

The complaint

Mr B complains about the advice he received from Quilter Wealth Ltd (Quilter). He's said that he believes he was sold unnecessary products. This complaint relates to the advice Mr B received to switch his pension to a new provider to invest via a Discretionary Fund Manager (DFM).

What happened

This complaint relates to the switch of Mr B's pension to invest via a DFM. Mr and Mrs B attended meetings together and she's made submissions to this service on Mr B's behalf, so I've referred to both Mr and Mrs B within this decision.

Mr and Mrs B originally met with Quilter's adviser in November 2018. An authority to proceed form was signed by both on 13 November 2018. This confirmed that certain documents had been provided and the costs associated with the advice. The flat fee for the advice was £17,000. The "premium plus" ongoing service had been selected; this was to be paid for by way of a fund-based fee of 0.6% a year. In relation to Mr B's pension this was calculated to equate to around £3,600 per year, dependent on any fluctuations in the fund value.

On the same day, an attitude to risk questionnaire was completed for both Mr and Mrs B. The following statements and responses were noted:

- *People who know me would describe me as a cautious person. Agree.*
- *I feel comfortable about investing in the stock market. Agree.*
- *I generally look for safer investments, even if that means lower returns. Agree.*
- *Usually it takes me a long time to make up mind on investment decisions. Agree.*
- *I associate the word "Risk" with the idea of "Opportunity". Disagree.*
- *I generally prefer bank deposits to riskier investments. Disagree.*
- *I find investments matters easy to understand. Disagree.*
- *I'm willing to take substantial investment risk to earn substantial returns. Strongly disagree.*
- *I've little experience of investing in stocks and shares. Disagree.*
- *I tend to be anxious about the investments decisions I've made. Disagree.*
- *I'd rather take my chances with higher risk investments than increase the amount I'm saving. Disagree.*
- *I'm concerned by the volatility of stockmarket investments. Agree.*

Based on this the adviser concluded they were "balanced" investors. This was qualified by:

"Balanced investors typically have modest levels of knowledge about financial matters. They may have some experience of investment in riskier assets.

In general, Balanced investors prefer not to take much risk with their investments, but will do so to an extent. They prefer lower risk assets, but realise riskier investments are likely to give better longer term returns.

Balanced investors can take some time to make up their mind on financial matters and can often suffer from regret when decisions turn out badly.”

On 25 January 2019, Quilter issued an invoice for “*Financial advice in relation to investment and pension advice.*” The invoice was for £17,000. On the same date a suitability report was issued.

Quilter recommended that Mr B switch his existing pension (capped drawdown) to another provider to utilise the services of a DFM. Amongst other things the suitability report confirmed that:

“We discussed and agreed the charge payable for this advice is a fixed fee of £17,000. This fee includes both investment and pension advice. I will address the investment advice under a separate report.”

The report then set out the services the fee covers including; initial and subsequent meetings, data gathering and analysis, planning report and advice and the arrangement of the pension.

It confirmed that a regular review service would be provided and that the cost of that would be covered by ongoing charges, an annual charge of 0.6%.

Mr B’s objectives were listed as:

- *Review the most tax efficient way to draw your current level of income*
- *Review your funds to establish if they remain suitable for your ATR and Capacity for Loss*
- *Review your plan to determine whether it still meets your needs*
- *Benefit from a discretionary manager monitoring your portfolio*

Quilter recommended the following strategies:

- Quilter Cheviot Conservative Strategy – 99.50%
- Quilter Investors Cirilium Balanced R Acc – 0.50%

In relation to charges the report says:

“I have compared the charging structure of the proposed plan with your existing plan and the charges in my recommended plan are slightly higher than those that applied to your old plan. The Reduction In Yield (an expression of the total charges over the term of the plan) is 1.29% compared with 1.75% in the new plan.

In effect this would mean that the new plan will need to be 0.46% better each year to achieve the same result.”

The total charges applicable to Mr B’s then existing plan were 1.29% per year and the new arrangement would cost 1.75% per year. Based on Mr B’s fund value this could amount to a difference of just under £3,000 per year. These amounts didn’t take into account the ongoing advice charges. Taking these into account the report said that:

“The total charges including those of the provider, the fund and my advice charges, will reduce the fund growth by a net 2.40% per annum on your plan to your proposed retirement date based on the current amount invested.”

In relation to income drawdown the report noted:

“We have discussed this and you do not require an income from your pension at present and you will instead draw £400 from your investments going forward to cover the income you were receiving as this is more tax efficient than drawing from your pension due to your tax status.”

At the time of the advice, Mr B was 81 and he had a monthly income of around £4,000 from a combination of occupational pension scheme benefits, existing annuities, his state pension and his capped drawdown plan. Quilter has recorded him as being in good health, Mr and Mrs B dispute this and say that he had numerous health issues at the time, of which the adviser was aware.

Background to the complaint

Mr and Mrs B complained to Quilter about this and some other advice. This complaint is only about the switch of Mr B's pension, so that's what I've focused on within this decision. Quilter issued its final response letter; it didn't uphold Mr and Mrs B's complaint. Unhappy with its response, they referred their complaint to this service.

During the course of our investigations. Mrs B told us:

- Mr B wasn't in good health around the time of the advice.
- Although the adviser appears to have acknowledged that Mr B was a vulnerable client, the extent of his vulnerability wasn't taken into account.
- During the meeting of 25 January 2019, the adviser was fully aware of Mr B's health problems.
- Mrs B wasn't an experienced investor, the assets in her name were inherited and included a portfolio of shares and a rental property. On this basis, she disputes the adviser's comment in his letter of 25 January 2019, that she was able to help Mr B with making decisions. She didn't have sufficient knowledge and understanding of financial matters to do so.
- Mr and Mrs B kept their finances separate and Mrs B had no understanding of what Mr B had done in the past.
- The situation continues to cause both Mr and Mrs B considerable stress at a time when their priority ought to be Mr B's health.

One of our investigators reviewed the complaint and concluded that it should be upheld, and that Quilter should compensate Mr B in full for any losses resultant from what he thought was unsuitable advice.

Mr B accepted our investigator's conclusions. Quilter didn't accept the view and made further submissions. I've considered its submissions in their entirety, here I've only included a brief summary of what I consider to be its key points:

- The complaint is about the charges incurred; the focus of the complaint isn't the suitability of the advice.
- The assessment of the suitability of the advice is flawed, and the assessment of the complainant's needs is at odds with contemporaneous evidence provided.
- The security of Mr B's financial position wasn't compromised.
- The advice met Mr B's objectives and alleviated the amount of monitoring the pension required.
- Mr B's health issues hadn't materialised at the time of the advice.
- The complainant benefitted from a tailored DFM and the recommended redress didn't account for the charges.

Our investigator issued a further view in response to the issues raised by Quilter briefly, he found:

- Mr and Mrs B's concerns clearly went beyond just the fees they were charged, their complaint form states "[adviser's name] *stressed the need to change our pensions, investments etc. and the charges are insane. We trusted [adviser's name] to give advice based on our circumstances. We feel he was making work for the sake of it.*"
- The suitability of the advice Quilter gave is in question and, in any case, our remit is inquisitorial.
- The fact that advice wasn't covered by Quilter's ongoing service is relevant.
- He identified that there were two instances of advice here given at different times and relating to different products 1) advice to transfer Mr B's pension; and 2) the inheritance tax (IHT) advice given to both Mr and Mrs B.
- On this basis, the two events would need to be dealt with as two separate complaints.
- He accepted the switch didn't result in Mr B having a different type of product, it was just the provider and the use of a DFM that changed.
- The use of a DFM did reduce the burden to Mr and Mrs B but it came at a significant cost, whilst the costs were clearly disclosed to them, this doesn't justify the advice.
- The circumstances didn't support the use of a DFM being suitable. Mr B's income needs were comfortably met by his collective pension arrangements. There's no evidence Mr B's pensions were invested in irregular or unusual funds – or that he had any desire to invest in such investments – so, there wasn't a need for Mr B's pension to be monitored in a way that was beyond the capabilities of his financial adviser.
- Little justification was given by Quilter for the increased cost associated with the use of a DFM. It only said: "*Your investments will be held in a portfolio managed by a discretionary management service which provides greater flexibility and control in terms of the implementation and management of your investment.*"
- Mr B had no need for greater flexibility and control, this wasn't one of the listed financial objectives and his income needs were already comfortably met – whilst Mr B would've wanted to maintain growth and good performance – the costs of the DFM were unjustified and unsuitable.

Quilter disagreed. It maintained that the advice complained about was clearly suitable. Its position was that we'd disregarded the contemporaneous evidence and instead formulated an opinion based on hindsight.

Our investigator explained that because Quilter disagreed the case would be referred to an ombudsman for a decision. Mr B expressed his disappointment with this. He reiterated that he felt that he was given advice for things he didn't need. He also highlighted that this situation was causing him significant distress.

I sent my provisional decision explaining why I thought Mr B's complaint should be upheld to Mr B and Quilter. Mr B didn't make any material submissions in relation to the outcome but did provide evidence that he was a higher rate taxpayer. Quilter disagreed and made further submissions, I've read and considered its submissions in their entirety, here I've included a summary:

- It had demonstrated that the DFM met Mr B's needs and that all costs were disclosed up front.
- It disagreed that Mr B didn't require a bespoke service, this took important investment decisions out of his hands and provided him with a clearly defined

investment path. This was outlined in the suitability report which set out the advantages and disadvantages of the DFM structure.

- Given Mr B's circumstances the expertise provided by the chosen DFM would've been of use to him.
- There are similarities here with Mr B's other complaint where we reached a different outcome.
- There was a further cost for the advice and increased costs on an ongoing basis, but this doesn't mean the advice was unsuitable, the increased cost was reflective of the higher level of service being provided.
- Mr B made an informed decision to accept those costs for the benefits outlined to him. The fee for the advice incorporated the Venture Capital Trust advice as well. The fees were well within normal parameters.
- Overall, the advice met Mr B's objectives and the fees were disclosed to him.

The investigator wrote to Quilter and Mr B explaining that I didn't think the advice fee included the VCT advice, that advice was paid for and invoiced separately. But it does appear that the fee also covered some subsequent investment advice. That advice doesn't form part of this complaint and it's only the fee in respect of the pension switch and DFM advice that forms part of the award in this case.

Because agreement couldn't be reached, this complaint has been passed back to me for review.

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 taken into account all of the additional submissions, my findings remain broadly as set out in my provisional decision, I've reiterated these below and expanded where appropriate to address the additional points made.

As I set out in my provisional decision, the parties to this complaint have provided detailed submissions to support their position and I am grateful to them for taking the time to do so. I've considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings, on what I consider to be the main points, and reasons for reaching them.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

When considering what's fair and reasonable, I've taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

It's my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

Nature of the complaint

Like the investigator I think that Mr B's complaint goes beyond just the level of fees charged by Quilter. He's questioned the need for the advice given and claimed that the adviser was recommending products simply for the sake of the fees.

This brings into question suitability of the advice – and, in any case, our remit is inquisitorial, and we can look beyond the complaint as expressed by the complainant.

Suitability of the advice

Quilter was required to follow the relevant rules set out by the regulator. These include the overarching Principles for Businesses – principles 1 (*integrity*), 2 (*due skill, care and diligence*), 6 (*customers' interests*) and 9 (*reasonable care*) are of particular relevance here.

Amongst other things, to fulfil its duties Quilter had to know its client, act in his best interests and give suitable advice.

Taking into account Mr B's circumstances, I'm not persuaded that the switch and subsequent investment via a DFM was suitable. This came at significant cost and resulted in him incurring additional fees in respect of his pension.

Mr B's pension was substantial, and his income needs were already comfortably covered through other existing pension arrangements. His risk was assessed to be balanced; this appears to have been broadly cautious-medium. His investment needs could easily have been met by investing in readily available funds, such as a managed fund, without incurring additional costs. There's also no indication that Mr B was unhappy with his existing arrangement or that it didn't meet his needs.

No real justification has been provided for the requirement of a DFM and incurrence of the additional costs associated with this. The use of a DFM did mean that Mr B's pension funds were being closely monitored and should've required little oversight from him. But there's no indication that this had previously been an issue. Given Mr B's circumstances and attitude to risk, if he'd been suitably invested, I don't think his pension required that kind level of oversight/management.

So, I think that the switch and subsequent investment via a DFM was unnecessary and unsuitable.

The switch appears to have been driven by the adviser not Mr B and it's not been suggested that Mr B was an insistent client or that he was otherwise likely to go against suitable advice from his adviser. But, for the sake of completeness, I've considered this – and, I haven't seen anything that would lead me to conclude that Mr B was likely to disregard suitable advice. So, I think that *but for* Quilter's unsuitable advice Mr B would've retained his existing pension arrangement and not incurred the additional costs associated with this advice.

The advice fee

In response to my provisional decision Quilter said that the advice fee of £17,000 covered the estate planning advice as well. The estate planning suitability report states:

"We discussed and agreed the charge payable for this advice and this is based on a 3% fee of the total amount invested of £300,000.00 which equates to £9,000.00."

And

“Having reviewed your current investments you are prepared to release up to £300,000 for possible reinvestment to better meet your financial objectives. You have recently surrendered £142,000 from [Mrs B’s] Bond whereby a report was competing under separate advice and you wished to re-invest this with Quilter Cheviot. However, following our recent meeting where your estate planning needs and your concerns regarding the life assurance plans were discussed further, you agreed that you would rather place some of these funds in a plan to reduce your IHT liability and gift funds to your sons immediately on either death. Of the £142,000 you wish to maintain £92,000 of this to fund new cars each and gift some to your sons. The remaining £50,000 you wish to use towards your estate planning, together with £250,000 from your Quilter portfolios.”

The initial advice fee of £9,000 specifically for estate planning advice was also confirmed in a separate invoice and in the “authority to proceed form” issued in relation to this advice.

Taking all of this into account I’m satisfied that the £17,000 initial advice fee didn’t include the VCT advice. What appears to have happened is that it was initially stated that the £17,000 would also cover advice on the reinvestment of £142,000. A report in relation to this was issued but that advice was never implemented. Instead, as a result of further discussions, it was decided that £92,000 would be retained and £50,000 would be used towards estate planning. It appears that the only advice which was implemented in relation to the £17,000 was the pension advice despite the initial intention for this to cover subsequent investment advice (this was provided but never implemented and subsequently revised and charged for separately). So, I remain of the view that the fee, in so far as it relates to the pension advice, should be refunded to Mr B by Quilter as set out below.

Putting things right

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr B would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I’m satisfied what I’ve set out below is fair and reasonable, taking this into account and given Mr B’s circumstances and objectives when he invested.

What must Quilter do?

To compensate Mr B fairly, Quilter must:

- Compare the performance of Mr B’s investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Quilter should add interest as set out below.
- If there is a loss, Quilter should pay into Mr B’s pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Quilter is unable to pay the compensation into Mr B’s pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would

have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr B's actual marginal rate of tax in retirement.
- Mr B is a higher rate taxpayer, I think his marginal rate of tax is 40%. However, Mr B may have been able to take a tax-free lump sum, if he was, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 35%.
- Pay Mr B £150 for the distress caused by this situation.
- Repay the adviser's fees together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *notional value* can be offset against the fees with interest.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr B how much has been taken off. Quilter should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
pension plan invested via DFM (LV pension)	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr B's investment had it remained with the previous provider until the end date. Quilter should request that the previous provider calculate this value.

Any additional sum paid into the LV pension should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the LV pension should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll

accept if Quilter totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Quilter will need to determine a fair value for Mr B's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr B wanted Capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objective and risk attitude.

My final decision

My final decision is that I uphold Mr B's complaint, I direct Quilter Wealth Ltd to pay him compensation as set out above.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Quilter Wealth Ltd pays the balance.

Determination and award:

I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Quilter Wealth Ltd should pay the amount produced by that calculation up to the maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation:

If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Quilter Wealth Ltd pays Mr B the balance plus any interest on the balance as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 July 2022.

Nicola Curnow
Ombudsman