder he issued. However, there is enough, in the complaint files, from both parties for me to proceed with this decision.

Context for the AR's advice to Mr B

The regulator's Handbook includes Principles for Businesses that the AR would/should have been familiar with in 2018.

Principles 2, 3 and 6, in broad terms, require firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. Case law set by Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) confirms that The Principles are ever present requirements that firms must comply with.

Furthermore, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the client's best interests rule which, as the title suggests, requires firms to uphold their clients' best interests. There are also rules in COBS about suitability of advice that firms must follow in giving regulated advice – in broad terms, these require firms to properly assess a client's profile (mainly, his/her objective(s), attitude to risk ('ATR'), investment experience and affordability status (including capacity for loss)), to give advice suitable for the client and his/her profile, and to ensure the client is informed of the reasons for the advice and details of any recommendation (including associated risks).

The regulator also published a checklist in 2009 for firms giving pension switching advice, which highlighted four key issues they are expected to consider – charges, existing benefits, risk and ongoing management.

The above broadly sums up the regulatory context in which the AR's advice to Mr B should have been approached.

The PL PP

Its TV was £26,184.83. It was a money purchase/defined contribution scheme that began in 1990, its selected retirement date was in 2019, and it had no transfer or early retirement charges/penalty. In this respect, there was no prospect of Mr B being penalised for the pension transfer.

The PP did not have a Guaranteed Annuity Rate ('GAR'), but it had enhanced fund unit allocations linked to large contributions and a loyalty bonus (that also resulted in increased unit allocations) that was linked to the tenth (and subsequent) annual contribution and to monthly contributions after 108 months.

There is evidence in the report that Mr B did not intend to make any further pension contributions at the time or in the future (unless he had disposable funds to do so).

He had an emergency fund of £15,000, but given its purpose – to be on standby to address *emergency* situations – that does not appear to have been available for contributions.

Furthermore, he was already using (or intended to us) part of this fund to supplement his income pending his state pension.

The report noted that he required annual retirement income of around £10,000, and that the best estimate of his total annual income in retirement (including all relevant sources) could be around £11,000. The majority of this was his annual state pension (estimated at around £8,500), once that began. However, the estimated total income was not guaranteed and nothing in the report sets out a basis on which he was likely to have a level of disposable income to use to make future pension contributions.

On balance, and for the above reasons, I consider that no future pension contributions from Mr B were foreseeable, so the prospect of losing the contributions based enhanced allocations and loyalty bonus in the transfer was probably without consequence.

The PP did not have a FAD facility and it did not have any enhanced tax-free cash benefit. It was invested in a managed (accumulation type) fund, and the Annual Management Charge ('AMC') for the policy was 1.21%. The managed fund's 2018 factsheet shows that it had around 49% UK equities content, a total of around 18% in US and European equities, a total of around 8% in Japanese/Asian/Emerging Countries equities, around 10% in fixed interest securities and bonds, and around 5% each in property, other investments and cash.

I have seen evidence from PL at the time of the recommendation, with regards to the funds that could be accessed under the PP. There were 10 internal PL funds to choose from, and a total of 14 external funds that were also available. Across them all were options for managed funds (one of which the PP was invested in), for funds focused on equities, fixed interest securities, income and growth – to give some examples – and for UK, international, Asian, United States and European funds. Given Mr B's inexperience in investments, I would not imagine he was sophisticated enough to need a significantly wider 'funds menu' than this, so a wider availability of funds might not have been the driver, or priority, in his objectives.

The SIPP and Ongoing Advice Recommendation

The 2018 fact-find document was completed by the AR. The document says it was given to Mr B in April that year and that a fact-find meeting was held with him on the same date, but it is unsigned where his signature is called for. Nevertheless, its contents appear to have informed the AR's 2018 suitability report that was issued to Mr B in June. He was invited to comment on the report if he needed to, and he does not appear to have highlighted any factual errors at the time, so I consider the report (and its contents) to be reliable evidence. Where the fact-find document is consistent with the report, the same applies to it.

The report's introduction gave Mr B early and clear notice that the AR could "… *only offer advice on limited types of products, or products from a limited number of companies*", so I am satisfied that he was made fully aware of the restricted or limited nature of the AR's service and advice. He did not need to proceed if he was dissatisfied with that and/or if he wanted independent and whole-of-market based advice, so the implication arising from the fact that he proceeded with the AR and its recommendation is that he made the informed decision to do so. As such, and on balance, I consider that the part of the complaint about the AR's non-independent service falls away.

The fact-find document and the suitability report confirm that Mr B's objectives were to have his pension arrangement reviewed, to look into reducing the combined effect of wrapper and fund charges and to have access to a wide range of funds to invest in – and that he saw the benefit of having flexible options at retirement.

Both documents appear to show that the notion of ongoing advice was initiated by the AR as a beneficial service and that Mr B liked the idea and agreed to it. In terms of costs, I will address this aspect slightly differently in my comparison between the cost of his previous arrangement and of the SIPP proposal. His desire to reduce charges related to the combined effect of charges for the wrapper and invested fund, so this will define my comparison and finding on suitability of the recommendation specifically for the cost reduction 'objective'. Hence the reason why I will address the cost of advice (both initial and ongoing) as an additional matter of suitability.

The cost details are as follows –

- Initial transfer advice fee – 1.51% of the TV (equivalent to an annual cost of between 0.14% to 0.15% if spread over the 10 to 11 years period between the point of advice and when Mr B turned aged 75 (and planned to cash in the SIPP)).

- Ongoing advice fee – 0.5% (per year) of the SIPP's value.

- Annual Service Charge for the SIPP – 0.25%.

- Annual management charge for the BPP – 0.60%.

- Total annual fees – 0.85% (without the cost of initial and ongoing advice); 1.5% (with the cost of initial and ongoing advice)

The recommended solution achieved Mr B's desire to reduce wrapper and fund charges. Whereas he previously paid a total of 1.21% per year for both in the PP, the SIPP's wrapper and fund charges came to a total of 0.85% per year. This, without yet considering the cost of advice, also met the regulator's checklist expectation about ensuring a transfer was not made to a more expensive pension solution without good reason. In his case, the SIPP transfer was a cheaper pension solution.

However, the *overall* solution cost him more, because the initial advice he received from the AR had to be paid for and because of the ongoing advice service (and the fee associated with that). The former was unavoidable, given that Mr B proceeded with the AR's recommendation. On its own, the annual equivalent of the initial advice fee in addition to the wrapper and fund charges amounted to 1%, which was still cheaper than the 1.21% that applied in the PP. Therefore, it is the ongoing advice annual fee that caused the total cost (1.5%) to exceed what he was paying in his previous arrangement (1.21%).

As noted above, Mr B and the AR appear to have shared common ground on the benefits of the ongoing advice service. Furthermore, and as the submissions for his complaint affirm, he was relatively inexperienced in investments. Whilst the SIPP solution reduced costs for him, it also created a need for self-management of the pension and its investment. Another of the regulator's checklist expectations becomes relevant here, because this need for *ongoing management* had to be addressed. This is probably why the AR recommended the ongoing advice service.

The BPP was a 'passive' portfolio, which meant, in broad terms, it was designed to follow the average performance of the relevant market(s) and it required minimal external active management. That sort of approach suited an inexperienced profile like Mr B's because it was not as complex as more sophisticated alternatives can be. Such portfolios also usually had lower costs, as was the case for him, and, also in his case, it made the idea of ongoing external management somewhat redundant.

Whilst its passive nature was suitable for him, for the above reasons, the BPP still had to be monitored over time to ensure it continued to serve his best interests and it continued to be aligned with his circumstances. Given his inexperience in investments, a professional ongoing advisory service that covered this purpose, provided by a regulated firm, was a reasonable recommendation.

In terms of costs, information from the regulator's survey of financial advisers – published in April 2016 and titled 'FCA survey of firms providing financial advice' – says at the time "*the median percentage fee for ongoing advice on investments was 0.5% for investable assets of £50,000 or less*". This survey was around a couple of years before the AR's advice to Mr B. The ongoing advice fee in his case was also 0.5%.

Overall, on balance and in the context set out above, I consider that the ongoing advice fee in Mr B's case was at a reasonable level. It paid for an ongoing service that was beneficial to him and his SIPP and that was arguably needed. Further context is that the overall annual cost was around 0.3% more than in his previous arrangement, but there was no ongoing advisory service in the previous arrangement. On balance, I do not consider this additional cost to have been unreasonable, given the ongoing service that came with it.

Furthermore, unlike the PP, the SIPP also provided the FAD facility that gave him flexibility in his retirement options. Such retirement options are generally helpful. For example, they can potentially accommodate changes in circumstances or objectives at the point of encashing a pension. In Mr B's case, this came with a SIPP product that was cheaper than his PP.

The costs of advice were deductible from the SIPP, which meant they were paid from a tax relief environment. That too is likely to have served Mr B's interests. Generally speaking, it can potentially reduce the net cost of the fees. This facility was not available under the PP.

I said earlier that a wider availability of funds might not have driven Mr B's objectives. If that finding is wrong, and if that was one of his priorities, evidence shows that the LV= SIPP delivered more than the PP offered – including numerous active and passive core funds; smoothed managed funds; and facilitated fund switching at any time.

I now turn to the contents of the BPP, and how they matched Mr B's profile.

His personal and investor profiles were as summarised in the investigator's view (and as summarised above). He was widowed and he had no dependents, no debts or liabilities and there were arrangements in place to ensure he did not need income from the SIPP at the time, or for the foreseeable future before he intended to encash it (at age 75). As the investigator said, evidence from the assessment of his ATR shows that he had a balanced risk profile for his pension. It might also be worth noting that such a profile is not uncommon for pension portfolios. They need growth to create a level of capital that can hopefully sustain income in retirement (through, for example, the purchase of an annuity). Therefore, mindful of the commonly recognised risk/reward trade-off, pursuing the prospect of such growth with a degree of exposure to investment risks is not unusual for them.

The BPP was a mixed/multi asset fund that contained around 46% of global equities (including index tracker sub-funds) and around 53% of fixed income securities, with a minor cash holding of 0.2%. This split depicts a broadly balanced profile in terms of exposure to risk – whereby the equities component was balanced by roughly equal exposure to the commonly regarded less risky fixed income securities. I have not seen indication in its factsheet that it invested in non-standard assets, or that there were high yield/high risk corporate bond/fixed income components in it. In terms of diversification, it invested in sectors ranging, for example, from government bonds (which appears to have been the

majority component, accounting for around 30%) to financials, industrials, technology, healthcare and energy. This was unsurprising given that it was set-up and designed to be a *mixed/multi asset* fund.

It is also noteworthy that the PP's managed fund, as I summarised above, had more exposure to equities and less exposure to fixed interest securities, so I do not consider – based on available evidence about the BPP – that the BPP exposed Mr B to any more risk than he was already exposed to under the PP's managed fund.

Overall, on balance and for the above reasons, I find that the BPP matched Mr B's investor/risk profile.

Conclusions

Overall, on balance and for all the reasons explained above, I find that the recommendation to transfer Mr B's pension to the SIPP was not unsuitable, and that the BPP investment in the SIPP was not unsuitable. Both were in his interest, based on the circumstances he presented at the time of advice. Neither recommendation fell short of the expectations for suitability or the expectations in the regulator's checklist. The suitability report issued to him was informative and it explained the reasons for the recommendations and the risks associated with the recommendations.

My final decision

For the reasons given above, I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 June 2024.

Roy Kuku
Ombudsman