

The complaint

Mr W complains that Charles Derby Financial Services Limited gave him unsuitable advice to transfer guaranteed benefits from a deferred annuity to a personal pension. Quilter Financial Services Limited ('Quilter') is responsible for answering this complaint, so for ease I referred to Quilter in this decision.

What happened

Mr W was advised in 2019 to transfer the benefits of his deferred annuity as well as three smaller personal pensions to a flexi-drawdown plan.

Mr W was nearly 57 at the time, married with no children, in good health and he had an annual income of £60,000. He was not looking to fully retire before state pension age of 67. He and his wife had a home worth £147,000 with a mortgage of £105,000 and had spent all their savings on the house move. They had two loans totalling £4,800 which would be repaid in the next 12 months. Mr W had also an outstanding balance on a credit card of £11,000 which was used for travelling expenses and partly covered by his employer.

Mr and Mrs W's joint income requirements in retirement were recorded as £21,600 per year with their essential outgoings covered by their respective state pensions. The new personal pension would be needed to bridge an income shortfall of £13,733 per year for three years until Mrs W's state pension would start and then supplement the joint state pension income mainly for non-essential spending and holidays.

Mr W was looking to immediately release 25% tax-free cash from his pension (around £42,000). He wanted to build a second bathroom as his wife had arthritis and was struggling to use the only bathroom downstairs. The expected costs were £15,000. He also was looking to pay off £20,000 off his mortgage to bring the mortgage term from age 70 to his expected retirement age of 67. Mr W wanted to use the remaining funds as emergency savings.

At age 65, Mr W's deferred annuity would have given him an income of £9,487 per year or a tax-free cash lump sum of £39,383 and an annual income of £5,907 with a five year guarantee period. It also included a 50% spouse's pension and a small lump sum of £2,192 upon Mr W's death. Parts of the annual income and spouse's pension were subject to 3% increases each year. If Mr W took his deferred annuity immediately at age 57, he could have received an annual income of £5,194 or alternatively a lump sum of £2,747 and an annual income of £4,889. His personal pensions had a combined value of around £5,300. He also was about to start a new workplace pension, but no details were recorded.

The transfer was recommended as it provided more flexibility- in particular the ability to take a higher tax-free cash lump sum immediately to meet Mr W's short-term objectives of building the second bathroom and paying off some of his mortgage. And it noted the potential for higher death benefits.

In 2024 Mr W complained about the advice he received and that he had been financially disadvantaged as a result.

After Quilter rejected the complaint it was referred to our service where one of our investigators initially upheld the complaint. He considered Mr W would be financially worse off in retirement by transferring and there was no compelling need for Mr W to give up his guaranteed benefits. He said Mr W could have used his tax-free cash at age 65 to pay for the bathroom.

Mr W accepted the outcome, however Quilter disagreed and explained why Mr W couldn't reasonably wait for another eight years to pay for the bathroom given the severity of Mrs W's condition and that he wanted security of the mortgage being fully repaid before his retirement. Quilter didn't consider Mr W would be worse off financially as Mr and Mrs W's state pensions and income drawdown would cover their desired income level in retirement.

After asking Mr W for more details on his wife's condition and how not having the new bathroom affected her, our investigator subsequently changed his view and rejected the complaint. He considered the bathroom was very important to make Mr W's wife's life more comfortable and Mr W likely wouldn't have waited until 65 to use tax free cash from his deferred annuity. He didn't think it was likely Mr W could have achieved his objectives without accessing a lump sum from his pension immediately and it was unclear if he could have borrowed more in addition to the debts he already had. The investigator considered Mr W would have proceeded with a transfer even if Quilter had recommended not to do this.

Mr W disagreed and so the complaint was passed to me for a decision. After reviewing the complaint I provisionally decided to uphold it and shared my thoughts with Quilter. In summary I didn't think alternatives of raising the funds Mr W needed were properly explored. On balance I considered some small additional borrowing and if needed accessing his personal pensions would have been a reasonable alternative which could have avoided Mr W giving up valuable benefits in retirement. I offered to consider any additional more detailed information Quilter could provide which showed my assumptions about possible alternatives were not affordable or feasible.

Quilter disagreed with my findings and provided further comments and information which I have carefully considered. However, I remain satisfied that Quilter didn't properly consider reasonable alternatives here to avoid Mr W being financially worse off in retirement.

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 previously told Quilter the following:

It's clear that Mr W would very likely be materially worse off in retirement by giving up his defined benefits. I acknowledge that, on the very limited information provided, his provisions might have possibly covered his required income in retirement, however I still think his defined benefits which were by far his most significant pension provisions should have been given up as a last resort.

The argument about potentially better death benefits isn't justified in my view. Mrs W was relying on her husband's pension provisions and even if the couple were only withdrawing the minimum amount they said they required from the personal pension to bridge the time until their state pensions started and to top up any requirements, it's likely that any remaining fund on Mr W's death would likely provide lower death benefits to his wife than the spouse's pension. That's assuming Mr W didn't die prematurely, which there was no indication this was likely. I also can't see that flexibility here was more than a stock motive.

So what we are left with is that Mr W was looking for money to install a bathroom for his wife who suffered from arthritis (around £15,000). I'm satisfied that this was very important to him and not just a "nice to have" as his wife's health condition was significant and had a severe impact on their daily living. He was also concerned he had no emergency savings after their house move. The adviser recommended to use £20,000 of the remaining tax-free cash to pay towards his mortgage in order to bring the mortgage term down to age 67 to coincide with Mr W's intended retirement age. The current term was until age 70 and it was noted that in retirement these payments wouldn't be affordable.

I'm not persuaded that the part-repayment of their mortgage was a necessity at this stage. In my view Mr W could have more likely than not paid off any remainder on the mortgage at age 67 with any tax-free cash available from his defined benefits (and possibly his new workplace pension if needed).

Which leaves the money for the bathroom and some emergency cash. I agree that taking the defined benefits early wouldn't have provided the lump sum Mr W required. However, based on the very limited income and expenditure and the details on the mortgage provided in the fact find, I'm currently not persuaded that re-mortgaging with a higher value wouldn't have been possible.

Mr and Mrs W's existing mortgage was £105,000 which at their existing interest rate of 1.4% would have been £689 per month and was equivalent of about 70% loan to value (LTV) based on the recorded property value of £147,000. Adding £20,000 to the mortgage would have increased the LTV to 85% and even if I assume an increased mortgage rate of 2% (rather than the existing 1.4%), this would have increased payments to £854. I can't currently see that an additional £165 month or even more would have been unaffordable. Mr W was earning £60,000 a year which would have been around £45,300 per year net or £3,775 net per month. His expenditure was recorded as £2,550 per month. This included all outgoings including £500 per month for leisure and already factored in mortgage payments after a part-repayment of £20,000 (£760 per month). It didn't include Mr W's other monthly debt repayments of £360 per month.

Adding the debt repayments in and factoring in a higher mortgage payment of £854 per month if he increased his mortgage borrowing, his outgoings would be around £3,304 per month, which would still leave him around £470 disposable income (maybe slightly less if he was making pension contributions into his new employer's scheme). And around a year later his outgoings would have reduced by at least a further £240 per month when his two loans would be paid off which would make repayments even easier. Mr W also could have taken his three smaller personal pensions as small pots which would have given him approximately another £4,000 after tax if really needed and wouldn't have affected his future pension contribution allowances.

None of this was properly looked at. It's possible that Mr W would have liked the idea of using his own funds rather than take on more borrowing. However, giving up his defined benefits for a relatively small cash lump sum was not very good value. Particularly, given Mr W could have more likely than not raised the required funds much cheaper by taking advantage of low mortgage rates at the time. I see no reason why Mr W would have insisted on using his own pension and accept higher losses in retirement if alternatives would have been explained and recommended.

Death benefits

Quilter pointed out that the death benefits from the deferred annuity were a small lump sum of £2,192.34 and an annual pension of £2,597. The new plan would provide a return of the fund which was £171,203 at the date of the transfer, this value being subject to market

fluctuations and any withdrawals made. Quilter didn't agree that his new pension would categorically provide lower death benefits.

I acknowledge that depending on when Mr W died, market conditions and his level of withdrawals, the new pension might have provided a lump sum which would have given Mrs W more flexibility and depending on how long Mrs W lived potentially even better benefits than the spouse's pension. However, equally it might not have. I don't think a fair and proper comparison was in fact carried out by Quilter at the time. The comparison with the initial fund value is flawed as after having taken tax free cash and the deduction of the initial adviser fee, the starting fund value already would have only been around £123,000 and assuming Mr W didn't die prematurely the remaining fund when he died would have been significantly lower than this. COBS 19 Annex 4a (8b) sets out that a comparison of death benefits should be provided on a clear and consistent basis both at present and at various future points in time. I haven't seen any evidence that Mr W was given an indication what death benefits might likely look like in the new pension at later stages of his life. So I'm not convinced he was given clear and non-misleading information here.

In any event, even if an analysis had show that there was a reasonable potential for Mrs W to receive higher death benefits from Mr W's new pension, I don't think this alone would have been sufficient to recommend a transfer and give up higher and guaranteed income benefits. I agree that Mrs W was dependent on Mr W and death benefits would have likely been important to him. However, I think an alternative of life insurance cover was a possible option here if Mr W wanted additional protections. This option was discussed by Quilter and a quote of £36.89 per month was provided for the level sum of the transfer value until 65. Again I think it was misleading to use the transfer value as a starting point given that Mr W's plan after spending his tax-free cash immediately and the adviser charges being deducted was already reduced by nearly £50,000. So the sum assured should reasonably been lower.

Whether the quote was done on a reasonable basis or not, I do acknowledge that Mr W said he didn't want to commit to another monthly payment. However, I do think it's important to consider this in the context that it was noted Mr W's other objectives couldn't have been met by taking out this life cover.

Looking at the fact find and suitability report, the key motivation for the transfer was the immediate release of a tax-free cash lump sum, so I don't think it's surprising Mr W preferred not paying an additional life insurance premium when this alone didn't meet his main objective and he was being told he would have a large lump sum available for his wife after his death if he transferred his deferred annuity. If alternatives had been explained how he could retain his deferred annuity and still meet his other objectives, I think it's likely he would have been more open to this idea.

Alternative ways to meet his other objectives

The Financial Conduct Authority sets out in the Conduct for Business Rules (COBS) at 19.1.6G that in order to demonstrate a transfer from a pension with safeguarded benefits is in the client's best interest, a firm needs to take into account alternative ways to achieve the client's objectives without a transfer. The starting point is that a transfer is not suitable for most people. Quilter acknowledged this themselves in the suitability report.

Quilter considered it wasn't certain that Mr W could have taken out further borrowing or would have wanted to do so. They pointed to the fact Mr W had only recently moved home and if taking on higher borrowing had been a feasible option, it's likely he would have done so at the time of the mortgage application. They also said further borrowing did not align with Mr W's objective of reducing his borrowing and mortgage term. Quilter also referred to Mr W's fact find where it stated that the adviser explained he could wait until the two personal

loans were repaid but Mr W preferred not waiting due to his wife's health. He also preferred paying off some of the mortgage and increasing the equity in the property should he want to take an equity release option later in retirement.

I'm not persuaded by these arguments. The fact find notes that Mr W's core essential need for the lump sum was adding the bathroom for his wife. And I agree that he likely wouldn't have wanted to wait for this. However, it's clear from the fact find and suitability report that Mr W's objective of paying off some of his mortgage was mainly motivated by shortening the mortgage term to align with retirement. The fact find even notes that Mr W's plan was to increase the mortgage payments in addition to a lump sum payment. As I explained in my provisional findings paying off the mortgage before retirement age could still have been achieved by using the tax-free lump sum from the deferred annuity available from age 65. And Quilter haven't really disputed in response to my findings that this was a reasonable option.

I remain satisfied that from Mr W's recorded financial details higher borrowing would have been affordable even at a higher interest rate. And the fact that Mr W was prepared to pay higher mortgage payments supports this. I note the fact find says Mr and Mrs W moved to their new home in February 2019, however online data shows it was actually bought in July 2017 which aligns with information on a later fact find from 2023. So whilst they might have permanently moved to the house in 2019, they bought and presumably took out their mortgage two years prior. I don't think the fact they didn't take out more borrowing at the time means they couldn't have borrowed more. Mr and Mrs W told the adviser they had spent their savings when moving, so they possibly used savings instead of more borrowing or simply noted later on they needed more money. I don't think this is unusual and doesn't mean they couldn't have received more borrowing. Any fees and administration charges for a remortgage tend to be relatively small and can usually be added to the loan, so I don't think Quilter's argument that this would have been a barrier to a remortgage is persuasive. For reasons set out in my provisional findings and above I consider it's more likely than not Mr W could have borrowed additional funds.

As I said previously, it's possible as that as a starting point Mr W, like many people, might have preferred to use his own pension funds than take out more debt. However, giving up his guarantees for this was not good value for money when there were cheaper alternatives available. It might be the case that if Mr W withdrew less from his new plan in retirement than he was entitled to from the deferred annuity he could make his fund last over the course of his lifetime. However, this doesn't change the fact that he would overall received lower benefits.

I remain of the view that reasonable alternatives to avoid having to give up Mr W's guaranteed benefits were not explored. On balance I consider if Quilter had explained that it was better value and in Mr W's best interest to obtain funds through a remortgage and possibly accessing his personal pensions if needed as well as consider life insurance if he felt his wife needed more protections in the vent of his death, he would have likely followed this advice.

Putting things right

My aim is to put Mr W as much as possible in the position he likely would be in now if he had been advised not to transfer his deferred annuity benefits. I consider he would have kept his deferred annuity. It should be assumed that he would have taken the benefits from this annuity at age 65.

Quilter should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in [Policy Statement](#)

PS22/13 and set out in the regulator's handbook in DISP App 4.

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

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

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
 - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mr W receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr W accepts Quilter's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid directly to Mr W as a cash lump sum 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. Mr W 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.

My final decision

I uphold this complaint and require Quilter Financial Services Limited to calculate and compensate Mr W in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 February 2026.

Nina Walter

Ombudsman