DRN-4200297

The complaint

Mr M 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 personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr M is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr M.

What happened

Mr M approached Quilter in 2019 to discuss his pensions. Quilter completed a fact-find to gather information about Mr M's circumstances and objectives. Mr M was 62, married with no financially dependent children. Mr M wasn't working, having suffered from a serious medical condition a couple of years earlier, with Quilter noting he was medically retired. And he remained in poor health. Mrs M also wasn't working. He and Mrs M owned their home but had an outstanding mortgage with a balance of £35,000. They were paying £550 per month toward this mortgage, and it had a remaining term of approximately seven years.

Mr M's income was comprised of benefits of approximately £850 per month, roughly 60% of which was means tested, and a pension that was already in payment, providing around £310 per month. I understand this pension was guaranteed. Mr M had another DB scheme pension that he was in the process of beginning to draw benefits from that would provide him a further annual income of £1,553. It was noted he had a daughter living at home, but she was independent and paid rent, which contributed to Mr M's recorded income. Mr and Mrs M's outgoings, including mortgage payments, were said to equal to their income, including the rent from their daughter, leaving no disposable income. And it was recorded that they were struggling financially and just getting by.

Quilter says Mr M was interested in transferring the other DB scheme pension he held and accessing tax-free cash to clear, or significantly reduce, his mortgage, free up income and ensure that Mrs M had somewhere to live in the event of his death. It said Mr M didn't though want to take an income from his pensions, as this could impact his benefit entitlement. This pension had a cash equivalent transfer value ('CETV') of £104,412.15. Quilter noted Mr M thought he could live comfortably on an income of £800 - £1,000 per month in retirement, after the mortgage was cleared, and noted that his state pension entitlement and other pensions, already in payment, would provide this when he became eligible for state pension in 2023.

Quilter also carried out an assessment of Mr M's attitude to risk and deemed him to be a 'risk averse investor'.

On 15 July 2019, Quilter advised Mr M to transfer his pension benefits into a personal pension with a specific provider. It recommended he draw the maximum available tax-free cash, just over £26,000, and use this, along with the lump sum of approximately £4,600 he was expected to receive from his other scheme that he was in the process of drawing benefits from, to significantly reduce his mortgage. The expectation was that his mortgage repayments would reduce to approximately £90 per month, which were more manageable. Quilter then recommended that £65,000 of the remaining value be used to purchase a five-year annuity, paying no income. This product had a guaranteed maturity value of £68,553 and would return the full amount in the event of Mr M's death. This would mean that the majority of the pension was on a no risk basis. Quilter recommended that the remaining £10,176 be placed in a low-risk flexible pension account, so a small portion of the pension was accessible in the case of emergencies.

It said the reasons for this were a transfer provided Mr M the flexibility he wanted, to access a greater amount of tax-free cash than the DB scheme would provide, to reduce his mortgage, without having to begin taking an income, which could impact his means tested benefits. Which would ensure that the property was secured for Mrs M in the event of his death. Based on what Mr M had said about his needs, he wasn't going to be reliant on this DB scheme for income, as his needs were met by his other means. And the recommended strategy safeguarded the value of his pension, which was appropriate to his risk averse attitude, ensuring it could be passed on in the event of his death – something which Quilter said Mr M was interested in.

Mr M complained in 2022 to Quilter, via his representative, about the suitability of the transfer advice. He said that he had no previous investment experience, a low capacity for loss and a low attitude to risk when he'd received advice. He said the valuable guaranteed benefits he was giving up weren't explained to him and that he should've been advised not to transfer.

Quilter didn't uphold Mr M's complaint. It said the recommendation was appropriate to his circumstances, needs and objectives. And it ensured that the most important of these needs to Mr M, reducing the mortgage to ensure Mrs M had a home in the event of his death, was achieved. And it said the risks and implications of transferring were fully explained to Mr M, and that he'd acknowledged he understood the reasons for the recommendation via email at the time.

Mr M referred his complaint to our service. An investigator considered the complaint and thought it should be upheld.

Quilter disagreed. It said reducing his mortgage and freeing up disposable income was essential to Mr M, to ensure Mrs M was not at risk of being homeless in the event of his death. So, it still felt the transfer was suitable.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to decide.

I issued a provisional decision in July 2023, explaining that I didn't intend to uphold Mr M's complaint. Below are extracts from my provisional findings, explaining why.

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.

Quilter carried out a transfer value analysis report (as required by the regulator). As part of this, it was required to produce a transfer value comparator ('TVC') – an estimate of what sum of money Mr M would need to invest, at the time of the analysis, at a risk-free return to *provide equivalent benefits to the DB scheme at retirement. In this case the comparison was produced on the basis of benefits being taken under the DB scheme at age 65. Quilter also calculated how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield) at age 65.*

It was estimated, at age 65, the DB scheme could either pay a full annual pension of £3,774, or tax-free cash of £18,533 and a reduced pension staring at £2,779 per year. Mr M was being offered a CETV of £104,412.15. But the TVC was calculated to be £159,401.34. Essentially the difference would need to be achieved by growth. And the critical yield indicated this growth would have to be in excess of 20% per year regardless of whether trying to replicate the full pension of the tax-free cash and reduced pension.

I've considered the regulator's standard projection rates, which have remained unchanged since 2014: the regulator's upper projection rate being 8%, the middle projection rate 5%, and the lower projection rate 2%. And given Mr M was recorded as being risk averse, achieving the growth required year on year to replicate the benefits the DB scheme guaranteed to provide from age 65 was highly unlikely.

The transfer analysis also looked at the benefits available immediately from the DB scheme. At that point, it said Mr M could take an annual pension of £3,453 or tax-free cash of £16,655 and a pension starting at £2,630 per annum. It said the cost of purchasing an annuity providing equivalent benefits, including spouse's pension and escalating income, was £193,267.18 for the full starting pension or £177,489.53 for the tax-free cash and reduced pension. Which was significantly more than the CETV.

So, I think the analysis shows that Mr M was always likely to receive benefits of a lower value than those the DB scheme would provide, and that he couldn't realistically have replicated these by transferring.

But I'm satisfied that the advice to transfer wasn't given on the basis of replicating the benefits being given up or improving on them. The suitability report explained "If you wanted to take your pension benefits in exactly the same format as that being offered by the [DB] scheme, then a transfer out would not be a good idea." And it went on to say "The transfer value is not high enough to replicate this level of income". Rather the advice was on the basis that Mr M's particular circumstances and objectives meant that transferring was suitable despite providing overall lower benefits. I've considered this below.

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 and should only be considered if it can be demonstrated the transfer was in the consumers best interests. It's also worth noting though that the FCA has suggested, under certain circumstances, a transfer might be suitable if the pension holder is not going to rely on the pension for their retirement needs or they have limited life expectancy.

Mr M's recorded outgoings at the time of the advice were £1,535 per month. £550 of which was repayments to his mortgage. Without the mortgage payments therefore, his expenditure would've been approximately £985. Mr M didn't expect his outgoings to change significantly aside from the mortgage and said that, in retirement he expected to need an income of £1,000 per month. And I think it was reasonable for Quilter, based on the available information, to believe that to be accurate.

I can see that Quilter gathered information about Mr M's state pension entitlement, which he was due to begin receiving at age 66, and his other pension provisions. And these would provide an income of approximately £14,000 per year – which was guaranteed and would escalate. And Mr M was expected to continue to receive a portion of his benefit entitlement *after he began receiving his state pension. But even without those state benefits continuing, his stated income needs would be met, and indeed would be exceeded by, his other retirement provisions. The DB scheme could've increased the level of income that Mr M received. But I think it was reasonable for Quilter to conclude that Mr M was not going to be reliant on the DB scheme it was considering, in retirement. So, it wasn't unreasonable, in my view, to think about whether addressing Mr M's other objectives was in his interests.*

While Mr M's income was said to be meeting his expenditure, I'm satisfied on balance from the information available that he did have financial concerns and had become reliant on support from his daughter, through rent, that was not certain to be sustainable. As he'd medically retired due to a serious medical condition, his income was unlikely to change. Mrs M wasn't working, there is nothing from the time to indicate that was likely to change and she was further from receiving state pension than Mr M was.

The most significant concern for Mr M seems to have been his mortgage – which made up a large part of his regular expenditure. Mr M still had an outstanding balance of £35,000 and it still had approximately seven years left to run.

Falling behind with mortgage payments can have serious consequences, including ultimately the potential loss of the property through repossession. I haven't seen anything to suggest Mr M was behind with his repayments. But as I've mentioned, a portion of his income was uncertain to be sustainable. So, there appears to have been the possibility of this becoming an issue. And again, Mr M's income situation seemed unlikely to improve. And Mr M seems to have not only been concerned about the payments being sustainable for him but also for Mrs M in the event he passed away. Which, given his prior health conditions, I think was a reasonable thing for Mr M to be thinking, and concerned, about.

Quilter says, because of this, Mr M was keen to reduce the mortgage as much as possible, to make it more manageable and to free up additional income to make sure that his benefits and pensions in payment could meet his needs. I think this was a reasonable objective. So, I've thought about whether transferring to achieve this was in his interests.

As I've said, Mr M was medically retired. And both his and Mrs M's income situation weren't likely to improve. Refinancing the mortgage therefore appears to have been unrealistic and, in any event, wouldn't actually have improved their situation – as they'd have still had a significant debt that required repayment.

The fact find didn't record any significant other savings or assets that could've been used to reduce the mortgage either.

Mr M could've taken benefits under the DB scheme immediately, including taking tax-free cash of £16,655 and a pension starting at £2,630 per annum. This was approximately £9,500 less than the tax-free cash he could access by transferring though, so wouldn't have reduced the mortgage balance, and in turn the monthly repayments, by as much. Mr M would also have been required, because of the fairly inflexible nature of the DB scheme benefits, to begin drawing the annual pension as well. Which would likely have impacted and led to a reduction in the means tested benefits he was receiving. So, coupled with the mortgage payments not reducing as far, would not have alleviated as much pressure on his finances.

On the other hand the income from the pension would've been guaranteed for the rest of Mr M's life and would've escalated while in payment. Mr M though, because of his health conditions, had reasonable concerns about what his life expectancy would be. And again, based on the information available, I don't think Mr M was reliant on receiving an income from this pension.

The transfer meant a greater portion of the mortgage could be repaid, meaning the reduction in monthly repayments was maximised, making Mr and Mrs M's finances more sustainable and alleviating Mr M's concerns about the long-term affordability of the mortgage. And it gave him the flexibility to defer drawing any income from the pension, so as not to impact his means tested benefits. So, in the particular circumstances of this complaint, I think that was in Mr M's interests.

Quilter has said that Mr M was also interested in the alternative death benefits available through a personal pension, and the option this provided to potentially leave a lump sum to Mrs M and their children. And the death benefits available through a personal pension were in a different format – the entire remaining fund would be passed on as a lump sum. Which after taking tax free cash and accounting for charges would've been around £75,000.

But while death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die, a pension is primarily designed to provide income in retirement and the priority here was to consider what was best for Mr M's retirement.

The DB scheme did also provide death benefits. If Mr M were to pass away before drawing any benefits a lump sum equivalent to his contributions or five times the annual pension would've been provided (which Quilter estimated to be approximately £17,500) with an annual spouse's pension of 66% of the amount Mr M would've been entitled to at that point payable to Mrs M. And if he passed away after drawing benefits, the first five years of his pension would've been guaranteed, followed by a 66% spouse's pension. And these benefits were guaranteed and would continue to escalate while in payment. Whereas any lump sum from the personal pension would also be reduced by any income Mr M drew in his lifetime.

So, I don't think transferring solely to achieve alternative death benefits would've been suitable.

But that wasn't the only reason for transferring. And again, based on the information from the time, it appeared that Mr M was unlikely to need an income from this pension, so he could've left most, if not all of the transfer value intact as a legacy. And so, the alternative death benefits provided could've been useful, and when coupled with his other objective means I don't think the advice Mr M received to transfer was unsuitable in his specific circumstances.

I also think the recommendation Quilter made about how the funds should be invested post transfer was appropriate based on Mr M's attitude to risk. I'm satisfied its assessment that Mr M was risk averse was accurate. So, he didn't want to expose his pension to any significant risk. But the investment strategy meant the significant majority of the pension was guaranteed to achieve a small level of growth. This did mean no income could be drawn. But again, the information from the time indicated he didn't have a need to take an income, particularly after improving his financial position by reducing the mortgage.

A smaller portion of the pension was invested and so was subject to some risk. But the nature of the fund was very low risk. And gave Mr M a contingency in case his circumstances changed, and he did require access to some funds from the pension within the first five years after the transfer.

I also think Quilter made it clear to Mr M in the information it provided, particularly the suitability report, that he was exchanging a guaranteed income – which could've been drawn immediately or several years later – for benefits in an alternative format. And even though Mr M was an inexperienced investor, I think this was made clear enough that he understood this. And Mr M sent to Quilter an email after it had provided its recommendation, indicating he understood this.

Taking all of this into account, I think the recommendation Quilter made, based on Mr M's specific circumstances and objectives was suitable. So, based on what I've seen so far, I don't intend to require it to take any further action.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Quilter didn't provide any further comments.

Mr M's representative said he did not accept my provisional decision. They said Mr M was not in arrears with his mortgage, so they disagreed it was in his interests to reduce this by accessing his pension. They also said that the benefits the DB scheme provided on death would've ensured that Mrs M could meet her financial obligations, including the mortgage. And that referring to the potential death benefits of the new policy as being around £75,000 was unreasonable, as this assumed they would be achieved straight away.

Mr M's representative also said that although rent received from his daughter wasn't guaranteed, it was wrong to assume this might cease. They also didn't think the impact drawing pension benefits would have on his means tested benefits was significant. And said that, reducing the outstanding mortgage could also reduce Mr M's benefits, as a portion was linked to his mortgage repayments.

They also thought it was wrong that Quilter had recommended that Mr M receive ongoing advice from it about his pension.

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, while I know this will come as a disappointment to Mr M, I don't intend to depart from my provisional findings.

As I noted in my provisional decision, I haven't seen anything to suggest that Mr M was behind with his mortgage payments. So, I agree, he doesn't appear to have been in arrears at the point of the advice. But I'm also satisfied he had genuine concerns, at the time, about this potentially becoming an issue both for him and for Mrs M in the event of his death.

While I note Mr M's representative doesn't agree, I think it is reasonable to take into account that a fairly substantial part of his monthly income – rental payments from his daughter – was not guaranteed. And that without this, Mr and Mrs M would have an income shortfall. So, as there was little prospect of his financial situation changing for the better, I don't think Mr M's concerns were unreasonable or unfounded. And, as the evidence indicates Mr M was not going to be reliant on the DB scheme benefits in retirement, I think considering a transfer to address his mortgage situation was reasonable in his specific circumstances.

I also don't agree that the death benefits the DB scheme offered meant that Mr M didn't have reason to be concerned about Mrs M being able to afford the mortgage in the event of his death. The spouse's pension the DB scheme would've provided – either immediately or if Mr M had remained in the scheme and begun drawing benefits – fell significantly short of the mortgage repayments, which again were due for a further seven years. And while Mr M did have two other pensions – one already in payment and one he was about to begin taking benefits from, the spouse's benefits from these pension also appear to fall short of meeting the mortgage payments, even when combined with what the DB scheme Quilter considered could've provided, and certainly wouldn't account for any other outgoings Mrs M would've still had.

Mr M's representatives have said that the reference to the death benefits the new policy would provide is incorrect, because the figure I mentioned assumed them being drawn immediately. And it is correct that this would've been the immediate benefit after transfer. But, given the majority of the pension was invested on a guaranteed basis for five years, this value was indicative of what could likely be expected for several years after the transfer. So, I don't think Quilter referencing this was unreasonable.

Mr M's representatives have said that the potential impact on his means tested benefits of drawing an income from his pension was likely not particularly significant. And reducing his mortgage could've impacted this anyway.

As I understand it, any element of Mr M's benefits that related to housing support would've been directed to the lender, separate to the income Mr M received. So, reducing the mortgage should not have impacted his income. And while the impact of taking a pension income on his means tested benefits may have been relatively small, I still think this was a reasonable consideration in his circumstances, particularly based on his concerns. And again, the tax-free cash available by transferring was around £9,500 more than the DB scheme could've provided. So, the reduction to Mr M's mortgage, and in turn monthly repayments, that could be achieved by transferring was a lot greater. And the sustainability of his finances was Mr M's major concern.

Quilter did recommend that Mr M utilise its ongoing review service, at an annual cost. Mr M's representatives have said that this wasn't appropriate. But I don't think this was unreasonable. It is true that the majority of Mr M's pension was held in a fixed term annuity which guaranteed to provide a set amount after five years. But there was still a portion of Mr M's pension invested. And while this was initially on a low-risk basis, Mr M's circumstances and objectives regarding the amount invested could've been subject to change. So, I don't think it was unreasonable to suggest that he may want to review this periodically. And I also note the suitability report made it clear Mr M could cancel this service at any time if wished.

Taking all of this into account, I don't think I can fairly say that the advice Mr M received was unsuitable. So, I'm not asking Quilter to take any further action.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 August 2023.

Ben Stoker
Ombudsman