Financial Ombudsman Service

The complaint

Mr F's representative has complained, on his behalf, that an appointed representative of Quilter Financial Services Ltd – Beaulieu Wealth Management (BWM) - unsuitably advised him to transfer his personal pension policies (PPPs) to a flexi access drawdown (FAD) plan for the sake of accessing tax free cash.

It's further said that the subsequent reinvestment of the pension funds was also unsuitable and that the charges Mr F had paid had been excessive.

What happened

Mr F met with an adviser of BWM in May 2015 to discuss his pensions, at which point Mr F's circumstances were recorded as follows:

- He was 55, in good health, and married with no dependants.
- He was employed, earning £52,000 pa, with an additional annual bonus of around £4,000 pa.
- Mr and Mrs F had joint savings of £4,000 and a mortgage-free property valued at around £300,000.
- Mr F planned to retire at 65, and had three PPPs with Royal London which had a total value of just over £62,000.

Mr F was recorded as wanting to release tax free cash from his PPPs, which he'd use for family holidays and home refurbishments. But he didn't intend drawing an income until he was 65.

BWM provided its recommendation to Mr F in September 2015, which was that he transfer his PPPs to the FAD and that, once tax free cash of just over £15,500 had been withdrawn, the bulk of the remainder would be invested in the Invesco Perpetual Distribution Fund, with 1% retained in cash.

In support of the recommendation, BWM said that this was the only way of achieving Mr F's objectives, as his existing pension provider couldn't place him in flexi access drawdown and Mr F didn't want to use other assets or create new debt.

In terms of Mr F's attitude to investment risk, BWM assessed him as being "balanced", which meant that he preferred to not take too much risk and had a preference for lower risk assets – but nevertheless appreciated that riskier assets were likely to produce enhanced long term results.

BWM also recorded that Mr F's existing PPPs had guaranteed annuity rates (GARs) attached to them, with the two smaller plans having the possibility of being accessed with the GARs at age 55, and the larger being accessible with the GAR from age 60. All of the GARs increased until age 65.

The actual GARs at age 65 were 8% for the smaller plans, valued at around £5,700 and £3,500 each, and 5% for around £42,000 of the larger plan, with 3.5% applying to the remaining £10,500.

The suitability report said that BWM had used a comparison annuity tool which was showing at the time that Mr F could expect an annuity rate on the open market of 5.076%. It also said that the guaranteed cash values attached to the policies were lower than the policies' current values.

Mr F accepted the advice and the transfer proceeded.

Mr F's representative then submitted the complaint to BWM in September 2020, but BWM declined to uphold it, saying in summary that Mr F's pension funds retained Financial Services Compensation Scheme (FSCS) protection, and that it considered that the advice provided was suitable.

It noted that a 1% ongoing adviser fee had been charged to Mr F's plan, which had been confirmed in the suitability report. The fee was payable monthly and covered the regular review service conducted by its adviser. This service, BWM said, had been provided consistently to Mr F.

It further said that, with regard to the guarantees Mr F relinquished through the transfers, this had been addressed in detail within the suitability report. And that, in terms of Mr F's attitude to risk, this had been assessed through a questionnaire, which had determined that Mr F had a "balanced" risk attitude. Mr F had agreed to this, and it was also outlined in the suitability report, BWM added.

As to the choice of investment fund, BWM said that Mr F was presented with several different investment choices and that, following the initial investment into the Invesco Perpetual Distribution Fund, the next annual review recommended that he switch to the Cirilium Balanced Passive Fund (again with 1% invested in cash).

Dissatisfied with the response, Mr F's representative referred the matter to this service, where it was considered by one of our investigators. She thought the complaint should be upheld, saying the following in summary:

- With regard to the comparative costs of the policies, the total cost of the PPPs was no more than 1% pa, which was mirrored by the cost of the FAD plan, but there was an additional ongoing advice cost of 1% and the initial cost of the transfer was 2.75%. So in the first year, the FAD plan would cost Mr F 3.75% more than his existing PPPs.

- The GARs attached to Mr F's PPPs would likely be higher than those normally available at retirement, and although an annuity illustration for these was provided to age 60, Mr F's predicted retirement age was 65. The illustration at that later age would have been higher.

- Although Mr F had been assessed as having a balanced attitude to risk, the answers he'd provided in the questionnaire indicated that he was at the more cautious end of "balanced", especially given his lack of investment knowledge. Mr F had no real capacity for loss as the PPPs were his only means of private pension provision. This rendered the GARs attached to them even more valuable.

- The recorded rationale for the transfer – to pay for a family holiday and home refurbishments – wasn't sufficient to make it a suitable recommendation. It was up to

BWM to provide suitable advice rather than simply facilitate Mr F's wishes.

- There was also no detail in the suitability report about what other options were discussed towards meeting Mr F's objectives. The investigator found this surprising, given the valuable guarantees which Mr F would be relinquishing by transferring.

- Mr F's net monthly income would have been in the region of £3,000, with joint expenditure of around £1,260 pm. Mrs F's financial position hadn't been recorded, but even taking into account the known income and outgoings, Mr F had at least £1,800 disposable income per month. Mr F had a car loan, but he only had a small amount to repay on that.

- The cost of the holiday and refurbishments hadn't been recorded, so it was unclear as to whether Mr F needed the entirety of his tax free cash to pay for them, but the investigator thought that it was more likely than not that Mr F would have had other means of meeting the cost, such as finance or savings.

- Mr F had also said that he would like an income of around £2,000 pm in retirement, which could be supplemented by two to three days' work. But even with the GARs, Mr F was unlikely to achieve the required income, and this would be further exacerbated by their loss and the withdrawal of the tax free cash. Suitable advice would have been to enhance the pension fund through further contributions, rather than withdrawing from it.

- There were other objectives such as flexibility of income options and tax efficiency, but these weren't of immediate importance and could be addressed nearer to Mr F's retirement in ten years' time.

As such, the investigator thought that a comparison should be undertaken between the benefits which would have been available from the PPPs compared to those which would be available from the FAD plan. If there was a loss, the investigator said that this should in the first instance be paid to Mr F's FAD plan, but if this wasn't possible, it should be paid to him directly, with a notional deduction for income tax.

Mr F's representative said that Mr F agreed with the proposed outcome. However, the business disagreed, saying the following in summary:

- There were no other means by which Mr F could have met his objectives. The only other funds Mr F had were those in his deposit account, with a value of £4,000. If Mr F had used this, he would have eliminated his savings and likely not have had enough to cover the cost of his planned expenditure. Mr F had confirmed that he didn't wish to take on new debts to fund his objectives.

- With regard to the costs of the transfer and new plan, this needed to be considered in the right context. Whilst it was true that the FAD plan would be 1% pa more expensive, this was due to the ongoing advice service, which Mr F wasn't receiving with his previous plans.

- None of Mr F's PPPs offered flexi access drawdown, and so wouldn't have been able to facilitate his objectives of taking tax fee cash but no income, tax efficient withdrawals, ad hoc lump sums and maximisation of the fund for his beneficiaries.

- In terms of the GARs, the risks associated with losing them were explained in the suitability report in detail. Given that Mr F intended to retire in ten years' time, along with the newly introduced pension freedom rules, Mr F was happy to relinquish those

benefits.

BWM requested that the complaint be referred to an ombudsman, and so it was passed to me for review.

I noted what Quilter had said about the comparison research which it had conducted on the annuity rate which Mr F might obtain on the open market – quoted as being 5.076% - and the investigator enquired, on my behalf, as to the basis on which it had determined this rate, i.e. at what age, whether this was on a joint or single life basis, whether this included a guarantee period, and whether it would increase in payment.

In response, Quilter provided the information, which showed that the rate had been calculated on a single life basis, with no escalation and no guarantee period. It said that this was for a male aged "over 55", and so I assumed that this was for age 55.

I issued a provisional decision on the matter on 5 October 2022, in which I set out my reasons for why I thought the complaint should be upheld. Those findings are as below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, whilst I appreciate the comments made by Quilter (BWM), I'm inclined to agree with the investigator and for broadly the same reasons – but with an important amendment to the manner of calculating redress as set out below.

In an environment of relatively low interest rates and increased longevity, as would also have been the case in 2015, and consequently relatively low annuity rates, GARs can have considerable value when applied to a pension fund.

It's fair to say that Mr F couldn't capitalise on much of the benefit of the GARs for several years, although they would attain increased value the later that Mr F retired. And as mentioned above, Quilter had researched the type of annuity which Mr F could achieve on the open market, and on the face of it, 5.076% might seem quite reasonable compared to the rates which were available to Mr F from his existing policies.

But Mr F didn't envisage retiring before age 65 – some ten years hence, at which point £42,275 of his overall pension fund would have been subject to a GAR of 5%, £9,290 would have been subject to a GAR of 8% and the remaining £10,499 would be subject to a GAR of 3.5%.

The open market rate of 5.076% may well have increased in the intervening years, albeit not guaranteed to do so, and I think it's likely that the GAR of 3.5% could have been bettered. But the suitability report made no mention of the basis on which the GARs would be payable, and even if it was the same as that for the rate of 5.076%, it would be hard to beat the 8% GAR applicable on £9,290 of Mr F's pension funds, even when Mr F was ten years older.

Therefore, unless there's a particularly compelling and robust reason for accessing pension benefits by transferring and so losing valuable GARs, I think it's fair and reasonable to conclude that this wouldn't be a suitable course of action.

But even if a different interpretation of the above was possible, I've also then considered the actual rationale for Mr F to access his pension benefits at the time. This seems to be to pay for a holiday and home refurbishments, and I accept BWM's point that, other than savings, Mr F had no capital sums upon which to draw to achieve these objectives.

But I do think the investigator has made a good point in that the actual cost of the objectives

wasn't recorded (the required tax free cash was just the maximum available), nor were means such as not insignificant disposable income, along with whatever income Mrs F may have been bringing into the household, explored as potential means of paying for home refurbishments – perhaps gradually over time - in the suitability report.

Furthermore, however, neither of these would in my view be reasonably considered so essential that they would justify accessing Mr F's pension benefits at that time, even setting aside the surrender of valuable GARs, especially when, as the investigator noted, Mr F's likely pension income would already be some way below that which he would wish to receive – and would likely need to be supplemented by part time work.

I acknowledge that an objective doesn't necessarily need to be essential to justify the early withdrawal of pension benefits, but Mr F didn't, for example, have significant debt at a high rate of interest, which would be cost effective to repay. I think a holiday and the refurbishments might reasonably fall within the "nice to have" category, but not in my view of sufficient importance that Mr F's longer term financial security in retirement should have been jeopardised, especially when there may have been other means beyond reliance on savings – albeit over time - with which to pay for them.

And as also observed by the investigator, it was BWM's responsibility to point this out to Mr F. It may well have covered the loss of the GARs in the suitability report, but it was still up to BWM to make a suitable recommendation, rather than simply facilitating wish fulfilment. And as BWM/Quilter will be aware, provision of product information or risk warnings wouldn't render otherwise unsuitable advice suitable.

Mr F may also have also been attracted to the additional features offered by flexi access drawdown in the wake of the pension freedoms. But again, Mr F was some ten years away from his intended retirement age, and so any such flexibilities or tax efficient withdrawal requirements could have been addressed at that time.

Summary

It may well have been the case at age 65 that conventional annuity rates would be in excess of those which would be offered by the PPPs – although I think this is doubtful, especially with regard to the 8% pa offered by the smaller two PPPs – but this, along with any subsequent changes in his and his wife's circumstances, could in any case have been reassessed at that time.

Overall, I'm not currently satisfied on a fair and reasonable assessment of the circumstances here, that BWM gave Mr F suitable advice to transfer his PPPs to the FAD plan, lose the GARs, and access his pension funds early, especially when it's entirely possible that Mr F's objectives could have been met, albeit over a slightly longer period of time, from disposable income and the associated savings.

I've noted the comments about the issue of costs and subsequent reinvestment of the pension funds, but I don't think I need to cover this in detail as – for the reasons given - I don't think Mr F should in any case have transferred his PPPs.

Putting things right

My view is aligned with that of the investigator, but with a key addition at point (7). In the event that I uphold this complaint, Quilter Financial Services Ltd should undertake the following:

1. *Ask the original provider (Royal London) to calculate the notional value of Mr F's PPPs at the date of this decision, as if the policies hadn't been transferred.*
2. *Obtain details of the GARs applying at Mr F's age at the date of this decision on a monthly in advance basis with 50% spouse's pension and a five-year minimum period of payment.*
3. *Determine the annuity rates as at the date of this decision to determine a rate payable on the open market for the same format and age.*
4. *Assuming (2) is greater than (3), increase the value in (1) by the ratio of 75% x ((2) divided by (3)). Otherwise leave the value in (1) unchanged.*
5. *Obtain the fund value at the date of calculation from the provider to which Mr F transferred as a result of the original advice.*
6. *The loss to Mr F's pension funds at the date of calculation is calculated as the result of (4) – (5). If the answer is negative, there's a gain and no redress is payable.*
7. *From any loss may be deducted the amount which Mr F has withdrawn from the FAD plan.*

The loss should if possible be paid into Mr F'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 F as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

As Mr F would have taken tax-free cash, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed by the investigator to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

Payment should be made within 28 days of Quilter Financial Services Ltd being notified of Mr F's acceptance of this decision. If it's made later, 8% pa simple interest should be added to the loss amount from the date of this decision to the date of settlement."

Both parties have confirmed that they have no further comments.

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.

My conclusions remain the same as those set out above, and for the same reasons.

Putting things right

Quilter Financial Services Ltd should undertake the following:

1. Ask the original provider (Royal London) to calculate the notional value of Mr F's PPPs at the date of this decision, as if the policies hadn't been transferred.
2. Obtain details of the GARs applying at Mr F's age at the date of this decision on a monthly, in advance, basis with a 50% spouse's pension and a five-year minimum period of payment.
3. Determine the annuity rates as at the date of this decision to determine a rate payable on the open market for the same format and age.

4. Assuming (2) is greater than (3), increase the value in (1) by the ratio of 75% x ((2) divided by (3)). Otherwise leave the value in (1) unchanged.
5. Obtain the fund value at the date of calculation from the provider to which Mr F transferred as a result of the original advice.
6. The loss to Mr F's pension funds at the date of calculation is calculated as the result of (4) – (5). If the answer is negative, there's a gain and no redress is payable.
7. From any loss may be deducted the amount which Mr F has withdrawn from the FAD plan.

The loss should if possible be paid into Mr F'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.

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Payment should be made within 28 days of Quilter Financial Services Ltd being notified of Mr F's acceptance of this decision. If it's made later, 8% pa simple interest should be added to the loss amount from the date of this decision to the date of settlement.

My final decision

My final decision is that I uphold the complaint and direct Quilter Financial Services Ltd to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 8 December 2022.

Philip Miller
Ombudsman