DRN-3897940

The complaint

Mr L complains about the advice given by Quilter Financial Services Ltd to transfer the benefits he held in two defined-benefit ('DB') occupational pension schemes to a personal pension. He says the advice was unsuitable for him.

Mr L 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 L.

What happened

Mr L held benefits in three DB schemes. Two covering periods of previous employment and one with his current employer.

In March 2016, Mr L's employer announced that it would be examining options to restructure its business, including decoupling the employers' DB scheme, the British Steel Pension Scheme ('BSPS'), from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr L's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr L was introduced to Quilter by another financial adviser for advice about his DB pensions.

Quilter completed a fact-find to gather information about Mr L's circumstances and objectives. Mr L was 54, cohabiting with his long-term partner and he had two children, one of whom was still financially dependent. While it was noted Mr L had a medical condition controlled by medication, it was also recorded that he considered himself in good health. Mr L was employed full time and his income exceeded his outgoings. He had a mortgage with a remaining balance of approximately £40,000 and personal loans totalling around £12,500. And he had savings of around £3,000.

The first of Mr L's three DB schemes, the BSPS, had a cash equivalent transfer value ('CETV') of £237,310.37. The second, which I'll call 'Pension I', had a transfer value of £40,135.00. And the third of Mr L's DB schemes, which I'll call 'Pension M', had a transfer value of £212,806.42.

Quilter said Mr L was aware he needed to make a decision about his BSPS benefits. It said although he didn't expect to fully retire until age 67, Mr L was interested in potentially clearing all of his debts and increasing the amount he held in savings, using tax-free cash ('TFC') from some of his pension arrangements, and reducing his hours by moving into a job share early the following year, around the time he reached age 55. Quilter said he was looking to retain the benefits he held in Pension M and take these from age 60. But he was interested in moving his BSPS benefits and Pension I to access TFC. Quilter noted that while he had lived with his partner for more than a decade, they had no plans to marry.

Quilter also carried out an assessment of Mr L's attitude to risk. It said Mr L's attitude to risk was assessed to be that of a 'moderate' investor. But it went on to say it was agreed his risk rating would be that of a 'balanced' investor – a lower risk classification than 'moderate' based on the information Quilter has provided.

Quilter advised Mr L to transfer his pension benefits from the BSPS and Pension I into a personal pension and invest in one of the provider's managed funds. Quilter set out its analysis in a suitability report, which said the reasons for this recommendation were that Mr L expected Pension M and his state pension to be enough to meet his income needs in later life, so he could afford to give these pensions up to achieve his other objectives. And a transfer would provide Mr L with the flexibility to be able to draw the TFC he wanted and would improve the lump sum death benefits available.

Mr L accepted Quilter's recommendation and transferred his funds from the BSPS and Pension I to the named personal pension.

Mr L complained in 2022 to Quilter. He said he didn't think the advice he'd received was suitable and that Quilter hadn't explained he was very unlikely to match the guaranteed benefits he'd given up.

Quilter didn't uphold Mr L's complaint. It said it thought the transfer was suitable as it met Mr L's objectives. It acknowledged that Mr L could've released the TFC he wanted by taking benefits early under the two schemes he transferred. But it said this wouldn't have given him the flexibility he wanted and would've left him with an excess income in retirement. And it said Mr L had made an informed decision to transfer.

Mr L referred his complaint to the Financial Ombudsman Service. His representative said Mr L has not retired or changed his working pattern, doesn't plan to do so and hadn't accessed benefits from his pension to clear his mortgage. So, they suggested those stated objectives were generic and that he didn't need flexibility or alternative death benefits. They said Mr L was an inexperienced investor with a cautious approach to risk and went to Quilter for advice. Quilter hadn't explained to Mr L that he was highly unlikely to match the benefits he was giving up and Mr L doesn't recall alternative options, for meeting the objectives Quilter said he had, being discussed. Rather he was just told to transfer.

One of our Investigators looked into the complaint and said it should be upheld. He noted that reducing hours and clearing debt had only been recorded as something that Mr L *might* do. So, he didn't think these were confirmed objectives at the time of the advice – and noted Mr L had not taken these actions. He also said there was nothing to suggest that Mr L's mortgage or loans were unaffordable. So, he didn't think the recommendation that Mr L give up guarantees and the security this offered just to repay these debts was in his interests. He thought Mr L was always unlikely to improve on the benefits his DB schemes offered by transferring. And he didn't think any of the other things Quilter had said the transfer helped achieve meant accepting this reduction in benefits was in Mr L's best interests. So, he recommended that Quilter compensate Mr L for any losses caused by the unsuitable advice.

Quilter did not respond to the Investigator's opinion, so we have assumed it did not agree.

As agreement could not be reached the complaint was referred to me to make 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

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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

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 Mr L's best interests. And having looked at all the evidence available, I'm not satisfied the transfer of Mr L's two DB schemes was in his best interests, for the following reasons.

- Quilter was required, by the regulator, to produce a transfer value analysis ('TVAS'). This included calculating critical yields - how much Mr L's pension fund, following a transfer, would need to grow by each year in order to provide the same benefits as the DB scheme would've done, at retirement. I can see that a TVAS report was produced for the BSPS benefits and those of Pension I.
- Pension I had a normal scheme retirement age of 60. To match the benefits it guaranteed to provide at that age Mr L's equivalent pension fund to those benefits would need to grow by either 14.5% if he took TFC and a reduced pension or 21.3% each year if he took a full pension.
- Under the BSPS the normal scheme retirement age was 65. Mr L couldn't though have retained benefits in the BSPS as it was. To remain a member of that DB scheme he would've either needed to join the BSPS2 or the PPF. To match the benefits the BSPS2 would provide from age 65, the critical yield was 7.7% or 9.2%.

To match the benefits the PPF would provide at 65, the critical yields were 5.5% or 6.3%, depending on whether or not Mr L took TFC.

- The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. At the time, the discount rate for 5 years to retirement (age 60) was 3.1% and for 10 years to retirement (age 65) 3.8%.
- Given Mr L's 'balanced' or 'moderate' attitude to risk, the discount rates and considering the regulator's standard projection rates at the time of 2%, 5% and 8% for low medium and high rate returns respectively, I think he was always likely to receive benefits of a lower overall value at the normal retirement age of the two DB schemes than he'd have otherwise been entitled to, by transferring.
- The TVAS reports also looked at the critical yields required to match the benefits Mr L could've taken under both schemes from age 56 – as taking benefits shortly after a transfer was something that Mr L was apparently considering but the analysis had to allow at least some time for growth.
- The report said to match the benefits Pension I would offer from age 56 the critical yields were all in excess of 29%.
- To match the benefits that the BSPS2 or the PPF would provide from age 56, in respect of the benefits Mr L currently held in the BSPS, the critical yields were all in excess of 32%.
- The relevant discount rate for 1 year to retirement was 2.5% and the regulators standard projections were as already noted above. So, I also think Mr L was always likely to receive benefits of a significantly lower value that he'd have been entitled to under the DB schemes if retiring early.
- And Quilter acknowledged Mr L was unlikely to improve on the benefits he was giving up, noting in the suitability report that the critical yields were unlikely to be achieved.
- Quilter said that Mr L could afford to give up the guaranteed benefits Pension I and the BSPS would offer. Because Pension M and his and his partners state pension would meet their expected needs. But their estimated needs were just that – estimates. These could've been incorrect. And so, in my view, it wasn't in his interests to give up the guarantees available to him for this reason, particularly as he was always likely to be worse off.
- Quilter says Mr L needed to access TFC of £68,000 to clear his debts and increase the amount he held in savings, in case he needed to provide some financial support to his children. But I've seen nothing to suggest that his debts were unaffordable or that he was having any issues in meeting the required repayments. And I don't think giving up his guaranteed pension benefits to clear debts that were affordable was in his interests.
- While I understand the appeal of having a sum of money available in case of unexpected expenditure, I don't agree that this was something Mr L *needed*. Giving up valuable guarantees to achieve this was a particularly high cost to pay for this extra security, that may never have been required. And Quilter's role wasn't to put in place what Mr L might've thought he wanted when seeking advice. It was to give him objective advice about what was in his best interests. So again, I don't think that giving up his guaranteed pension benefits to achieve this apparent goal – particularly given he was always likely to receive benefits of a lower overall value by transferring – was in Mr L's interests.
- Quilter has said that Mr L was interested in potentially reducing his working hours by entering a job share. And this would reduce his income – which is why he wanted to

access TFC and achieve his objectives. But, as our Investigator noted, while this was something that Mr L might've considered doing, I can't see that he'd committed to it or made a final decision about taking this course of action. And indeed, Mr L has said he hasn't gone ahead with this. So, I'm not sure this was a definitive plan at the time of the advice.

- In any event, I don't think Mr L needed to transfer away from his DB schemes to clear his debts and be in a position to reduce his hours, if this had been his intention. The TVAS said that if Mr L opted into the PPF in respect of his BSPS benefits, at age 56 he'd be able to take TFC of £62,291 and then receive a guaranteed, annual escalating pension income of £6,091 per year. I appreciate that, at age 55, a year earlier, those figures would've been slightly lower. But the TFC amount would still likely to have been sufficient to clear his recorded debts of £52,500 with some funds left over to add to his savings if he so chose. And the ongoing income, which would've been received in addition to his salary, could've supplemented his savings further or be used to enjoy his early years of semi-retirement. And Mr L could also have taken his benefits early under Pension I and drawn a further TFC sum from that pension of just over £4,500 and an escalating annual pension beginning at around £680 per year.
- Quilter acknowledged in its response to the complaint that Mr L could've achieved his objectives of clearing his debts by remaining in the DB schemes and taking benefits through them. But it said this didn't give him flexibility and could've resulted in him potentially receiving a surplus income in his retirement. But I don't think potentially having more funds than he thought he'd need in retirement was a bad thing for Mr L – as his estimates of the income he expected to require could've been incorrect. And I can't see that Mr L needed the ability to be able to vary his income in retirement. So, I don't think transferring to achieve flexibility, which Mr L didn't have a need for, was in his best interest.
- Quilter said that the lump sum death benefits available through a personal pension were another reason that a transfer was suitable for Mr L. But the primary purpose of a pension is to provide for the holder's needs in retirement, and the priority here was to advise Mr L about what was best for his retirement provisions. And Mr L may well have come to rely on the benefits of Pension I and the BSPS in his retirement.
- Pension I would've provided a spouse's pension, equivalent to two thirds of the income that would've been payable to Mr L, in the event of his death. Which could've been useful to his partner, in the event he predeceased her. This was guaranteed and it escalated and was not dependent on investment performance. And it appears that Quilter confirmed with the trustees that Mr L's partner would qualify for this benefit.
- Due to their marital status Mr L's partner may not have qualified for a spouse's pension under the BSPS2 or the PPF – although a final decision would be subject to the scheme's discretion. 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 – so may not have provided the legacy Mr L might've thought it would.
- Mr L had death in service benefits through his employer equivalent to six times his salary, which in my view appears to have been a more appropriate method by which to leave a potential legacy to his family. And if he wanted to leave a further lump sum, life insurance could've been explored. Quilter said in response to the complaint that Mr L's health condition was likely to make this expensive. But I can't see that it actually considered this at the time of the advice.
- Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr L. And ultimately Quilter should not have encouraged Mr L to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr L was an inexperienced investor, and I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been on the understanding he was going to take ongoing advice about how his pension was invested, at additional cost. So, I don't think him having control over his pension was a genuine reason for transferring or made doing so in his interests.
- The consultation regarding the BSPS may've given Mr L concerns about how that pension had been managed to that point. But Quilter said in its suitability report that the funding position of the pension wasn't a reason for its recommendation. And, even if Mr L did have concerns about this, the BSPS2 and the PPF both would've provided guaranteed benefits that Mr L was unlikely to improve upon by transferring.

Overall, I can't see persuasive reasons why it was clearly in Mr L's best interest to give up his DB benefits under either Pension I or the BSPS and transfer them to a personal pension.

Quilter says that Mr L made an informed decision to transfer and referred to an email he sent after receiving the suitability report explaining he understood the reasons for the recommendation. So, I've thought carefully about whether Mr L would always have looked to proceed with a transfer. But the email Quilter has referred to appears to have been directly requested by it, as part of the transfer process, rather than being independently provided by Mr L. And it appears to have simply repeated information about reasons for transferring that Quilter had already provided to Mr L. And ultimately, Quilter advised Mr L to transfer. I think he relied on that advice. And if Quilter, a professional adviser whose expertise he had been recommended and was paying for, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As a result, I'm upholding this complaint as I think the advice Mr L received from Quilter was unsuitable.

While the information from the time indicates that Mr L was potentially interested in changing his working pattern from age 55, I don't think he'd made a firm decision about this. And he also seems to have been clear with Quilter that he didn't intend to stop working entirely until age 67. With that in mind, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't necessarily have been offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr L would've retained the ability to transfer out of the scheme at a later time. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think, had he received suitable advice not to transfer, Mr L would've opted into the BSPS2.

Putting things right

A fair and reasonable outcome would be for Quilter to put Mr L, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr L would have most likely remained in both of his DB pension schemes, retaining his benefits in Pension I as they were and that he would've opted to join the BSPS2 if suitable advice had been given.

Quilter must therefore undertake redress calculations. Two separate calculations will need to be run. One in respect of Pension I and a separate one in respect of Mr L's BSPS benefits. Both should be carried out 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.

In respect of Mr L's BSPS benefits, Quilter should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr L and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Quilter based the inputs into the calculator on.

For clarity, I understand Mr L has not yet retired, and has no plans to do so at present. So, compensation in both calculations should be based on each schemes' normal retirement age, as per the usual assumptions in the FCA's guidance.

The two calculations 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, these should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr L acceptance of the decision.

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

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

Redress paid to Mr L as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Quilter may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr L's likely income tax rate in retirement – presumed to be 20%**.** So, making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Quilter Financial Services Ltd to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Quilter Financial Services Ltd pays Mr L the balance.

If Mr L accepts this decision, the money award becomes binding on Quilter Financial

Services Ltd.

My recommendation would not be binding. Further, it’s unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 21 November 2023.

Ben Stoker
Ombudsman