DRN-3596412

Financial Ombudsman Service

The complaint

Mr D has complained about advice he received to invest in an unregulated investment called Stirling Mortimer. He used funds in an existing ISAs to make a direct investment in Stirling Mortimer via an ISA and also made an investment after switching pension funds into a Self-Invested Personal Pension (SIPP). Mr D says the advice was provided by a representative of Quilter Financial Planning Solutions Limited (Quilter). The investment has failed and Mr D says that Quilter should pay him compensation for his losses.

What happened

Mr D says he was advised by someone called Mr C in 2006 after being referred to him by a colleague. He was looking at making changes to his pension arrangements at the time as he had held the same investments for a number of years.

Mr D says he met with Mr C at his office in Cardiff and that he understood that Mr C was an adviser with Quilter. Mr D says he was told that Stirling Mortimer, an off-plan property overseas development, was a low risk investment with developer and bank guarantees.

Mr D says that following the advice he made the following investments:

- He consolidated some existing ISA holdings and used an ISA with Transact to invest approximately £61,000 into the Stirling Mortimer No. 2 fund. The investment took place in November 2006.

- He switched his existing personal pensions to a Skandia SIPP and invested approximately £115,000 into the Stirling Mortimer No. 2 fund. The SIPP was opened in September 2006 and the investment in Stirling Mortimer was made a short time later in November 2006.

The property development was never completed and the Stirling Mortimer fund was placed into liquidation in 2016. So it looks like Mr D has suffered a substantial loss.

When Mr D found out that the fund had been liquidated, he submitted a claim to the Financial Services Compensation Scheme (FSCS) to recover some of his losses from Mr C's firm – I'll call it "CR LLP". However, his claim was rejected on the basis that the FSCS felt that Quilter was responsible for the advice.

Quilter (known at the time of the advice as Positive Solutions) was an independent financial adviser firm authorised by the Financial Services Authority (FSA) (later the Financial Conduct Authority, FCA). It gave advice through registered individuals (RIs) who were referred to as Partners. The Partners were self-employed agents of Quilter not employees. Nor were Partners appointed representatives under s.39 of the Financial Services and Markets Act 2000. Mr C was an RI for Quilter in 2006. He ceased to be an RI of Quilter in 2007.

After having his claim rejected by the FSCS, Mr D complained to Quilter. Quilter didn't uphold the complaint. It said that it had no record of the advice having been given by Mr

C whilst he was its RI. Quilter also said that the complaint had been made too late under the regulatory rules.

One of our investigators looked at all the evidence and issued an assessment that said that, in his view, Mr D had complained too late. He said that Mr D had complained in August 2018, which was more than six years after the advice in 2006. The investigator also said that Mr D had complained more than three years after Mr D ought to have been aware of problems with the Stirling Mortimer investment. He said that Stirling Mortimer was intended to be a short two year investment and that Mr D would have received annual reports that highlighted problems with the investment and that the developer of the property had gone into administration in 2012. So he said that Mr D should have complained by 2015 at the latest.

Mr D responded to say that the value of the Stirling Mortimer investments had not gone down until 2016 and that he considered these as long term investments for his retirement. Mr D said that the first time he'd become aware of any issues was when he received the update in 2016 about the liquidation of the Stirling Mortimer fund. So he said his complaint in 2018 was within three years of when he became aware that he had cause for complaint.

I looked at all the issues and then issued a provisional decision on 23 June 2022. I said the complaint *was* one that we had jurisdiction to consider and that it should be upheld. I invited further submissions from both parties.

Mr D asked whether it would be fair to award an additional amount for the ISA fees he had incurred. He also confirmed that the ISA had been closed recently.

However, Quilter said it had no submissions to add. In light of this, my findings on both jurisdiction and merits remain the same as in my provisional decision and I set these out again below.

I will address Mr D's points in the redress section below.

My findings

<u>Jurisdiction</u>

I've considered all the available evidence and arguments to decide whether this is a complaint that this service has jurisdiction to investigate.

There are two principal issues that need to be addressed: has the complaint been brought in time and, given that Mr C was an RI, is Quilter responsible for the acts complained about?

<u>Has the complaint been brought in time?</u>

The rules which govern the operation of our service are part of the regulator's handbook. The Dispute Resolution (DISP) section sets out that we can't consider a complaint that has been made to the respondent business (or referred to us) more than:

- Six years after the matter complained about; or (if later)
- Three years after Mr D became aware, or ought reasonably to have become aware, that he had cause for complaint.

The acts being complained about are the advice and arrangements to make the Stirling Mortimer investments. Mr D's complaint is that he was advised that the investments were low risk and backed by guarantees.

There is no documentary evidence about the advice or when exactly the advice was given. But Mr D says that the advice for both the ISA and SIPP investments were given at the same time in 2006. This is reflected in the available evidence too as the SIPP and Transact ISA application forms are dated 7 and 14 August 2006 respectively. So, I think it's likely that the advice and arrangements for the investments took place in August 2006.

Mr D referred his complaint to Quilter on 6 August 2018. This is clearly more than six years of the acts he's complaining about. So, the crucial issue for me to decide is therefore whether the complaint was also made outside the second part of the time limit – i.e. whether it was made more than three years after Mr D knew, or ought reasonably to have known, he had cause to complain. Because the complaint was made on 6 August 2018, the question becomes whether he knew, or ought reasonably to have known, he had cause to complain before 6 August 2015.

Quilter says that Mr D would have known about issues with the investments from the annual statements he recieved from the SIPP operator. Quilter says these statements would have alerted Mr D to problems with the fund values.

The SIPP operator was intially Skandia, but then subsequently, in 2010, Mr D moved his SIPP to Curtis Banks. And it appears that when Mr D's pension was moved to Curtis Banks, the investment was held within an online portal based wrapper with a company called Ascentric. The ISA operator was Transact throughout. I've looked at all the available evidence about the fund values and statements that Mr D would have recieved about the investments. These show the following:

Year	**Transact value for Stirling Mortimer investment**	**SIPP value for Stirling Mortimer**
2006	£61,372	£115,000
2007	£61,167	
July 2008	£70,851	
October 2008	£71,592	
April 2009	£82,972	
April 2009	£82,972	
October 2009	£79,288	
Undated		(£122,000 Ascentric refers to fund being suspended)
March 2010	£79,288	
May 2010	£75,611	
21 June 2010		£136,823
April 2009	£82,972	
October 2009	£79,288	
October 2010	£72,929	
October 2011	£71,316	
May 2012	£73,411	

October 2012	£67,385	
February 2013	£69,198	£131,228
October 2013	£64,506	
April 2014	£64,506	
October 2014	£64,506 (delisted)	
April 2015	£64,544	
September 2016		£111,615

We do not have a complete copy of the SIPP statements throughout the years. But based on what we do have, in conjunction with the more complete evidence from Transact, it appears that the Stirling Mortimer investments made by Mr D had gone up in value until 2010 but then went down. However, they had not lost significant value from the sums invested until some point after September 2016.

Some of the statements had indicated, first that the funds had been delisted and, secondly, that they were suspended. I don't think those annotations of themselves, coupled with the current values indicated, should necessarily have been viewed negatively. It's possible for an investment to be delisted and suspended and still deliver a profit or at least a return of all or most of the capital investment. I think it would be reasonable for an investor such as Mr D to presume from the statements there was still an underlying value in the investment.

So, based what I've seen, I don't think the statements that Mr D received about the Stirling Mortimer investments ought to have given Mr D reason to think that the advice he'd received was wrong or unsuitable.

The investigator who initially considered the case said that Mr D entered these investments on the basis that they were short two year investments. The investigator also said that Mr D would have received annual reports from Stirling Mortimer in 2012 highlighting problems with the investment, including that the developer had gone into liquidation. He said that these factors should have made Mr D aware that he had cause for complaint about the advice he received more than three years before he did.

However, my view is different. First, there is no record of the advice given and the sales material provided to Mr D in 2006. So I can't be sure that he was even aware of when the investments should have been redeemed. In any event, I accept what Mr D has told us about not being overly concerned about the fact that the investments were going on for longer than initially expected. He was not aware that he had lost his initial capital before 2016 and thought that pension and property investments could restrict withdrawals for long periods. And he didn't intend to retire for some time.

By 2015, Mr D was 63 years old and so would have been looking more closely at his investments at around this time. But I think it would have been reasonable for him to rely on the SIPP and Transact statements. As I've said above, these didn't highlight any obvious concerns about the advice he had received.

Secondly, I've made extensive enquiries about what updates and reports Mr D would have been sent about the investments over the years. Having done so, I'm not satisfied that I can safely conclude that Mr D was sent any updates from the investment. Curtis Banks has told us that, as the SIPP investment was held in the Ascentric platform, it did not receive or send any updates or reports to Mr D. Ascentric has in turn told us that any information about the investment would have been available to Mr D's adviser – from 2010 onwards this was a firm

called Portland Wealth. Portland Wealth has told us that it did not send any updates to Mr D as they believed he was being updated by Transact.

Similarly, I've made enquiries with Transact about any updates it would have provided to Mr D about his ISA investment in Stirling Mortimer. Again, I've not seen any compelling evidence that Mr D was sent anything about the Stirling Mortimer investment in the form of updates and reports. It has sent us some investment updates, but most of these post-date August 2015 and some are about completely different Stirling Mortimer funds. So I'm not convinced that relevant updates were sent to Mr D by Transact.

Mr D has consistently told us he didn't receive any updates. Significantly, Mr D has also provided us with an email exchange he had with the Stirling Mortimer fund administrator in October 2016 which I think supports Mr D's assertion. In the exchange, Mr D says that he'd not received updates about the investment and wanted to be kept "in the loop". The administrator explains that this was probably because the updates were being sent to the SIPP operators and other administrators. The fund administrator then sends Mr D an update about the Stirling Mortimer investment dated October 2016 which says that the fund would be put into liquidation.

On receiving the update in October 2016, I think Mr D ought reasonably to have known that he had received unsuitable advice in that Stirling Mortimer was not low risk or backed by guarantees - and that he had cause for complaint. Mr D complained to Quilter in August 2018. That is within three years of October 2016. Therefore, my conclusion is that Mr D has made his complaint within our time limits.

Is Quilter responsible (under our rules) for the acts being complained about?

Under our rules, Quilter can only be responsible for certain types of activity. The DISP rules set out that we can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm in the carrying on of one or more listed activities, (including regulated activities), or any ancillary activities carried on by the firm in connection with those activities, (DISP2.3.1R). And our rules also say that we can only look at complaints about acts or omissions of an agent of a firm where the firm has accepted responsibility for those acts (DISP 2.3.3G).

There is no written record of the advice that Mr D says he was given. But, I'm satisfied that he was indeed given advice about the pension switch and investments in Stirling Mortimer. Therefore, the complaint involves regulated activities.

But who carried out these activities?

Mr D says he was advised by Mr C. Mr C's details appear on the statements from Transact and Skandia from 2006 as Mr D's adviser. Mr C's details appear on the Transact application too. But the details of someone called Mr R appear on the SIPP application form and some of the SIPP correspondence from 2006. Mr R was another RI of Quilter at the time. Based on what I've seen, I think it's likely that Mr C advised Mr D on the switch to the SIPP and the Stirling Mortimer investments and Mr R carried out some of the arrangements for the SIPP.

Mr C and Mr R worked with one another and together operated a separate advisory business - CR LLP. I have seen no evidence to suggest that there has ever been any contractual relationship of between CR LLP and Quilter. In particular, CR LLP has never been an agent, appointed representative, or RI of Quilter. Quilter had contractual relationships with Mr C and Mr R individually, but it did not have contractual relationships with their limited liability partnership.

So, whilst I'm satisfied that Mr C and Mr R were involved in giving Mr D advice and making arrangements for the SIPP and ISA, I also need to consider whether they were acting on behalf of Quilter or whether they were acting in a different capacity - unrelated to their roles as RIs of Quilter for the SIPP and ISA and the subsequent investments in Stirling Mortimer.

Having considered the evidence, I think they were likely acting on behalf of Quilter because:

- Mr C signed the Transact application on 14 August 2006 as a Quilter adviser.
- Mr R signed the SIPP application form dated 7 August 2006 as a Quilter adviser.
- The statements for both the SIPP and Transact ISA list Mr C of Quilter as the adviser in 2006-2007.
- Mr D has consistently told us that he believed he was dealing with Mr C as a Quilter adviser.
- A Sophisticated Investor certificate was sent to Transact in November 2006. This is certified by Mr C as an authorised person for Quilter. I've noted that this was sent under cover of a letter on CR LLP letterhead. But the letter has a footer that says that CR LLP is a trading style of Quilter. As I've made clear above, CR LLP was not a trading style of Quilter. So it appears that Mr C and Mr R may have been using incorrect letterhead. Nevertheless, I think this still shows that Mr C was purporting to act for Quilter at the time.
- A transfer of servicing request was sent to Transact by CR LLP in 2008. This shows that CR LLP can't have been the advisers on the account before this time.

So, I think Mr C and Mr R were purporting to act on behalf of Quilter when advising and making arrangements for Mr D in 2006.

Both Mr C and Mr R were RIs of Quilter. However, Quilter isn't responsible for everything that its RIs do. Our rules say that we can only look at complaints about acts or omissions by agents (in this case RIs) for which the firm has accepted responsibility (DISP 2.3.3G).

So another issue I need to decide is whether the advice and arrangements given and made by Mr C and Mr R are acts for which Quilter accepted responsibility. If not, then our service won't have jurisdiction to consider this complaint against Quilter.

What does the law say about this?

Relationships like the one between Quilter and Mr C and Mr R require an analysis of agency law. Agency is where one party (the principal – here Quilter) allows another party (the agent – here Mr C and Mr R) to act on its behalf in such a way that affects its legal relationship with third parties. An agent may have *actual authority*, where the principal has expressly or impliedly given its assent to the agent that it may act on its behalf. Or the agent may have *apparent authority*, where the principal has made a representation to a third party that the agent has authority to act on its behalf and the third party has relied on this representation.

There are separate express agreements between Quilter and Mr C and Mr R. Both are essentially on the same terms. The agreements set out that they must account to Quilter for all business and only advise on investments that it had pre-approved. There is also a general point in agency of this type that the agent is required to act in the principal's best

interests.

Neither Mr C nor Mr R appear to have done any of these things in this case. Stirling Mortimer was not an approved investmentsand they don't appear to have notified Quilter about what they were doing either. So they were not acting in accordance with the actual authority they had been given. So, I can't conclude that Quilter accepted responsibility for acts complained about by Mr D by way of actual authority.

That is not however the end of the matter because there is also agency based on apparent authority. The essence of apparent authority is not concerned with what was actually agreed between the parties (for example by way of the agency agreement), but rather, how the relationship between those parties *appeared* to third parties. In this complaint, I'm concerned with how the relationship appeared to Mr D.

Apparent authority arises when the principal represents to third parties through words or conduct that the agent has authority to act on its behalf and the third party reasonably relies upon that representation. The case law makes it clear that whether a claimant has relied on a representation is dependent on the circumstances of the individual case. So here, I must consider whether, on the facts of this individual case:

- Quilter made a representation to Mr D that Mr C and Mr R had Quilter's authority to act on its behalf in carrying out the activities he now complains about; and

- Mr D reasonably relied on that representation in entering into the transactions he now complains about.

Did Quilter represent to Mr D that Mr C had the relevant authority?

I think Quilter placed Mr C and Mr R in a position which would, in the outside world, generally be regarded as having authority to carry out the acts Mr D complains about. I say this for the following reasons. Some of these interrelate.

- Quilter held itself out as an independent financial adviser firm that gave advice and offered products from the whole of the market after assessing a client's needs. No information was provided to clients or potential clients about its agents – such as Mr C and Mr R - being authorised in relation to approved products only.

- Quilter authorised Mr C to give investment advice on its behalf and Mr C was held out by it as authorised to give investment advice on its behalf. Quilter arranged for Mr C to appear on the regulator's register in respect of Quilter. And Mr C was approved to carry on the controlled function CF30 - which relates to investment advice - at the time of the disputed advice.

- It was in Quilter's interest for the general public, including Mr D, to understand that it was taking responsibility for the advice given by its financial advisers. I'm satisfied that Quilter intended Mr D to act on its representation that Mr C was its financial adviser.

- The provision of financial advice was a key part of Quilter' business. It said in its terms of business that its "*Partners*" would give "*impartial, independent financial advice*". I don't see how Quilter could have carried out its business activities at all if the general public had not treated registered individuals like Mr C and Mr R as having authority to give investment advice on behalf of Quilter.

- It's not clear that Mr D was given a terms of business agreement in respect of the disputed advice. But if he was, these would have shown that Mr C and Mr R could advise on and arrange investments and set up SIPP's for Quilter' customers. None of these activities would be unexpected for an IFA firm. They are all the type of activity that IFA's are usually authorised to do.

- The terms of business agreement would not have shown any restrictions on Mr C and Mr R's authority to give advice on transferring existing pensions, setting up a SIPP or using only certain investments. So, for example, Mr D would not know that an adviser should only recommend approved investments, should obtain clearance from Quilter before giving certain types of advice and should present the advice in certain ways.

- The application forms for the SIPP and ISA names Quilter as Mr D's investment adviser. I accept that the forms were completed by Mr C and/or Mr R, and not by Quilter. But I consider that in appointing Mr C and Mr R as RIs, Quilter put them in the position in which they could tell product providers that they were indeed Quilter financial advisers. If product providers had checked the FSA Register, they would have seen that Mr C and Mr R did indeed appear as approved by the FSA to carry out the controlled function of investment advice on behalf of Quilter.

So I think that all of these points taken together mean that Quilter did represent to Mr D that Mr C was authorised to give the advice he gave to Mr D and make the arrangements he did.

Did Mr D reasonably rely on Quilter' representation?

I think it's important to reiterate that the evidence we have shows that Mr C presented himself to Mr D as a Quilter adviser. And Mr D has confirmed to us that he believed Mr C to be acting for Quilter at all times.

I haven't seen any evidence to show that Mr D knew or should reasonably have known that Mr C was acting in any capacity other than a Quilter adviser. And further, I've seen no evidence that Mr D would have proceeded with the pension switch and investment if he had any inkling that Mr C was not acting with regulatory authority – which is what Mr C would have been doing if he'd given the advice and made arrangements without using his Quilter "hat".

I note that Mr D initially made a claim to the FSCS about CR LLP before making this complaint to Quilter. But I think this suggests some confusion about who to complain to several years after the advice was first given, during which period at least three different firms were involved in advising Mr D – Quilter, CR LLP and Portland Wealth. I don't think this significantly undermines his assertion now that he believed that Mr C was operating as a Quilter adviser when giving the advice in 2006 - especially when this is consistent with the application and statement documents I've noted above.

So, on balance, I think it's likely that Mr D proceeded on the basis that Mr C was acting in every respect as the agent of Quilter with authority from Quilter so to act. In other words, Mr D reasonably relied on Quilter' representation that Mr C was authorised to give the investment advice he gave to Mr D.

It is therefore my finding that Quilter is responsible for the advice Mr D complains about

and that we can consider his complaint. So, I will deal with the merits of Mr D's complaint below.

What I've decided on merits– and why

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

In giving advice to Mr D, Mr C ought to have made a recommendation that was consistent with his investment objectives, which ought to have been assessed by reference to his personal and financial circumstances. He should have carried out a fact find of his circumstances and investment experience and given a written recommendation with reasons. It doesn't appear he did this any of this before recommending the pension switch and investments in Stirling Mortimer via the ISA and SIPP.

Stirling Mortimer appears to be an Unregulated Collective Investment Scheme (UCIS). UCIS like Stirling Mortimer are high risk as they're based overseas, often subject to higher degrees of market volatility and unregulated and so investors have no access to the FSCS.

Under the rules at the time, UCIS could be promoted to individuals who were certified as "Sophisticated Investors". Mr D signed a sophisticated investor certificate, prepared for him by Mr C, for the Transact investment. However, I don't know whether the requirements and implications of this were explained to Mr D. I've also seen no evidence that Mr D was *in fact* a sophisticated investor. We know from his claim to the FSCS that his circumstances at the time of the advice were that he had:

- £10,000 in cash/savings.
- Just over £60,000 in an ISA.
- Property worth around £420,000.
- A pension fund of around £300,000.
- No other investments – including unregulated investments.

Based on this, I think it's unlikely that Mr D was a sophisticated investor.

In any event, regardless of whether Stirling Mortimer could have been promoted to Mr D, any advice Mr C gave would still have needed to be suitable advice. Mr D was 55 years old and says he had a low to medium attitude to investment risk. Based on Mr D's circumstances (including his assets and investment experience), I can't see how investing such a large proportion of his pension and all of his ISA investments into a high risk investment like Stirling Mortimer could be regarded as suitable.

As such, I think the advice to switch Mr D's pensions to a SIPP and invest in Stirling Mortimer as well as to make a direct investment via a Transact ISA was not suitable.

I'm aware that different firms that are unconnected to Quilter later became advisers to Mr D in respect of the ISA and SIPP. However, I've seen no evidence that there was ever a secondary market for the Stirling Mortimer investment. So I don't think Mr D could have

sold the investments at any point if he was later advised that the investment was unsuitable by other parties. And I don't think there was realistically any opportunity for Mr D to mitigate his position after placing the investments.

As a result, I think Quilter should compensate Mr D.

Putting things right

My aim is that Mr D 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 D would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr D's circumstances and objectives when he invested.

Mr D has confirmed that th SIPP still exists, but the ISA account was recently closed. So I have adjusted the redress benchmark "end date" to reflect the closure of the ISA.

What must Quilter do?

To compensate Mr D fairly, Quilter must:

For the pension investment:

- Compare the performance of Mr D's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

  If the *fair 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 D'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 D'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 D won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age.

- It’s reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr D would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

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

Investment name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
Stirling Mortmer (in SIPP)	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	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.

It may be difficult to find the *actual* value of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. Quilter should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. The amount Quilter pays should be included in the actual value before compensation is calculated.

If Quilter is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Quilter may require that Mr D provides an undertaking to pay Quilter any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

If Quilter chooses to limit compensation to our award limit, the undertaking should only apply to any amounts received once Mr D has been fully compensated in line with this decision.

Quilter will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Quilter should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr D paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the investment should be deducted from the fair 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.

If Mr D wishes to but is unable to close his SIPP because the Stirling Mortimer investment can't be removed (which is possible because of ongoing uncertainly surrounding the Stirling Mortimer investment) to provide certainty to all parties I think it's fair that Quilter pays Mr D an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

<u>For the ISA investment:</u>

To compensate Mr D fairly, Quilter must:

- Compare the performance of Mr D's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Quilter should also pay interest as set out below. Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Stirling Mortimer in ISA	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mr D agrees to Quilter taking ownership of the investment, if it wishes to. If it is not possible for Quilter to take ownership, then it may request an undertaking from Mr D that he repays to Quilter any amount he may receive from the investment in future. Although, as above, if Quilter chooses to limit

compensation to our award limit, the undertaking should only apply to any amounts received once Mr D has been fully compensated in line with this decision.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Quilter should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr D paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair 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 fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Mr D has asked whether the fees he incurred when closing the ISA account last year can also be compensated. These appear to be the fees requested by the operator for operating the ISA account over the years. Having considered this, I don't think it would be fair and reasonable to do so. I think M D would have invested differently if he'd recieved suitable advice. He would have incurred some fees in doing so. Given the passage of time, it's difficult to know what these would have been and whether an investment wrapper would have been used and how much such a wrapper would have cost. Given this, I don't make any further award for the ISA fees.

<u>In respect of both the Pension and ISA investment:</u>

Why is the above remedy suitable?

I have chosen this method of compensation because:

- Mr D wanted Capital growth with a small risk to his capital.
- 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 a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr D'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 D into that position. It does not mean that Mr D would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr D could have obtained from investments suited to his objective and risk attitude.

Quilter should also pay Mr D a total of £300 for the distress caused to him by the unsuitable advice he received.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that Quilter Financial Planning Solutions Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Quilter Financial Planning Solutions Limited should pay the amount produced by that calculation up to the maximum of £150,000 (including distress or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Quilter Financial Planning Solutions Limited pays Mr D the balance plus any interest on that amount as set out above

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 15 August 2022.

Abdul Hafez
Ombudsman