DRN-3290443

The complaint

Mr B complains about advice he was given to transfer the benefits from his defined-benefit (DB) occupational pension scheme (OPS) to a personal pension plan. He says the advice was unsuitable for him and believes this has caused him a financial loss.

Quilter Financial Planning Solutions Limited is responsible for answering this complaint. So, to keep things simple, I'll therefore refer to "QFP".

What happened

Mr B approached QFP in September 2016 to discuss his pension and retirement needs. QFP initially completed a fact-find to gather information about Mr B's circumstances and objectives. A summary is broadly as follows:

- Mr B was 54 years old, married with no dependent children. He had very recently been made redundant and so at the time had no current job or income. He said he was in good health. His wife, Mrs B, was 47 and had an ongoing chronic medical condition, although worked part-time and earned £12,000 per year.

- Mr B had very recently been paid around £22,000 in redundancy and this represented most of his savings at the time. He and Mrs B had a mortgage outstanding of £70,000 on their home, said to be worth around £140,000. They had unsecured credit card debt and a loan totaling around £8,000.

- After being a member of his OPS for over 30 years, Mr B was now classed as a deferred member. The Cash Equivalent Transfer Value of Mr B's OPS was £407,709. Mr B's OPS had a normal retirement age of 65.

- Mr B had an aspiration to stop working and draw from his pension savings more or less straight away, at age 55.

In November 2016, QFP went on to recommend to Mr B that he should transfer out of his DB OPS and into a personal pension plan. It said he should invest the proceeds in funds commensurate with his attitude to risk (ATR) which it said was 'balanced'. The recommendation report noted that now being a deferred member of the DB scheme, the OPS benefits available to him immediately – taking the benefits at 55, for example – would be substantially reduced.

QFP recommended the transfer saying it would enable Mr B to access a cash lump-sum of 25% of his pension and thus allow him to fulfil his main preference which was to stop working (retire) early. It said this would also allow him to take a draw down income to meet his target income of £20,000 a year gross.

Mr B acted on the advice by transferring out. However, in 2020 he complained to QFP that the advice was unsuitable and had caused him losses and he later referred the complaint to our Service. One of our investigator's looked into the complaint and said we should uphold it. They thought Mr B would not have transferred out if QFP had given him suitable advice.

QFP didn't agree with our investigator and made a number of points which I address in my decision. However, it specifically said it had made it clear that the transfer out wouldn't replicate Mr B's OPS scheme, and that he was fully aware of the risks.

As the complaint couldn't be resolved informally, it's come to me for 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.

Having done so, I've decided to uphold the complaint.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, QFP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests (COBS 19.1.6).

Having looked at all the evidence available, I'm not satisfied the advice to transfer out was in his best interests.

Financial comparisons and viability

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.

The critical yield required to match Mr B's OPS benefits at age 65 was 9.4% if he took a full pension of £23,633 per year. Alternatively, QFP said if he took a tax-free cash element at 65 and a reduced pension of £16,521, the critical yield was 8%. The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before October 2017 and was 3.8% per year for 10 years to retirement. 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% per year.

I have kept in mind that Mr B's retirement aspirations were to access his pension savings at around the age of 55, rather than 65. Nevertheless, the above figures demonstrate, in my view, just how much Mr B's transferred funds would need to grow by even to match those in his OPS. I've also seen a transfer analysis carried out for QFP which shows the critical yield figures based on retiring earlier than 65 were much higher still than those I've set out above. QFP also said that at 55 years old Mr B's OPS could pay him £8,133 per year with a tax-free lump sum of £54,223 – and to buy such benefits on the 'open market' this could cost around £611,000.

I've taken all these things into account, along with the composition of assets in the discount rate and Mr B's balanced attitude to risk. There would be little point in Mr B giving up the guarantees available to him through his OPS only to achieve, at best, the same level of benefits outside that scheme. But here, given what I've pointed out above, I think that by transferring out, Mr B was likely to receive benefits of a substantially lower amount, whether his retirement plans came sooner or later.

QFP provided quite a few cashflow models which it says showed whether, and for how long, Mr B might have been able to meet his financial needs in retirement if he transferred out. The models show a depletion of the funds at the age of around 77 and as QFP will know, past performance is no guarantee for future performance. So, I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. And all these show that transferring out made him worse off in the long-term.

For these reasons, a transfer out of Mr B's OPS was not in his best interests from a financial comparison perspective. Of course, I completely accept financial viability isn't the only consideration when giving transfer advice; there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've therefore considered these below.

Flexibility and income needs

Whilst I think it's fair to say Mr B's plans about retiring weren't completely fixed, he told QFP he'd like to access his pension savings at around the age of 55. He made that quite clear, although he did say that if necessary he'd find other work to top up his income. I've noted the possibility of working again was mentioned in QFP's own letter to Mr B of 19 November 2016 when introducing its recommendations. I see that Mr B also specifically said that there was the possibility of a job at the same company he'd worked for up until very recently, although what looked like at a lower grade and proportionately less pay. I think these things were important considerations and relevant to what Mr B might be advised to do.

However, in my view, Mr B's preference to hopefully cease working altogether formed the major objective on which QFP's recommendation report was then based. I think this caused the subsequent advice to be flawed because the starting position, as I've described above, should have been that transferring out of Mr B's DB scheme was likely to be unsuitable. And as we've seen from the above, QFP's own analysis tended to confirm this, at least from a financial perspective.

Nonetheless, QFP placed Mr B's aspirations around early retirement ahead of all the other necessary considerations and in effect, this became the starting point for the advice. I can see, for example, that under "*Goals & Objectives*", the transferring out of the DB pension was listed as goal number 1. And whilst I've got no doubts this was placed there as a direct result of what Mr B himself told QFP, its role was to provide objective advice, rather than to merely transact what Mr B aspired to. I think that despite what Mr B *thought* he wanted, his expectation in seeking, and indeed paying for, regulated financial advice was probably that he would be carefully guided on the basis of his circumstances. I don't think QFP adequately did this.

I say this because Mr B's aspirations for more or less immediate retirement, at the age of 55, may well have been unrealistic, given the financial situation he was in. I note that Mr B's OPS was his only retirement provision, other than his state pension due at the age of 67, so it was important there was a clear financial basis for any recommendations to leave it. Other relevant factors were his current income which had recently reduced to zero as a consequence of his redundancy and that he was funding some of his current living costs from his redundancy payment. On the other hand, Mrs B had an income, albeit a part-time one and there's no suggestion their mortgage or unsecured debts were unmanageable at the time, and their overall living costs were clearly set out, at around £1,850 per month.

Against this backdrop, I think it was important for QFP to point out that Mr B's aspirations to stop working at that point in his life could be viewed as somewhat premature on the basis of his overall circumstances. Giving up the benefits and guarantees in his OPS by transferring out needed to be assessed against the option of remaining inside the scheme and continuing to meet their monthly requirements with a combination of Mrs B's income and potentially Mr B re-starting paid employment himself. I also don't think Mr B had arrived near to a situation yet where access to immediate cash from his pension was so urgent, to the extent no other options, other than to transfer out, were available to him.

However, I don't think QFP set any of this out for Mr B clearly enough when it advised him; instead it 'defaulted' to him transferring out, citing the following and rather unspecific reasons as to why:

- Matching his OPS benefits wasn't important to him.
- His priority was to access drawdown and have flexibility.
- Obtaining an immediate secure income from the OPS wasn't a priority for him

In my view, these reasons to transfer were both poorly defined and poorly evidenced by QFP. I don't think there's any evidence that Mr B considered having an index-linked pension with many guarantees and benefits as not being important. Nor do I think he required the flexibility in retirement as claimed above; Mr B appeared to have a well-defined monthly figure he was working to which he knew would provide a reasonable living for him and Mrs B moving forward.

I also think it should have been pointed out to Mr B that retiring at 55 was relatively early and probably only recommended with more substantial assets and cash than he currently had. But because he himself had expressed a preference for retirement, QFP's advice was very focussed on this from the beginning, rather than an objective analysis of his situation.

Mr B had indicated he could return to earning an income in a number of different scenarios. So, I think that with those new earnings, together with Mrs B's part-time income, it would have been possible for Mr B to continue to meet his monthly financial needs, at least in the short-to-medium term. This would have allowed him to stay in the OPS. I accept this may have required some careful thought, particularly when considering the possibility that Mrs B's income could potentially change. Nonetheless, Mr B did have some redundancy cash which might have helped supplement income when needed or reduce some of the debt.

I have considered whether, in looking at Mr B's situation through a different lens, he could be said to have had other reasons to transfer out, specifically for the purpose of quickly accessing tax-free cash or to drawdown cash as needed. I've also considered whether he could have done anything else. But as we've seen, the financial comparisons showed this transfer was likely to leave Mr B in a much worse position in the longer-term and importantly, likely to run out in his 70s. Taking early retirement at around 55 whilst remaining in the scheme was also not something he would have wanted to do, due to the scheme rules. So, I don't think he'd have found these attractive options if more comprehensively explained.

Death benefits

This issue was mentioned by QFP as being important to Mr B and discussed. 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. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr B and I note that QFP says this was something

Mr B was interested in when he spoke with the adviser – he found the option of passing on money after his death useful.

However, whilst I appreciate death benefits were important to Mr B, and he might have thought it was a good idea to transfer his DB scheme to a personal pension partly because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think QFP explored to what extent Mr B was prepared to accept a lower retirement income in exchange for higher death benefits.

I think the existing death benefits attached to the DB scheme were underplayed. Mr B was married and so the spouse's pension provided by the DB scheme would have been useful to Mrs B if Mr B predeceased her. I don't think QFP made the value of this benefit clear enough to Mr B. This was guaranteed and it escalated – it was not dependent on investment performance - whereas the sum remaining on death in a personal pension was. In any event, QFP should not have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement. I note Mr B had some life insurance, although the end date wasn't made clear.

Overall however, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr B. And I don't think that insurance was properly explored as an alternative.

Was the advice to transfer suitable?

Taking account of everything I've seen I think the advice provided by QFP to transfer out of Mr B's OPS was unsuitable. It was not in Mr B's interests to transfer out and into a personal pension.

Mr B had only just been made redundant and was comparatively young. The option to stay within the OPS and take early benefits, at the age of 55, was most likely something Mr B would not have wanted to do. This was because, as a recently deferred member taking early retirement, there were substantial reductions in the benefits due. That this didn't feature that much in the advice isn't particularly relevant.

However, the option to go ahead and transfer out of the OPS was poorly explained and not sufficiently weighed-up for Mr B. QFP's own comparisons showed he would be much worse off in the longer-term. It also largely overlooked the cash in retirement shortfall in Mr B's late 70s, saying only that he 'wasn't bothered' about his funds running out. Similarly, the significant benefits, index-linking and guarantees of the OPS were underplayed. Mr B's need for so called flexibility from a drawdown arrangement wasn't clearly defined.

Overall, I think the advice provided by QFP was flawed, focussing as it did on transferring out to meet Mr B's hope that he might retire early. Options for Mr B to re-seek an income, reduce his outgoings and restructure his modest debts, whilst maintaining his OPS benefits, were overlooked.

Other issues and complaint points

Mr B made some allegations in his complaint about QFP not taking account of his opportunity to remain in the OPS at the very outset of its dealings with him. He implied this might have been possible by him taking a lower paid job, rather than him leaving on redundancy, and being then able to remain an *active* member of the OPS for a longer period. He also complained the funds into which his pension was placed after the transfer were unsuitable, given his ATR, and also moved periodically without his permission.

However, I've found nothing to support these allegations. Looking at the timescales involved, I don't think QFP was brought onto the scene quickly enough for Mr B to consider taking an 'internal' job with the same company thus avoiding him leaving the OPS in the first place. The financial advice provided by QFP was not formally delivered until the late autumn of 2016 and we know Mr B had already been made redundant as of August 2016. So, to be clear, he'd already taken redundancy by the time of the advice.

As far as the fund management issues are concerned, our investigator comprehensively dealt with these in her 'view' letter and I agree with her conclusions. The issues I've dealt with in the preceding paragraphs are the much more substantive ones in this case – and the main issues I've rightly focussed on.

Putting things right

A fair and reasonable outcome would be for the QFP to put Mr B, as far as possible, into the position he would now be in but for QFP's unsuitable advice. I consider Mr B would have most likely remained in his DB scheme if suitable advice had been given.

QFP must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision.

QFP may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr B within 90 days of the date QFP receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes QFP to pay Mr B.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the QFP pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Quilter Financial Planning Solutions Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Quilter Financial Planning Solutions Limited to pay Mr B any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Quilter Financial Planning Solutions Limited to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Quilter Financial Planning Solutions Limited pays Mr B the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts this decision, the money award becomes binding on Quilter Financial Planning Solutions Limited.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 8 July 2022.

Michael Campbell
Ombudsman