DRN-4288894

The complaint

Mr P complains about the advice given by Quilter Financial Planning Solutions Limited (Quilter) to transfer the benefits from his defined-benefit (DB) occupational pension schemes to a Legal and General (L&G) self-invested personal pension (SIPP). He says the advice was unsuitable for him and believes this has caused a financial loss.

As part of the advice Mr P also transferred a defined contribution (DC) pension scheme which was not included within his complaint to Quilter, as such this scheme has not been commented on further within this decision.

Mr P is being represented in this complaint however for ease of reference I have referred to the complainant as simply Mr P throughout the decision below.

Additionally, I would note that the advice was originally provided by Positive Solutions (Financial Services) Limited, who changed their legal entity to Quilter in 2020. Again, for ease of reference I have referred to Quilter throughout the decision below.

What happened

Mr P discussed his pensions and retirement planning with Quilter in 2010.

Quilter completed a fact-find to gather information about Mr P's circumstances and objectives.

This fact-find confirmed that Mr P was:

- Aged 38, married, with three dependent children.
- Employed as an analyst with an overall annual income of £425,000. Net monthly income of £12,000 and expenditure of £6,500 resulted in disposable income of £5,500 each month.
- The family home was valued at £900,000 with Mr P holding £70,000 in investments including £18,000 held in a Venture Capital Trust (VCT).

The fact-find confirmed that Mr P was a member of his current employer's occupational DC scheme and additionally included details of the three other pension schemes which were the subject of the advice. Only the two DB schemes have been the subject of complaint and as such I have not included detail on the DC scheme which was also transferred at this time.

The pension details were confirmed as:

- DB scheme 1 – around five years of service with an annual pension income in retirement of around £12,500 and a transfer value of around £256,000.
- DB scheme 2 – three years of service with an annual pension income of £1,404 and transfer value of around £36,800.

Quilter also carried out an assessment of Mr P's attitude to risk, which it deemed to be 'high'.

On 5 March 2010, Quilter advised Mr P to transfer two of his DB pensions schemes and the additional defined contribution (DC) pension scheme into a SIPP and invest the proceeds in a combination of the eight investment funds below.

- 16% - L&G North American Equity Index PMC.
- 10% - L&G Property fund.
- 20% - L&G UK Equity Index PMC.
- 8% - Allianze RCM BRIC Stars fund.
- 8% - Gartmore China Opportunities fund.
- 10% - Investec American fund.
- 20% - M&G Recovery fund.
- 8% - Cazenove European fund.

The suitability report said the reasons for this recommendation were that the transfer gave the potential for Mr P to increase his pension provision, would allow Mr P to control the pension fund, and offer the potential for self-investment of the transferred funds.

Mr P complained to Quilter in August 2022 about the suitability of the transfer advice stating that he believed the advice was negligent and had caused financial loss.

Quilter did not uphold the complaint and stated that it believed Mr P had registered his complaint too late.

Quilter noted that the advice had been given more than six years before the complaint had been made. In addition, Quilter argued that Mr P would (or should) have been aware of any issues more than three years before his August 2022 complaint. Quilter noted that Mr P would have received annual statements from his SIPP provider each year providing updates on its value and the potential benefits Mr P could expect in retirement. As such Quilter stated that each of these statements would have made Mr P aware of his pension provision and the risks associated with it.

With regard to the suitability of the advice, Quilter stated that they believed the advice to be suitable. They said that a fact-find and suitability letter had been completed by their adviser in 2010 which showed that Mr P was a sophisticated and experienced investor who had worked as an analyst for several investment banks from 1994 onwards, and that Mr P had agreed and accepted a high level of risk with the transferred funds in return for the possibility of higher pension provision in retirement.

Disagreeing with Quilter’s response, Mr P referred his complaint to our service.

An investigator firstly looked into the timeliness of the complaint to assess whether it fell within our jurisdiction. Having looked at the documentation from the time of advice, and the subsequent pension statements Mr P received over the following years, our investigator concluded that the complaint was one which we could consider.

Whilst the investigator accepted that the annual statements received by Mr P did provide valuations and projections, they did not believe that these provided enough information to alert Mr P to any potential issues with the advice received in 2010. Additionally, whilst it was noted that Mr P changed his retirement age from 60 to 55 in 2015, this again was not considered an event which would (or should) have caused any concern to Mr P. As such, the investigator concluded that it was only in 2022 when Mr P was made aware of the potential mis-selling of pensions that he became aware of a potential problem with the advice he had received. As such the complaint had been made in time.

Quilter did not agree and reconfirmed their stance that they believed the annual statements received by Mr P each year should have provided him with the opportunity to compare his SIPP value with the DB benefits given up on transfer and therefore Mr P should have been aware of any potential issues much sooner than 2022.

Whilst there was no agreement between Quilter and our investigator regarding our jurisdiction, the investigator moved forward and considered the suitability of the advice provided to Mr P.

Having looked at the advice documentation and considered the regulations in place in 2010 our investigator concluded that the advice given to Mr P was suitable. They noted that the analysis of the DB pension and the proposed SIPP showed that the transfer was likely to provide Mr P with increased benefits in retirement, as well at the additional flexibility and investment control desired.

The investigator also considered the suitability of the underlying investments recommended by Quilter and concluded that these too were suitable. Mr P's assessment as a high-risk investor was considered reasonable given his investment experience and capacity for loss, with the eight investment funds recommended by Quilter considered suitable for a high-risk investor.

Mr P did not agree with this outcome and noted that he does not self-invest with any investments only ever being made after advice, that he did not recall being provided with any of the advice documentation, and that he was not aware of the high-risk nature of the transfer.

The investigator wasn't persuaded to change their opinion, so 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 considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I would firstly note that Quilter remain of the opinion that this complaint sits outside of our jurisdiction as they believe Mr P made his complaint too late. As such my first consideration here is whether this is a complaint that we can consider further.

The rules which set out the time limits we must follow is detailed in the Financial Conduct Handbook under DISP 2.8.2.

Here, it states:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received."

From the chain of events above it is clear that the advice was given to Mr P more than six years before his complaint and as such I have focussed my decision on point 2(b) above – when Mr P became (or ought reasonably to have become) aware he had cause for concern about the advice he had received.

Regarding our jurisdiction I have recached the same conclusion as our investigator. I have carefully considered the content of the pension statements Mr P received from both L&G and St James's Place (to whom the L&G SIPP was transferred in 2015) however do not believe the content of these statements would have raised any concerns for Mr P.

The statements received from both L&G and St James's Place broadly show a steadily increasing pension value over time, with there being no reason for any of these statements to cause undue concern to Mr P. Whilst Quilter have stated that each of these statements detailed projected retirement benefits and provided Mr P with an opportunity to compare these with what would have been provided by the DB schemes, the statements themselves do not instruct or suggest to Mr P that such a comparison be made. I don't think the statements would have triggered any alarm on Mr P's part about his pension provision or any thoughts that the advice he had been given in 2010 may have been negligent.

In considering that Mr P changed his retirement age (from 60 to 55 years of age) in 2015, I do not consider this to be the point at which Mr P should have been aware of any potential issues with his pension. Again, the value of the SIPP had grown between 2010 and 2015 and I do not consider it reasonable to assume that a change in retirement date would have prompted Mr P to compare the value of his SIPP to the benefits which would have been provided by the DB schemes. I would also note that the fact Mr P was bringing his retirement date forward by five years would support the conclusion that Mr P was happy and satisfied that his pension provision would support an earlier retirement.

Overall, there is no evidence that Mr P was (or should have been) aware of any potential issues with Quilter's pension advice before his complaint was made in 2022, as such this complaint is one which this service can consider further.

I have therefore gone on to consider the suitability of the advice provided by Quilter in 2010.

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 have reached 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 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.

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

- Principle 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 not to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 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 P's best interests.

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.

The investment return (critical yield) required to match the DB pension scheme 1 provision at retirement was quoted as 4.87% per year (or 5.35% per year if no tax-free cash was taken at retirement).

The investment return (critical yield) required to match the DB pension scheme 2 provision at retirement was quoted as 6.08% per year (or 6.57% per year if no tax-free cash was taken at retirement).

This compares with the discount rate of 6.7% per year for 21 years to retirement in this case.

For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5%.

I've taken this into account, along with the composition of assets in the discount rate, Mr P's attitude to risk and the term to retirement. Whilst I appreciate that actual growth rates may have been different to the projected growth rates, the critical yield and the discount rates referenced above, what I must consider is whether it was reasonable to give advice based on the assumption that these growth rates were achievable. Based on what was known at the time, I think Mr P would have been likely to receive benefits of a higher overall value than the DB schemes at retirement, as a result of investing in line with his attitude to risk.

I note that the difference between the critical yield and the discount rate is smaller with DB scheme 2, however I would still consider this difference sufficient to support the conclusion that Mr P was likely to receive greater benefits in retirement.

With this in mind, I don't think the recommendation to transfer out of the DB schemes was unsuitable for Mr P.

In addition to the financial reasons supporting the transfer, Mr P was also noted as wanting additional control over the pension monies with the option of self-investing. Overall and in isolation I would not consider these objectives to be sufficient justification for the advice and loss of the valuable guaranteed benefits forgone by transferring.

It is true that whilst the DB pensions were retained Mr P had no control over the underlying investments made by the pension scheme trustees, however he also bore none of the investment risk. In addition, whilst the transfers did provide Mr P with the ability to control and self-invest the transfer proceeds, this is not something he has actually done since 2010.

Whilst these additional reasons are not considered strong, I have concluded that Mr P's main priority – gaining access to potentially higher pension benefits – was met by the transfer and as such the transfer advice is considered suitable.

I have gone on to consider the suitability of the underlying investments recommended by Quilter.

Mr P was assessed as having a high attitude to risk. I do not consider this unreasonable given the information on file.

Mr P had prior investment experience, holding £70,000 of investments at the time of advice including an amount of £18,000 held within a VCT investment. Additionally, Mr P worked within financial services as an analyst for an investment bank at the time of advice. Whilst Mr P has stated he has never self-invested and only purchased investments after receiving advice, I do not consider self-investment itself to be key in providing investment experience. More important than self-investing is a consumer holding investments over time and experiencing fluctuations in their value over that time.

As well as having the relevant knowledge and experience to support a high-risk approach with these pension benefits, I have also concluded that Mr P had the adequate capacity to take such risks.

Whilst the transferred benefits represented the bulk of Mr P's pension provision at the time of advice, it must be noted that Mr P was also a member of his current employer's occupational DC pension scheme.

This was of a relatively small value at the time of advice; however, Mr P had only been with his current employer for a short time in 2010. With overall earnings of £425,000 (which Mr P confirmed he expected to rise faster than inflation over the following years), disposable income of over £5,000 per month, and around 21 years until retirement, Mr P had significant time and resources to build considerable additional pension provision alongside the transferred funds to support his retirement.

Given this I have concluded that the initial advice to invest in the eight funds detailed above was suitable and in line with both Mr P's attitude to risk and capacity for loss.

I have noted Mr P's comments that he was not aware of the high risk associated with the transferred funds, however I have based my decision on the evidence available which clearly documents the high-risk approach being taken. Whilst I appreciate that Mr P has stated he was not provided with any of the advice documentation, I would note here that the suitability letter is correctly addressed with there being no evidence that this was not sent. In addition, I would note here that even after the pension funds were transferred away from the L&G SIPP to Mr P's current St James's Place SIPP, the funds have remained invested in a similar fashion. The most recent 2023 statement shows the pension is now invested in the six investment funds detailed below, and whilst there have been some changes to fund choice and asset allocation, the pension monies remain invested predominantly in equities with a large proportion in overseas equities - not a strategy which could be considered low risk.

- 24.7% - SJP North American fund.
- 19.7% - SJP Greater European Prog fund.
- 18.8% - SJP Global Managed fund.
- 18.7% - SJP Global Quality fund.
- 9.9% - SJP Asia Pacific fund.
- 8.1% - SJP UK fund.

Overall, I have reached the same conclusions as our investigator. Whilst this complaint is one which this service can consider, the complaint itself is not upheld with the advice to transfer considered suitable. As such, no further action is required of Quilter.

My final decision

As per the rationale above, I am not upholding this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 December 2023.

John Rogowski
Ombudsman