

## The complaint

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

## What happened

In early 2018, Mr N received an enhanced transfer offer from the trustees of his former employer's DB scheme. Mr N was a deferred member of the DB scheme in which he had accrued three years and seven months of pensionable service. The standard cash equivalent transfer value ('CETV') of the DB scheme was £43,950.63, however, for a limited time period, the trustees were offering scheme members a 10% enhancement to the standard CETV to transfer; this meant Mr N received an enhanced transfer offer of £48,345.70. This was guaranteed through to 23 July 2018 but later extended by the trustees to 11 September 2018 and then again to 28 September 2018.

Mr N contacted his financial adviser to discuss the offer but he didn't hold the relevant regulatory permissions to advise on DB pension transfers. Mr N's financial adviser therefore referred him to a Quilter adviser who did hold the relevant permissions. Mr N met with the adviser on 26 September 2018 in order to discuss the transfer of his DB scheme.

On 26 September 2018, Quilter completed a fact-find to gather information about Mr N's circumstances and financial objectives. The fact-find recorded the following information about Mr N:-

- He was aged 56, unmarried with two adult non dependent children. He lived rent free with his partner in a property owned by her.
- His partner paid all the bills. Part of the property was run as a holiday let generating a joint annual income of £6,000.
- He and his partner jointly owned a holiday home in Spain valued at £92,000.
- He was self-employed but not currently earning. He received state benefits of £975 per month and had no debts or loans.
- He had monthly outgoings of £425 which included saving £200 each month. He did not anticipate that his outgoings would alter in retirement.
- He thought he might retire at age 67 but was not completely decided.
- He had savings of £7,700 as an emergency fund and £33,996 in a stocks and shares ISA. He also held £5,676 in a general investment account.
- He had three DB schemes of which he was a deferred member. In addition to the one he was seeking advice on transferring, Mr N had another with a CETV of £37,980 and another with a CETV of £134,986. He also had a SIPP worth £42,818. It was noted that Mr N intended to retain his other two DB schemes.
- He was looking to transfer his DB scheme into his existing SIPP.
- His main concern was the funding level of the DB scheme he was looking to transfer as it was currently funded at just 68% of its liabilities. It also concerned him that the

scheme had no lump sum death benefits and that he had no spouse or dependents who would benefit from the death benefits the scheme did offer.

- He was attracted by the 10% enhancement so he was minded to move the DB scheme to the SIPP to retain some flexibility and to avoid restrictions should the scheme enter the 'payment protection fund' ('PPF')<sup>1</sup>.

On 27 September 2018, Quilter also carried out an assessment of Mr N's attitude to risk ('ATR'), which it deemed to be 'dynamic' or five on a scale of one to six (where one is the lowest). Quilter defined a dynamic investor as one who had high levels of financial knowledge as well as experience with a range of investment products in the past. It also thought such investors were happy to take investment risk with most of their available assets and were able to accept that occasional poor returns were a necessary part of long-term investment.

On 27 September 2018 Quilter provided Mr N with a transfer analysis report. The report recorded that the CETV was worth £48,346 and that at age 65 Mr N's DB scheme was forecast to provide him with an annual income of £2,603 or tax-free cash ('TFC') of £11,865 and a reduced annual pension of £1,779. And the report also provided Mr N with the critical yield (the annual investment return his pension would need to attain in order to be able to match the benefits offered by his DB scheme's normal retirement date (NRD)) which was 12.16% if he took all his benefits as a pension or 9.83% if he took the maximum permitted TFC and a reduced pension.

On 28 September 2018, Quilter provided Mr N with its suitability report in which it advised him to transfer his pension benefits from his DB scheme into his existing SIPP and invest 99.75% of the proceeds in a dynamic fund with the remaining 0.25% held in a cash fund from which the charges would be paid. The suitability report said the reasons for this recommendation were :-

- To lock in the enhanced CETV on offer.
- To have the funds within Mr N's control so he could avoid limiting his options should the funding position worsen further and the risk of entering the PPF increase.
- To benefit from potentially more tax-free cash ('TFC') at retirement.
- To have the flexibility to access this fund early should the need arise.
- To have a flexible income stream to support his other guaranteed income sources in retirement (his other two DB schemes and his state pension).
- So that Mr N could benefit from more flexible lump sum death benefits typically available in personal pension plans and have the option to nominate beneficiaries.
- So that Mr N could have further access to wider investment markets by investing through his existing SIPP in line with his ATR.
- To be advised on the most tax-efficient way to withdraw his funds as required and to understand the options available to him throughout his retirement.

The suitability report also recorded that Mr N's other two deferred DB schemes were forecast to provide him with full annual pensions of £2,270 and £5,280 at the schemes' NRD of age 65. And it noted that Mr N was to benefit from a full state pension upon reaching his state pension age of 67.

Mr N signed the transfer forms the same day, accepting Quilter's recommendation and the transfer went ahead shortly after.

---

<sup>1</sup> The PPF is a 'lifeboat scheme' that pays compensation to members of defined benefit pension schemes if there is a qualifying insolvency event in relation to their employer and where there are insufficient assets in the pension fund.

Mr N complained to Quilter in early October 2023. Quilter looked into Mr N's complaint but didn't think it had done anything wrong. In its final response letter dated 19 October 2023 it said its advice to him to transfer his DB scheme was suitable for his circumstances at the time.

Unhappy with the outcome of his complaint to Quilter, Mr N referred his complaint to the Financial Ombudsman Service. One of our Investigator's looked into Mr N's complaint and recommended that it was upheld. She said that the investment returns Mr N's transferred pension fund would need to make in order to match the DB scheme benefits he had given up were unachievable. She also thought that Quilter had failed to properly assess Mr N's ATR. And she thought there were no other compelling reasons that could justify the advice to transfer. Our Investigator recommended that Quilter compensate Mr N in line with the regulator's rules.

Quilter disagreed with our Investigator's findings, largely repeating points it had made previously. Our Investigator thought about what Quilter had said but wasn't persuaded to change her mind.

The complaint was passed to me and I issued a provisional decision where I explained why I didn't think this was a complaint that should be upheld. I made the following provisional findings: -

*"My findings*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*

*The applicable rules, regulations and requirements*

*What follows below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Quilter's actions here.*

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

*PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

*The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.*

*Having considered all of this and the evidence in this case, I'm not currently intending to uphold this complaint.*

*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, on contemporary evidence, that the transfer was in Mr N's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.*

#### *Financial viability*

*Quilter carried out a transfer value analysis report (as required by the regulator) showing how much Mr N's pension fund would need to grow by each year in order to provide the same benefits in retirement as his DB scheme (the critical yield). Mr N was 56 at the time of the initial advice and thought that he might retire at age 67 although his plans were not fixed. The DB scheme's normal retirement date ('NRD') was age 65. The critical yield required to match Mr N's benefits at age 65 was 12.16% if he took a full pension and 9.83% if he took TFC and a reduced pension. And the transfer analysis undertaken by Quilter noted that Mr N's SIPP would need to attain a value of £84,461 in order to replicate his DB scheme benefits at retirement (this figure assumes TFC is taken). It is worth bearing in mind too that the regulator's projection rates had also remained unchanged since 2014; the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.*

*Quilter assessed Mr N's ATR to be five on a scale of one to six (or 'dynamic') but I can't agree with that assessment because I don't think Mr N's circumstances at the time met Quilter's definition of a 'dynamic' investor. I say this because the information gathered by Quilter in the fact-find does not support the conclusion that Mr N was an individual whose ATR was aggressive, as someone who had high levels of financial knowledge, or who had had past experience with a range of investment products. I accept that Mr N had modest savings, a small investment account and that he had a stocks and shares ISA. But I would expect someone whose ATR is assessed at level five/dynamic to be able to display a greater depth of investment experience and to demonstrate experience with a greater range of investment products than Mr N was able to.*

*So there was nothing in Mr N's profile that, in my view, could lead to the conclusion that he was someone who was happy to take investment risk with most of his available assets (as per Quilter's definition of someone with a 'dynamic' ATR). I don't think Mr N should have been classified by Quilter as someone whose ATR was dynamic/aggressive and who was willing to take the investment risks necessary to achieve the returns needed so that his personal pension fund grew to a point that it was able to match his DB scheme benefits. I think that Mr N's ATR, given his personal circumstances at the time, should more reasonably have been assessed as no more than medium/moderate (or level 3 on Quilter's ATR assessment form).*

*I think that it's unlikely that someone with a medium ATR would, if it was fully explained to them, be willing to take the investment risks necessary to achieve an annual investment return in excess of 9% just to match the scheme benefits being given up. In any event, there would be little advantage to giving up the guarantees associated with a DB scheme just to be able to match – let alone exceed – the benefits being given up. And I can see from the comments made by Quilter in the suitability report that it accepted that the critical yield was higher than the regulator's mid-rate assumption figure and that it was unachievable.*

*Had Quilter been more realistic in its assessment of Mr N's ATR it's reasonably likely the required investment growth would have been even more difficult to achieve. And the critical yield of 9.83% is also higher than the regulator's upper projection rate of 8%. So I think it is unlikely that the transfer was going to be financially worthwhile. And from its comments in*

*the suitability report, and from its own transfer analysis report, it can be seen that Quilter accepted that to be the case.*

*Thus it seems therefore that from a financial viability perspective, the transfer wasn't in Mr N's best interests. But what I have set out here doesn't convey the full picture. Financial viability isn't the only consideration when giving transfer advice; there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.*

### *Reasons for transferring*

*I can see that in or around April 2018, Mr N received a pension transfer offer from the trustees of his former employer's DB scheme and that included in the pack was a 'Summary Funding Statement'. The statement included a table showing the latest position in relation to the funding of the scheme, setting out what had happened over the last three years. I can see that in 2015 the scheme was 70% funded, in 2016 it was 69% funded and in 2017 it was 68% funded. And I can see that the shortfall increased from £85m to £90m and to £103m over the same three years. Details were included about how the shortfall would be eliminated and what would happen if the plan came to an end. And it was stated that the DB scheme's full solvency funding level was 46% yet there were no plans to wind up the scheme.*

*The pension transfer offer included an offer of financial advice funded by Mr N's former employer, however I understand that Mr N preferred to seek advice from his own independent financial adviser (who in turn referred him on to Quilter). On taking advice from Quilter it is noteworthy that it was only the DB scheme with the funding issue that Mr N sought advice about transferring. He had two other schemes, one worth significantly more and one worth less. But Mr N did not discuss transferring either of these schemes with Quilter. Indeed the fact-find notes that the other two schemes are to 'remain in place' and only the scheme which Mr N was concerned about was being considered for transfer.*

*Both the fact-find and suitability report cite Mr N's principal reason for wanting to transfer as his concern around the DB scheme's funding level. Mr N told Quilter that another funding statement was due shortly but it was his understanding that the funding level had further deteriorated. It was recorded that Mr N did not want to remain in deferment in his underfunded DB scheme in case the position worsened further or the scheme entered the PPF when all his options would be lost and he would have to take the default option it offered. Mr N told Quilter he wanted to lock in the 10% uplift whilst it was available and that he wouldn't miss the projected pension income under the scheme of £2,603 per year.*

*The suitability report records that Mr N wanted to retain as much flexibility as he could with this particular pension scheme. Quilter told Mr N that there appeared to be no imminent danger that the scheme would enter the PPF.*

*It seems to me, from the reasons given by Mr N to Quilter at the time of the advice, that the funding level of this particular DB scheme was manifestly of such concern to him that he wanted to get out of the scheme – particularly whilst there was an enhanced CETV on offer. I think the fact that Mr N made it very clear to Quilter that he wanted to retain his other two DB schemes strongly indicates he understood the value of the benefits associated with DB schemes. However, Mr N singled out this specific DB scheme for transfer based on the fears I've described above.*

*Had Quilter advised Mr N to transfer all three of his DB schemes, I would likely be reaching a different conclusion on this complaint; but it didn't. It warned Mr N throughout the suitability report that the financial benefits of the DB scheme in question would be impossible to match*

*given the critical yields required. But it also acknowledged Mr N's concerns around the scheme's funding levels and his desire to keep his options for the future open rather than have them restricted by the PPF if the funding position were to deteriorate further. So I'm satisfied that Quilter warned Mr N about the financial viability of the recommended transfer. And I'm satisfied that Mr N thought carefully about this issue but, as he himself told Quilter during the fact-find meeting, he wouldn't miss the guaranteed income projected under this DB scheme as he had income from elsewhere. His overriding concern was the scheme's funding position and the potential loss of any flexibility should it end up moving to the PPF.*

*I am also satisfied that Quilter gave adequate consideration to how Mr N would fare financially in retirement, despite giving up his guaranteed DB benefits in one of his three DB schemes. Quilter assessed that Mr N would need an income in retirement of £425 per month (£5,100 annually) to meet his basic needs. Having reviewed the fact-find I can see that Mr N's current monthly outgoings were clearly noted as well as what he expected his core outgoings to be in retirement (and that they were basically the same). I can see that Mr N's remaining DB schemes together with his state pension entitlement – all three of which are index-linked – were sufficient to cover his anticipated retirement income needs. Based on the figures from the time of the advice, his remaining two DB schemes and his state pension would give him a monthly indexed-linked pension of £1,341 (£16,092 annually) which more than adequately covers his anticipated retirement income needs.*

*Mr N will also be able to access his SIPP flexibly or purchase an annuity in retirement if he so wishes. And he would also have access to his savings and investments.*

*I've thought too about whether Quilter should have advised Mr N to consider taking his DB scheme benefits earlier but I can see from the information provided by the DB scheme to Mr N's financial adviser that early retirement under the scheme was not permitted.*

*So I'm satisfied that Mr N's overriding concern about the DB scheme's funding position and the potential loss of any flexibility should it end up moving to the PPF made the transfer a suitable one in Mr N's circumstances at the time. Retaining control of the pension, avoiding any further loss of value and taking advantage of the enhanced transfer value being offered was manifestly very important to Mr N. So I think, from the evidence I've seen, Mr N had a very specific objective, personal to his circumstances, that he was focussed on achieving. As he himself said to Quilter, the relatively small forecasted pension wasn't one he was going to miss. So despite the risk of investment performance now being his to bear, the cessation of his anxiety about the future status of the scheme outweighed the accrued guaranteed pension benefits he was giving up.*

*I've looked at the advice process undertaken by Quilter, and I'm mindful of the financial viability assessment of the transfer I have set out above, but I'm satisfied from the evidence I've seen that Mr N's objective wasn't to secure better retirement income; it was to get out of the DB scheme in case the funding position worsened, to take advantage of the enhanced CETV on offer and to retain flexibility around how he accessed his future benefits. And I think Quilter made it clear to Mr N that its recommendation would help him to achieve that, but that this would result in lower overall retirement benefits for him.*

*There were aspects of the advice process that could, in my view, have been better executed. For example, I can see that the transfer forms were signed on the same day Quilter provided Mr N with its suitability report so he did not have long to digest its advice. But that was in part due to the deadline associated with accepting the enhanced CETV. And, as I set out above, I don't think Quilter's assessment of Mr N's ATR was aligned with his actual investment experience.*

*However, in looking at the process overall, I'm not persuaded Mr N received unsuitable advice, despite any shortcomings in the advice process. I'm satisfied that Quilter made Mr N aware of the guarantees he was giving up and that he was provided with sufficient information to make a fully formed decision about what he wanted to do. I also think that even had Quilter undertaken a flawless advice process, giving Mr N longer to think about its recommendation, that Mr N would have proceeded regardless such was his determination to take advantage of the enhanced CETV on offer and end the uncertainty about this one of his DB schemes. And had Quilter's recommendation been not to transfer, from what I know about its processes, I believe it would have accepted Mr N as an 'insistent client' and facilitated the transfer that way. And I don't think that would have been unreasonable, given Mr N's objective and, in my view, his clear determination to achieve it.*

*So I don't think any minor flaws in Quilter's advice process adversely affected the decision Mr N made. I'm not sure what would have made such a difference to Mr N that he could have been persuaded to accept a recommendation not to proceed. The fact remains that Mr N had a specific and clear objective which he wanted to achieve in relation to this specific pension.*

#### *Death benefits*

*Mr N was unmarried and had no dependent children. He was clear with the adviser that he had no need for the spouse's or dependent's pension that the DB scheme provided. So, for Mr N, a fortunate bi-product of transferring the DB scheme was the ability to be able to nominate beneficiaries to whom he could leave any residual funds upon his death. And in any event, Mr N retained the death benefits associated with his other two DB schemes should any future need for a spouse's pension arise. But at the time of the advice, no need for such a benefit was present.*

#### *Flexibility*

*I'm satisfied Mr N's income needs in retirement would be comfortably met through his remaining two DB schemes and his state pension. That being the case, I think that the transfer afforded Mr N some capacity to enjoy the ability to flexibly access a proportion of his pension provision should he so wish or need. Like the different death benefits associated with transferring to the SIPP, the flexibility he would also attain was more of a welcome bi-product to the transfer than an overriding objective. Taken in isolation, flexibility as a reason to transfer is very rarely sufficient to render it suitable. But given that flexibility wasn't the paramount reason behind Mr N's desire to transfer I don't disagree that the flexibility that accompanied it was – in his circumstances – an additional welcome benefit. The transfer meant that Mr N would be afforded a larger flexible income stream (one already existing in the form of his modest SIPP) to support his other guaranteed income sources in retirement.*

#### *Summary*

*For Mr N, his concerns and anxiety around the funding position in this one of his DB schemes was paramount. And in transferring the scheme he has achieved what he set out to do; namely to take advantage of the enhanced CETV on offer and to end the uncertainty he felt about the scheme's future funding. The transfer also meant that Mr N would never see his options, or the flexibility about how best to access the DB scheme, restricted should it end up having to move to the PPF.*

*Whilst there was a 10-year plan in place to eliminate the funding shortfall, Mr N's concerns were understandable. In the three years leading up to the advice, the funding position worsened and Mr N was expecting to hear the position had worsened again; this was*

*despite the existence of the funding plan. Thus his anxiety around the future of this one of this DB schemes was understandable.*

*For its part, Quilter took Mr N through a suitable advice process where it warned him about the guarantees he was giving up and made it clear the investment performance his transferred pension would need to achieve just to match his DB scheme benefits in retirement was unachievable. Sufficient consideration was also given by Quilter as to how Mr N would fare financially in retirement.*

*Although the advice process was not without flaw, and despite the transfer not being a financially viable one, I'm satisfied that overall Mr N was provided with all the information he needed to make a fully informed decision about what was in his best interests.*

*So it follows, taking all the circumstances of Mr N's situation into account, that I think he was suitably advised by Quilter to transfer his DB scheme. I'm not intending to uphold this complaint."*

Quilter replied and said it accepted my provisional decision that it had no further comments to make.

Mr N replied and said he disagreed with my findings. Mr N made the following comments: -

- He was upset and distraught to receive my provisional decision, which he rejected. I should reconsider my provisional decision as our Investigator had already made a decision in his favour in her duty as ombudsman. He did not understand what had 'gone wrong'.
- Quilter's adviser mistreated him by pressuring him to make a decision instantly.
- Quilter's aggressive, unreasonable and unworkable pressure technique is deployed to wear people down so they agree to transfer otherwise why would he have done so if he was going to be financially worse off. After waiting a long time, it was now happened again with the co-operation of the 'appealing ombudsman'.
- Quilter has left this appeal to the 11<sup>th</sup> hour so that once again he is being pressured.
- Everyone else is awarded all the time except for him.
- His current financial adviser had noticed the email that Quilter had dictated to him moments before the transfer offer deadline which it pressured him to send in time. His financial adviser is convinced this was unethical. Had he received a full report, projection and honest advice in his best interests it would have been clear that his pension should not have been transferred. But he was required to make the decision to transfer almost instantly with no 'cooling off' period.
- Quilter told him that the government would take over the pension and the pot would be gradually reduced so it was best to transfer it. He now understands that this is not what happens.
- Did I believe that the critical yield was realistically achievable. Quilter did not state it was achievable. He would like me to state why I think it was achievable.



- Quilter had not complied with COBS 2.1.1R. I had said that the transfer was not in his best interests so how could I go on to determine that the advice he'd received was suitable. Our Investigator's findings gave many reasons why the transfer was unsuitable. After reading our Investigator's findings he was more informed and he would have made a different decision. Now that he is more informed he realises that the transfer was unsuitable for him. If he had been given more time to decide he would not have taken the decision to transfer.

The complaint was returned 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*

What follows below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Quilter's actions here.

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

*PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I'm not currently intending to uphold this complaint.

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, on contemporary evidence, that the transfer was in Mr N's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

I've thought about the comments Mr N has made in response to my provisional decision but, with regret for the disappointment I know it will cause him, they've not persuaded me to change my mind; I am not upholding his complaint.

I fully appreciate Mr N's strength of feeling about the transfer of his DB scheme but I would like to reassure him nothing has 'gone wrong' with his complaint. The Financial Ombudsman Service operates a two-stage complaint process. That means every consumer's complaint is first investigated by one of our Investigators (who are not ombudsmen) who will then issue a 'view' on their findings having taken all the available evidence into account. Should either party to a complaint – be that the financial business or the consumer – disagree with the outcome reached at this stage then they may ask for the complaint to be referred for an ombudsman's decision.

Here, Quilter disagreed with the findings of our Investigator to uphold Mr N's complaint. And, as it is permitted to do under our rules, Quilter asked for the complaint to be referred for an Ombudsman's decision. As our Investigator explained at the point in our process that Quilter asked for this to happen, an ombudsman will look at all the evidence provided and make an *independent* decision. That means an ombudsman is not bound to follow the findings or recommendation of the Investigator. Rather it is the role of the deciding ombudsman to look at a complaint and all the evidence afresh, and reach a fair and reasonable decision based on what they have seen. In this complaint, having reviewed all the evidence provided by the parties, I decided that this was a complaint that should not be upheld. My reasons for doing so were set out provisionally so that both parties could have the opportunity to comment before I issued my final decision.

Of course I can appreciate why, having received a 'view' from our Investigator that upheld his complaint, Mr N was upset to receive my provisional decision. But I would like to reassure him that nothing 'went wrong'. Rather, having weighed up all the evidence in his complaint for myself, the fair and reasonable decision I reached – for the reasons I gave provisionally – was that his complaint should not be upheld. On occasion, ombudsmen do decide complaints should fairly and reasonably reach a different outcome to that recommended by our Investigators; that is the nature of a two-stage complaint process.

Having reviewed the contemporaneous documentary evidence, I have seen no evidence of aggression towards Mr N on the part of Quilter, nor a deployment of an unreasonable or unworkable pressure technique to wear Mr N down so that he transferred. On the contrary, both the suitability report and a transfer analysis report provided by Quilter to Mr N set out why the transfer wasn't financially viable and the suitability report also set out that despite that being the case, Mr N had other reasons for wanting to transfer. But neither of these reports, nor any of the other documentary evidence I have seen, demonstrate Quilter was aggressive towards Mr N or applied unreasonable pressure to make him transfer.

I am not entirely sure what Mr N means by Quilter leaving its 'appeal' to the 11<sup>th</sup> hour. Quilter is entitled to defend itself against complaints brought against it. As it is permitted to do, it rejected the findings of our Investigator and asked for the complaint to be referred for an ombudsman's decision. It made this request in a timely manner and it caused no undue delay.

The Financial Ombudsman Service looks at each complaint it receives individually and reaches a decision based on the merits of each complaint made having considered all the available evidence. Some complaints will be upheld and some will not but it is not the case that everyone except for Mr N receives an award.

Quilter was clearly working to a tight deadline when advising Mr N. It is not entirely clear why Mr N did not approach Quilter sooner after receiving the enhanced transfer offer from the trustees of his former employer's DB scheme in April 2018. But by the time Quilter began advising Mr N – according to the evidence I have seen – it was early September 2018 and the enhanced transfer offer had been extended twice. Having reviewed the information about the CETV that it had been passed, Quilter noted that it was not complete and so sought

further information from the scheme administrators. It is my understanding that Quilter did not receive everything it needed to advise Mr N until two days before the deadline expired on 28 September 2018.

I accept that the approaching deadline was, no doubt, pressurising for Mr N. But I'm satisfied that Quilter itself wasn't placing pressure on Mr N to transfer. As I have set out here, and in my provisional decision, Quilter did provide reports and projections to Mr N during the advice process and they contained warnings that the financial benefits of the DB scheme in question would be impossible to match given the critical yields required. But the suitability report acknowledged that Mr N was mainly concerned about the scheme's funding levels and his desire to keep his options for the future open rather than have them restricted by the PPF if the funding position were to deteriorate further.

So I can't say I've seen any documentary evidence that would allow me to reasonably agree that Quilter placed pressure on Mr N to decide 'instantly' whether he wanted to transfer. I can't ignore either that Mr N had been in possession of his enhanced transfer offer since April 2018.

I have of course seen the suggested email that Quilter sent to Mr N which it asked him to send back. It is routine, when advising on a pension transfer, to ask the customer to set out in writing the reasons why they want to transfer as well as their understanding of the guaranteed benefits they are giving up. It is likely that Quilter – working to a tight deadline – was asking Mr N to send such an email as soon as he could (in a similar form of words to those it suggested) so that it could submit the transfer request in time.

I've seen no documentary evidence that Quilter told Mr N that the government would take over Mr N's DB pension and that the pot would be gradually reduced. On the contrary, Quilter said in the suitability report that there appeared to be no imminent risk of Mr N's DB scheme entering the PPF and that even if it did he would still receive 90% of his benefits at retirement. It further commented that a disadvantage of the transfer was the loss of the protection offered by the PPF. Furthermore, Mr N's desire to avoid any potential move of his DB scheme to the PPF, and the limitation of his options at retirement should that occur, was noted by Quilter to be one of his main objectives for transferring his DB scheme.

Mr N has said he would like me to explain why I think the critical yield was achievable. For the reasons I gave provisionally, I don't think that the transfer was going to be financially worthwhile. And from its comments in the suitability report, and from its own transfer analysis report, it can be seen that Quilter accepted that to be the case. But as I said in my provisional decision, financial viability isn't the only consideration when giving transfer advice; there can be other considerations which mean a transfer is suitable, despite providing overall lower benefits. In Mr N's circumstances there were other compelling reasons – such as Mr N's overriding concern regarding the DB scheme's funding position and the potential loss of any flexibility should it end up moving to the PPF – which made the transfer a suitable one. Retaining control of the pension, avoiding any further loss of value and taking advantage of the enhanced transfer value being offered, was manifestly very important to Mr N.

I appreciate that our Investigator cited many reasons why the transfer was unsuitable. And I appreciate Mr N feels that the reasons our Investigator's gave for this accurately reflects how he now feels (and what he understands) about the advice Quilter gave him. I accept too that as a result of our Investigator's findings Mr N feels better informed about certain aspects of the advice he received and, as a consequence of which, he feels certain that had he been informed of these issues at the time of the advice (and had had more time to consider his position) he would have decided not to proceed.

But having reviewed all the evidence – for the reasons I’ve given here as well as those contained in my provisional decision – I have reached a different outcome.

Taking all the circumstances of Mr N's situation into account, I think he was suitably advised by Quilter to transfer his DB scheme. Mr N's concerns and anxiety around the funding position in his DB scheme were paramount and by transferring the scheme he achieved what he set out to do; namely to take advantage of the enhanced CETV on offer and to end the uncertainty he felt about the scheme's future funding. The transfer also meant that Mr N would never see his options, or the flexibility about how best to access the DB scheme, restricted should it end up having to move to the PPF.

It follows that this is a complaint I cannot fairly or reasonably uphold.

### **My final decision**

My provisional findings now form part of this, my final decision.

My final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 December 2024.

Claire Woollerson  
**Ombudsman**