DRN-5697790

The complaint

Mrs H has complained about the advice she received from Quilter Financial Limited ('Quilter') to transfer a defined-benefit ('DB') occupational pension to a self-invested personal pension ('SIPP'). Mrs H has also complained that she didn't receive the annual reviews that she was paying for on the SIPP or her Individual Savings Account ('ISA').

What happened

Mrs H received pension transfer advice from a business, which was a representative of Quilter, in March 2015. The Financial Strategy Report noted that Mrs H had two DB schemes and wanted advice on whether she should retain them or transfer them to a personal pension.

Mrs H had received cash equivalent transfer values ('CETV') for each of her DB schemes. DB scheme A had a CETV of £58,130 and DB scheme B had a CETV of £130,030. Quilter ultimately advised Mrs H to retain DB scheme B but recommended that she transfer out of DB scheme A and invest the monies in a SIPP in line with her attitude to risk, which Quilter had assessed as 'risk level 4'. The recommendation letter explained that an ongoing advice service, which would be paid for by way of an ongoing advice charge ('OAC') of 0.5% from the SIPP, would be provided annually.

Mrs H also held an ISA, on which Quilter was providing ongoing advice. However, this service was covered by the OAC Quilter deducted from the SIPP. This changed in April 2023, when the adviser recommended a fund switch. The letter issued on 27 April 2023 explained that an OAC of 0.5% would be deducted from the ISA funds to pay for the ongoing advice service provided for the ISA.

In August 2024, Mrs H terminated her service agreement with Quilter and in September 2024 a representative ('CMC') made a complaint on Mrs H's behalf about the advice she'd received. The CMC said the advice to transfer out of the DB scheme was unsuitable for Mrs H given her low risk appetite. The CMC also said Mrs H hadn't received the ongoing advice or annual reviews she'd paid for and questioned the advice she had been given relating to her ISA. It added that it believed Mrs H had been advised to give up a whole of life ('WOL') assurance policy but this advice hadn't been documented and the consequences of giving this up hadn't been considered.

Quilter said Mrs H's complaint about the advice she received to transfer her DB pension hadn't been made in time under the Regulator's Dispute Resolution ('DISP') rules as the advice was taken more than six years before she complained and she would've been aware of her cause for complaint more than three years before she complained. This was because she received regular reviews and she would've known whether the advice was suitable for her following those reviews.

Quilter said that Mrs H had received the reviews she'd paid for in respect of her SIPP and ISA. But that Quilter didn't advise Mrs H to open her ISA so any complaint about this recommendation would need to be directed to the business that made the initial recommendation. Quilter said that no advice had ever been given to Mrs H in relation to a

WOL policy and it held no documentation to show that it was aware of any WOL policy held by Mrs H.

Our Investigator considered the complaint and found that the complaint about the advice Mrs H had received to transfer her DB scheme to a SIPP had been made in time. He wasn't persuaded that Mrs H had any reason to be concerned about the advice she'd received until she spoke with her CMC. He also found that the only reviews that had been missed would've taken place within six years of Mrs H raising the complaint.

The Investigator considered that the advice Quilter provided to transfer out of DB scheme A was unsuitable. He recommended that Quilter compensate Mrs H for this unsuitable advice in line with the Regulator's guidance. The Investigator thought that Quilter hadn't provided the SIPP reviews Mrs H had paid for in 2020 and 2024. But as he had upheld the complaint about transferring out of the DB scheme, he wasn't recommending that the OACs taken for these years should be refunded. This was because the redress recommended put Mrs H back into the position she would have been had she not transferred her DB scheme benefits. And if he were also to recommend that OACs should be refunded then this would effectively put Mrs H into a better position than she would've been in had she not made the transfer.

The Investigator was satisfied that Mrs H only started to pay a separate OAC for ISA reviews from April 2023. As he wasn't persuaded that Mrs H had received the review the OACs paid for since then, he recommended a refund of the OACs paid since April 2023 plus a return in line with the growth the ISA achieved from the date the fees were taken to the date of settlement.

The Investigator wasn't persuaded that Quilter had provided any advice to Mrs H to cancel a WOL plan – he thought the reference to the WOL plan found in paperwork Quilter had sent the CMC most likely related to a different consumer, not Mrs H.

The CMC accepted the Investigator's findings in full. Quilter received the Investigator's assessment and asked for an extension to the response date. This was granted but Quilter didn't provide a response by the new deadline set so the complaint was referred to an Ombudsman to make a final decision. Quilter also hasn't provided a response whilst the case has been awaiting allocation to an Ombudsman. The complaint was subsequently allocated to me.

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've reached the same conclusion as the Investigator and as Quilter didn't respond to the Investigator's findings, I've largely repeated them.

<u>Jurisdiction</u>

DISP 2.8.2R says that, where a business doesn't consent, I can't consider a complaint made more than six years after the event complained of, or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint.

Quilter does not consent to our Service considering the complaint about the DB transfer advice or the complaint about any missed SIPP or ISA reviews before September 2018.

Like the Investigator, I'm satisfied Mrs H complained about the advice she received to transfer out of DB scheme A in time. While she complained more than six years after she received the advice, I haven't seen any evidence to persuade me that Mrs H ought reasonably to have been aware of her cause for complaint more than three years before she terminated her service agreement with Quilter in August 2024 and then complained to it in September 2024.

Mrs H transferred out of an arrangement that would've provided a guaranteed income to a pension which instead had a fund value based on how the underlying investments performed. As such, they weren't directly comparable. While Mrs H underwent annual reviews, I can't see any evidence that the performance of the pension was discussed in terms of how that compared with the benefits she gave up. And there weren't periods of significant underperformance more than three years before she complained such that Mrs H ought reasonably to have questioned whether the advice was right for her. So, I don't think Mrs H would've had any cause for complaint until she spoke with her CMC.

I'm also in agreement with the Investigator that the only SIPP reviews that were missed ought to have taken place in 2020 and 2024. And as the complaint was made in September 2024 Mrs H complained within six years of the dates of those events.

As such, I can consider the complaint about the advice Mrs H received to transfer out of DB scheme A and the reviews that were missed relating to her SIPP.

Mrs H's CMC accepted that Mrs H only started to pay for reviews for her ISA from April 2023, so there are no time bar concerns relating to the OACs paid for the ISA.

<u>Merits of the complaint</u>

The advice to transfer out of DB scheme A

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

The applicable rules, regulations and requirements

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

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

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

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

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

The Regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Quilter should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs H's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint.

Before providing the advice, Mrs H completed a risk profile questionnaire so that Quilter could assess her attitude to risk. This resulted in her being placed in the 'risk level 2' category. However, the fact-find notes that Mrs H agreed a 'risk level 4' approach would be *"more appropriate for this recommendation."* Given that Quilter's risk scale was between 1 and 10, I think this would equate to a 'low-medium' risk appetite. However, it seems to me that this adjustment was made to support the transfer given the critical yield, rather than Quilter assessing whether Mrs H's actual attitude to risk supported the transfer. In my view, I think Quilter essentially told Mrs H she'd need to take more risk with her pension to make the transfer viable. But based on her responses to the risk profile questionnaire I think Mrs H was actually a low risk investor.

The critical yield of 4.5% (after taking account of all ongoing fees) meant that Mrs H needed to achieve annual pension growth of 4.5% in order to build a fund of sufficient value to purchase equivalent benefits to her DB scheme at her normal retirement age. However, like the Investigator, I'm not necessarily persuaded this figure was accurate given that the critical yield to achieve the benefits the Pension Protection Fund ('PPF') provided – which would be a lower level of benefits than DB scheme A – was 5.47%. Furthermore, Quilter input that the post 88 GMP benefit did not escalate in retirement, whereas the trustee of the scheme told Quilter that there were no escalations other than the 3% escalation on post 88 GMP. So, in reality, I think the critical yield was likely to be higher than the 4.5% quoted. And I think Quilter ought to have known there was an issue with the figures given its expertise in this area.

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

As I've said above, Quilter said the critical yield required to match the DB scheme pension at retirement was 4.5% per year. This compares with the discount rate of 4.4% per year for 12 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

So, even if I were to accept that Mrs H's attitude to risk was as high as low-medium, which I don't, I think at most she was only ever likely to match the benefits she was giving up. Given that I think Mrs H's attitude to risk was lower than what Quilter based its recommendation on, I don't think the critical yield would've been achievable. So, I think she was likely to receive retirement benefits of a lower overall value if she transferred them to a SIPP. And if, as I suspect, the critical yield was higher than 4.5% I think she was likely to receive pension benefits of a significantly lower overall value than those she'd have been entitled to under DB scheme A. So, I don't think it clearly in Mrs H's best interest to transfer out of the scheme.

I've thought about whether there could be other reasons why it was in Mrs H's best interest to transfer out of her DB scheme but I'm not persuaded there are. Quilter says Mrs H was significantly younger than her husband, meaning he was expected to predecease her, so she had no need for the spouse's pension attached to DB scheme A. Mrs H may have preferred to be able to pass any remaining pension funds on her death as a lump sum rather than an annual income, but while the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mrs H drew in her lifetime. However, the spouse's pension attached to her DB scheme was guaranteed and escalated in payment, so, even if Mrs H was expected to outlive her husband, I think it could've been valuable to him in the event of her early death.

I also don't think that death benefits should've been prioritised over Mrs H's own retirement needs. Quilter didn't carry out any analysis of Mrs H's expected expenditure in retirement, so it's possible she was more reliant on the annual income DB scheme A provided than Quilter understood. It appears Quilter considered that Mrs H could afford to risk this pension given her and her husband had substantial other assets, including significant funds held in ISAs and rental properties. But given that Mrs H's other assets had varying degrees of risk attached, I don't think Mrs H needed to take any risk with this pension. And in any event, Mrs H was still some 12 years from her retirement, so even if she thought she may not need to rely on the guaranteed income the pension provided, she could take a view on this closer to her actual retirement.

Overall, I can't see persuasive reasons why it was clearly in Mrs H's best interest to give up her DB benefits and transfer them to a personal pension, when this would likely result in lower overall retirement benefits. I also haven't seen anything to persuade me that Mrs H would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mrs H received from Quilter was unsuitable for her. And Quilter should compensate Mrs H for the unsuitable advice in line with the Regulator's methodology (set out below).

As I'm recommending that Quilter should compensate Mrs H by putting her back into the position she would've been in if she hadn't transferred out of the DB scheme, I'm not recommending that any OACs for missed annual reviews should be provided for the same reasons given by the Investigator.

The ongoing reviews of the ISA

Like the Investigator, I'm satisfied that Mrs H started paying for the ongoing advice service for her ISA separately from April 2023. And I haven't seen any evidence to persuade me that Mrs H received the review that would've been due around April 2024. I also haven't seen evidence to persuade me that Quilter offered the review and Mrs H declined it. As such, it is fair and reasonable for Quilter to refund the OACs charged since April 2023 plus a return as per the methodology set out below.

Putting things right

Compensation for the DB transfer advice

A fair and reasonable outcome would be for Quilter to put Mrs H, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs H would have most likely remained in the DB scheme if suitable advice had been given.

Quilter must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13

and set out in the Regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

For clarity, it appears Mrs H hasn't yet retired. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the Regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs H's acceptance of the decision.

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

- calculate and offer Mrs H redress as a cash lump sum payment,
- explain to Mrs H before starting the redress calculation that:
    - her 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 her redress prudently is to use it to augment her defined contribution pension.
- offer to calculate how much of any redress Mrs H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs H accepts Quilter's offer to calculate how much of her redress could be augmented, request the necessary information and not charge Mrs H for the calculation, even if she ultimately decides not to have any of her redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs H's end-of-year tax position.

Redress paid directly to Mrs H as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Quilter may make a notional deduction to allow for income tax that would otherwise have been paid. Mrs H's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Compensation for ISA OACs

My aim is to put Mrs H as close as possible to the position she would probably now be in if she hadn't paid OACs from her ISA from April 2023.

Quilter should:

- Refund the OACs deducted from the ISA since April 2023, and pay a return on the fee amounts from the date the fees were taken to the date of my final decision.

- The lost return on the fee amounts should be calculated in line with the actual performance of the ISA over this time.

- If Quilter is unable to obtain information about how the investment portfolio performed, Quilter should use this benchmark:

    - For half of the monies: FTSE UK Private Investors Income Total Return Index;
    - For the other half: average rate from fixed rate bonds.

- This benchmark broadly reflects how Mrs H's funds were invested and I think it is reasonable proxy for the type of return that could have been achieved over the period in question.

- Provide the details of the calculation to Mrs H in a clear, simple format.

My final decision

I'm upholding Mrs H's complaint and I require Quilter Financial Limited to pay her compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 23 December 2025.

Hannah Wise
Ombudsman