DRN-4561781

The complaint

Mr E complains about the outcome of the review carried out by Quilter Financial Services Ltd ("Quilter") in connection with the FCA's consumer redress scheme for the British Steel Pension Scheme ("BSPS") – to make my findings easier to follow, I'll refer to this as the "redress scheme".

What happened

The sequence of events isn't in dispute, so I've only set out a brief summary of what happened.

Mr E had built up 11 years and 4 months' pensionable service in the BSPS between November 2005 and March 2017. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members.

Between July and September 2017, Quilter recorded the following information about Mr E and his wife:

- Mr E was aged 59 and his wife was aged 55. They were both in good health. Their youngest child was aged 22 and financially dependent on them while they continued university education;

- Mr E was employed by British Steel and in receipt of gross annual income of around £43,000. He wanted to retire at age 60 in December 2017. His pension provision comprised the following: (1) entitlement to a full state pension from age 66; (2) his preserved DB pension in the BSPS (which had a cash equivalent transfer value of £119,778); (3) a personal pension plan ("PPP") with Met Life with a crystallised fund value of about £338,000 (after he had taken a tax-free lump sum) which he was in the process of converting into guaranteed annual income of around £11,300 from December 2017 but hadn't yet finalised anything; and (4) a defined contribution ("DC") workplace pension plan provided through his employment with British Steel then valued at about £6,000;

- His wife had recently retired from teaching. Her pension provision comprised the following: (1) entitlement to a full state pension from age 67; (2) her preserved DB pension in the Teachers' Pension Scheme which was expected to provide her with an immediate tax-free lump sum of £160,000 and an annual income of around £12,149; (3) a Free Standing Additional Voluntary Contribution ("FSAVC") plan valued at about £30,000;

- Their joint assets comprised their main residence valued at £300,000, an investment property valued at £140,000, investments of about £167,000, cash savings of about £7,500. The investment property generated annual rental income of around £8,100;

- Their liabilities comprised some unsecured debt with an outstanding balance of around £4,000 which was due to be fully repaid within 18 months (if scheduled repayments continued). Both the main residence and investment property were owned outright with no debt against them;

- Mr E and his wife considered their finances jointly with a financial reliance on each other. From the point Mr E planned to retire in December 2017, he and his wife required joint net annual income of around £39,500 from all sources. There was a note that either or both of them may continue to work on a part-time basis in the future and therefore required the flexibility to vary pension income; and

- Mr E had a *'Moderate'* risk profile.

In October 2017, Quilter advised Mr E to transfer the capitalised value of his DB pension in the BSPS to a new PPP. Mr E accepted the recommendation. The transfer to the PPP was completed shortly afterwards.

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BSPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme require firms to identify scheme cases following certain criteria. Once identified, firms need to review the advice they gave to former BSPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms are required to use the FCA's BSPS Defined Benefit Advice Assessment Tool ("DBAAT"). The review can lead to one of two outcomes:

- The advice is rated as "suitable" and the case is closed; or

- The advice is rated as "unsuitable" – if so, the case progresses to a calculation and the payment of redress if it's shown the consumer suffered a financial loss

If the consumer disagrees with the outcome, they can ask the Financial Ombudsman Service ("FOS") to look at whether the review was carried out correctly in line with the redress scheme rules.

Quilter's review of the advice it gave Mr E

In May 2023, Quilter completed its review of the advice it gave to Mr E to transfer out of the BSPS. The DBAAT generated a suggested suitability rating of "potentially suitable" based on Quilter's answers. It finalised the rating as "suitable" and closed Mr E's case.

Quilter confirmed the review outcome to Mr E and told him that it wouldn't be taking any further action.

FOS's assessment

Mr E disagreed with Quilter's assessment of his case. So he referred the matter to us.

In December 2023, one of our investigators recommended that this complaint be upheld because he had concerns Quilter hadn't followed the FCA's redress scheme rules. He explained the reasons why in his assessment. To put things right, our investigator recommended that Quilter amend the review outcome on Mr E's case under the redress scheme to "unsuitable" and then go on to calculate and pay any redress due to him in line with the redress scheme rules.

Quilter acknowledged receipt of our investigator's assessment. It requested time to provide a more detailed response but didn't provide any further comments or evidence.

This complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

Scope of this final decision

I'd like to clarify to the parties that the scope of this final decision is limited to evaluating the adequacy of Quilter's assessment of Mr E's case under the redress scheme.

I note that in its most recent correspondence with this service in January 2024 that Quilter stated it intended to provide a more detailed response to our investigator's assessment. As at the date of this decision, this service hasn't received any further comments or evidence from Quilter. I'm satisfied that it has had sufficient time to respond. So, to avoid any further delay, I think it's fair and reasonable to proceed and issue my decision based on the available evidence.

The FCA's BSPS DBAAT

As noted above, the redress scheme rules require firms to use the FCA's BSPS DBAAT. In summary, the tool helps firms assess the suitability of pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 examples of unsuitability are present. For each example, the firm, in its role as assessor, should simply answer "yes" or "no" to indicate whether or not the example is present considering the consumer's circumstances and FCA guidance at the time of the advice.

If an example is present on the consumer's file it may indicate failure to comply with the FCA's suitability requirements for pension transfer advice. Once all 12 suitability questions are answered, the tool suggests a rating. If one or more examples are present, the tool will suggest that the advice is "potentially unsuitable" and the pension transfer isn't likely to be in the consumer's best interests. If no examples are present, the tool will suggest that the advice is "potentially suitable". But the tool only provides a suggested rating. It's for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain its reasoning for the final judgment.

Quilter's review of the advice it gave Mr E

In its role as assessor, Quilter answered that none of the 12 examples of unsuitability applied to Mr E's case. This generated a suggested rating of "potentially suitable". Quilter finalised the advice rating as "suitable" based on the following rationale:

> *"On balance we consider the advice to transfer to be suitable.*
>
> *The client has a total income objective of £39,500 net. He will shortly be in receipt of a guaranteed income from his MetLife pension scheme of £11,320, whilst the spouse is in receipt of a guaranteed pension from the teacher's pension scheme of £12,149. In addition to this, they receive rental income of £8,100p.a. and will both receive full*

state pensions at ages 66 and 67 respectively. The spouse will receive her state pension six years after the client. As such, from the spouse's state pension age onwards it's likely their required income will be covered by guaranteed or relatively secure sources. There is still an element of risk to the rental income, given that the property may be empty at some point, or capital may be required to cover maintenance/repairs, however the property is unencumbered and therefore there is no risk relating to borrowing or increasing interest rates.

The firm has prepared an income spreadsheet detailing how the client's desired income will be met from his age 60 onwards. This illustrates that initially £29,821 net will be provided from their guaranteed pension sources, as well as the low-risk rental income. The residual monies of c£10k p.a. will be made up from PCLS of £4,688p.a., with a residual 3% draw on their other investments. They will hold c£56k in ISAs, where any withdrawals will be tax free, and £100k in a joint OEIC account, which will enable them to use their CGT allowances. The client and spouse have a balanced/moderate attitude to investment risk, and we therefore consider this level of drawings to be not unreasonable, particularly as the majority of their required income comes from guaranteed/low risk sources. The firm further recommends that the level of drawings is reduced as incomes from other assets commence i.e. the spouse's AVC which carries guaranteed annuity rates from her age 60, and their respective state pensions. At that point, their net income requirement is likely to be covered by guaranteed (albeit taxable) sources. As such, we consider the client has a low level of reliance on the monies within his DB scheme.

Given that the client intends to meet his income requirements from a variety of sources, we consider it reasonable that flexibility is desirable in order to vary his income withdrawals from this pot, particularly given the secure nature of their other income sources. It's also of note that the spouse has guaranteed retirement provision in her own right, and as such further guaranteed spousal benefits from the DB scheme are unlikely to be as valuable to them.

Given the low level of reliance on the monies from the DB scheme, coupled with the secure/low risk nature of their other income sources, we consider the client was able to bear the risks associated with the transfer. We also consider that he had the necessary attitude to investment risk and transfer risk, as well as sufficient knowledge and experience to support the transfer.

The client could likely have met his income objectives whilst remaining in the scheme, either by taking benefits from the scheme at age 60, or deferring to age 65 and taking a higher level of withdrawals from his other flexible assets, however the income available from the scheme (£3,119 at 60 or £4,134 at 65, assuming full PCLS taken) would comprise a relatively small proportion of their overall income requirement and we consider therefore that the benefits of transferring to achieve flexibility and tax efficiency are sufficient to justify the loss of guarantees from the DB scheme."

I've reviewed the answers on the completed DBAAT. For largely the same reasons, I agree with our investigator's view that Quilter didn't follow the redress scheme rules when it assessed Mr E's case. In particular, based on the contemporaneous evidence and the redress scheme instructions in CONRED 4 Annex 21, I think Quilter, in its role as assessor, should've answered "yes" to the following examples of unsuitability:

Example 2: The aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under this question the assessor is required to consider whether the pension transfer was required to achieve Mr E's death benefit objective and – if so – whether he was able to bear the risk of the transfer. Under reference 10.5R (3), the assessor is required to identify whether there was an alternative way to meet the objective without giving up comparator scheme benefits.

In the suitability report it was stated in reference to Mr E, *"You favour the improved death benefits under a personal pension arrangement where* [Mr E's wife] *can receive a lump sum rather than a spouses pension and where you can pass on any unused fund to your children".* So it's not disputed that passing on the value of his DB pension upon his death was important to Mr E. However, the question here is whether the pension transfer was required to achieve the objective.

There's no contemporaneous evidence that any or a combination of the following alternative ways to meet the death benefit objective were adequately considered and discounted by Quilter:

- using Mr E's disposable income available from his various current and expected income sources (once he retired) to obtain level or decreasing term assurance; and/or

- using Mr E's personal contributions paid into the BSPS (and BSPS2 had he been advised to select that option) which would be refunded to any nominated beneficiary on his death including his wife (at that time, his personal contributions were £22,630 plus interest); and/or

- using the value of Mr E's Met Life PPP, DC workplace pension plan or other investments to provide lump sum death benefits.

This wasn't addressed by the assessor when completing the DBAAT. With reference to 10.5R (4), the assessor is required to decide whether the firm has a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on death met the consumer's investment objectives.

I think it's clear that lower risk suitable alternative options were available to achieve Mr E's death benefit objective but Quilter failed to adequately consider these, as noted above.

Since Mr E was aged 59 and in good health at the time, he could reasonably expect to live well into his 80s based on average life expectancy. It's fair to say that immediately following the transfer to the PPP and for the period until Mr E started to withdraw retirement benefits, the death benefits available would be significant (subject to investment performance) until such time as he accessed and depleted the fund value. But once he started withdrawing money from the PPP to meet his income and lump sum needs, it would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. This doesn't appear to have been considered by Quilter and explained to Mr E.

Mr E wanted to retire from age 60. The TVAS report produced by Quilter showed that based on taking a similar level of benefits in retirement as the BSPS from age 65, the PPP fund value (in respect of the element related to the BSPS transfer only) would last until age 83 if taken as income only or age 86 if taken as reduced income and the maximum tax-free lump sum. This assumed a medium rate of return which of course wasn't guaranteed. There wasn't any similar analysis if benefits were taken from age 60, as Mr E intended. Furthermore, I cannot see any evidence that Quilter carried out any cashflow modelling to indicate the sustainability of income from the proposed PPP.

In my view, the information in the TVAS report supports the case that Mr E would likely exhaust his pension savings in the proposed PPP, particularly if he lived beyond average life expectancy which of course is a possibility.

Taking into account the above, it's my view that Quilter didn't have a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on Mr E's death met his objective.

Under reference 10.6E (1), (2) and (3), the assessor is directed to answer "yes" to Example 2 when the available evidence demonstrates that:

- a lower risk suitable alternative was available to achieve this objective; and/or
- it was likely that the consumer would exhaust their pension savings during their lifetime and so there will be minimal death benefits available.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 2.

Example 3: The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under reference 10.9E, the assessor is required to answer "yes" to this question where the following apply:

- (2) there is an alternative way for the consumer to meet their objectives using other assets instead of transferring their BSPS scheme.

The suitability report stated that Mr E wanted *"greater flexibility going forward"* regarding how and when he withdrew his pension benefits from age 60. It was recorded that from the point Mr E planned to retire in December 2017, he and his wife required joint net annual income of around £39,500 from all sources.

Flexibility and control might sound attractive, but I cannot see that Mr E had any concrete need for it regarding his DB pension in the BSPS. There's no real evidence that Mr E required the flexibility of irregular lump sums or variable income during retirement from this money. Rather, the evidence indicates that he required a steady and reliable source of income when he retired to achieve his overall stated income need. But if he did require flexibility, there were alternative, lower risk options available (as noted above, Mr E and his wife considered their finances jointly):

- saving some of Mr E's disposable income while he was still working in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees; and/or
- using the value of Mr E's existing PPP provided by Met Life then valued at about £338,000 (at the point of the recommendation I believe that no final decision had been made regarding this crystallised fund and so it was available to provide flexible taxable income and/or lump sums rather than converting the DB pension in the BSPS to a flexible fund); and/or

- using the value of Mr E's liquid investments and cash savings of about £175,000 (which he shared with his wife); and/or

- using the value of his wife's tax-free lump sum of £160,000 paid by the Teachers' Pension Scheme; and/or

- using the tax-free cash available under the BSPS2 (had he been advised to select that option).

Given the range of other lower risk options available, I cannot see any compelling reason why it was necessary to transfer at that time to meet the flexible objective and in doing so relinquish valuable guaranteed income.

Overall, it's my view that Quilter failed to adequately consider and discount alternative, lower risk options to achieve any flexible needs rather than relinquishing a guaranteed lifetime income.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 3.

Example 5: an aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs

Under reference 10.17E, the assessor is required to answer "yes" to this question where the following apply:

- (1) (a) the level of comparator scheme benefits meets the consumer's income needs

Quilter stated in the suitability report that early retirement under the BSPS was possible and that, if selected, it would pay Mr E, then aged 59, an immediate annual pension only of £4,531 or a reduced annual pension of £3,119 and a tax-free cash lump sum of £20,793.

If Mr E deferred taking benefits until the scheme normal retirement age of 65 then, according to the TVAS report, the BSPS was projected to provide an annual pension of £6,238 or a reduced annual pension of £4,134 and a tax-free lump sum of £27,563. I acknowledge that the BSPS2 would've likely provided a marginally lower level of estimated benefits due to the lower revaluation rates applied to the pension in deferment compared to the BSPS. But nevertheless, the figures above provide a reasonable indication of the level of benefits Mr E might have received under the BSPS2 had he selected that option and deferred taking benefits until age 65.

It was recorded that from the point Mr E planned to retire in December 2017, he and his wife required joint net annual income of around £39,500 from all sources. The basis of Quilter's advice was that the bulk of this was to be met by Mr E's and his wife's various other pension and investment arrangements. This left a shortfall in income of around £4,500 per year which was to be met by drawing the tax-free cash from the proposed PPP and spreading this over the six-year period until Mr E started withdrawing his state pension from age 66.

But it's clear that the shortfall of around £4,500 could've been met by the BSPS based on Quilter's own analysis. For example, Mr E could've selected immediate reduced annual pension of £3,119 and a tax-free cash lump sum of £20,793 to meet the shortfall until his state pension started from age 66. Alternatively, he could've deferred taking benefits until age 65 (to avoid the early retirement reduction) and instead take a higher level of withdrawals from his other flexible assets in the interim between age 60 and 65. Both options would've enabled Mr E to retain his DB pension rather than relinquishing a guaranteed lifetime income.

In my view, the comparator scheme would've met Mr E's identified income. Quilter agrees because it stated as much in its rationale in the DBAAT.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 5.

Example 6: the consumer wants to retire early but can meet their objective(s) in the comparator scheme(s)

Under reference 10.20E, the assessor is required to answer "yes" to this question where the following apply:

- (3) a lower risk suitable alternative was available to achieve this objective;

For the reasons I've explained under Example 5 above, Quilter's analysis at the time showed that Mr E wanted to retire early from age 60 and could meet his income objective by taking benefits early from the BSPS. This was a lower risk suitable alternative to achieve the objective rather than transferring to the PPP – the transfer to the PPP led to the investment, inflation and longevity risks associated with providing the pension income from the BSPS to Mr E. I cannot see why that was a suitable outcome for Mr E when his income objective could be met by the BSPS at the time.

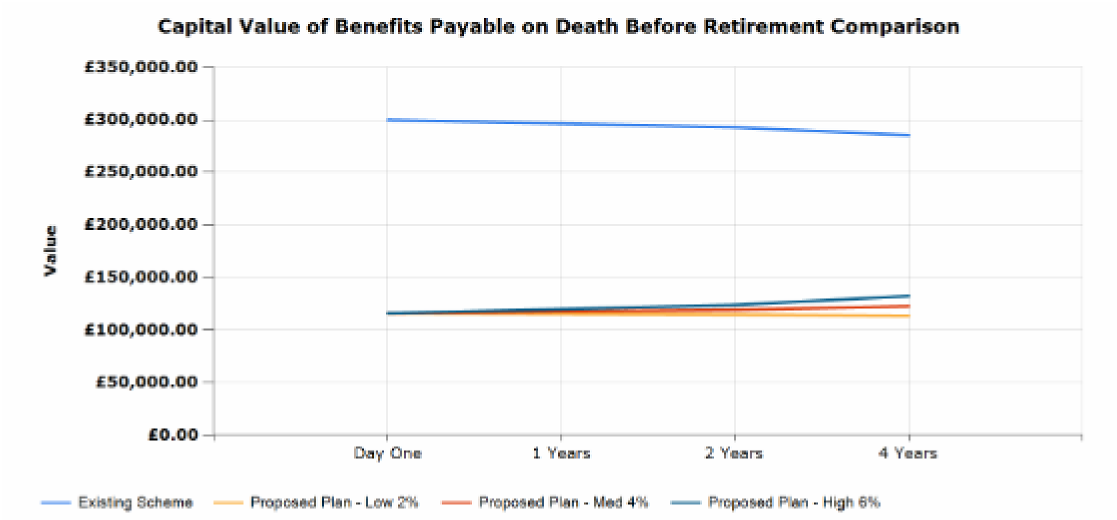
Given the above points, it's my opinion that the assessor should've answered "yes" to Example 6.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

Under reference 10.27E (1) (a), the assessor is required to answer "yes" to this question when the firm hasn't demonstrated that the transfer analysis supports the recommendation to transfer, for example because: (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the consumer's attitude to investment risk; or (ii) the capitalised value of death benefits (where this is a priority objective) is significantly higher under the comparator scheme(s) than that available from the proposed arrangement.

In Mr E's case, he wanted to retire at age 60. The critical yield figures at age 65 calculated by Quilter were 18.91% on the basis Mr E took a full pension only or 13.29% on the basis he took a reduced pension and maximum tax-free lump sum. Quilter recommended that Mr E invest the value of his PPP into a fund that aligned with his *'Moderate'* risk profile. The key features illustration for the PPP showed that the assumed growth rates were 5.25% for the upper projection rate, 2.25% for the middle projection rate and -0.75% for the lower projection rate. Those figures took into account assumed annual future inflation of 2.5%. It's my view that the critical yield figures of 18.91% and 13.29% were likely to be unobtainable based on the rates of return shown on the illustration and Mr E's risk profile.

Furthermore, according to the TVAS report, the capitalised value of death benefits under the BSPS were significantly higher than the PPP at all points based on the high, medium and low projection rates as shown in the excerpt below:



I think this analysis showed that it was likely Mr E would be financially worse off as a result of the pension transfer.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 9, particularly given my view that Mr E didn't require flexibility with these benefits (Example 3) and his income and early retirement objectives could've been met by the BSPS (Example 5 and Example 6).

Conclusion

Based on the above considerations, it's my opinion that Quilter failed to follow the FCA's redress scheme rules when it assessed Mr E's case. Specifically, for the reasons explained above, it's my view that had it followed the guidance correctly, it would've answered "yes" to unsuitability examples 2, 3, 5, 6 and 9 in the DBAAT. The tool would've then generated a suggested rating of "potentially unsuitable". Considering the evidence in the round, I cannot see any compelling reason why a suggested rating of "potentially unsuitable" should be overturned to "suitable".

Causation

I've considered the points under reference 11.7G (1) to (9) in the Causation Section under the redress scheme rules to decide whether I think it's more likely than not that Quilter's non-compliant conduct was the effective cause of Mr E's decision to transfer. This was a complex transaction involving many factors. In my view, Mr E was reliant on Quilter, as the professional party in the transaction, to take those factors into account and provide balanced and suitable advice regardless of his own views.

Overall, it's my view that Quilter's conduct is more likely than not to have caused Mr E to transfer to the PPP when this wasn't in his best interests. Given Mr E's reliance on Quilter to provide suitable advice, I think it's unlikely he would've still decided to transfer to the PPP against its advice had it advised him not to transfer.

Putting things right

Quilter must do the following:

1. Amend the DBAAT so that unsuitability Examples 2, 3, 5, 6 and 9 are marked as 'yes' on the relevant tab and the *'Assessor's suitability rating'* is marked as

“unsuitable” – and then update the section covering rationale with appropriate comments to support the conclusion;

2. Calculate and pay any redress due to Mr E in line with the redress scheme rules; and

3. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr E’s case.

My final decision

I uphold this complaint. I direct Quilter Financial Services Ltd to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr E to accept or reject my decision before 17 May 2024.
Clint Penfold
Ombudsman