DRN-4162573

The complaint

Miss C and Miss C1 as executors of the estate of Mrs M complain that an Appointed Representative of Quilter Financial Services Ltd provided the wrong information about a bond which has caused the estate a loss.

What happened

Mrs M was advised by an adviser, whom I will refer to as Mr A, to invest in the bond in 2018 and invested just under £100,000 in the bond in her sole name. She was a life assured under the bond, as were Miss C and Miss C1.

Mrs M sadly died on 8 December 2021 and Miss C forwarded a copy of the death certificate to Mr A who by this time was employed by JRW Financial Management Ltd, an Appointed Representative for Quilter. He forwarded the death certificate to the bond provider and also informed Miss C that on receipt of the death certificate by the bond provider Mrs M's name would be removed from the bond and that she and Miss C1 were now the owners of the bond and no one needs to be informed.

In September 2022 Miss C contacted Mr A explaining that they wanted to encash half the investment bond for Miss C1. Mr A emailed Miss C on 5 September 2022 stating that the bond provider wanted ownership of the bond to be passed to Miss C and Miss C1 before it encashed the bond and that a grant of representation was needed.

There was subsequent email correspondence about this but the end result was that Miss C and Miss C1 had to obtain a grant of representation which they subsequently did and a 'Certificate of Confirmation' (COC) was granted by the relevant Sheriff Court on 17 January 2023.

Miss C and Miss C1 had complained in the interim and Quilter provided a final response to the complaint dated 26 October 2022 in which it made the following key points:

- The advice to invest in the bond was before Mr A joined Quilter and it wouldn't therefore investigate the suitability of the advice.
- The bond provider informed Mr A on 29 December 2021 that Mrs M was the sole owner and what was required to change the ownership to Miss C and Miss C1.
- Mr A isn't responsible for decisions that need to be made about the estate on behalf of Miss C and Miss C1.
- It was Mr A's belief that the bond would transfer automatically to Miss C and Miss C1 on the death of Mrs M but notwithstanding this it would expect this to be confirmed with the bond provider.
- The bond provider itself provided incorrect information on 29 September 2022 as it said that as probate wasn't being applied for a form of indemnity would need to be completed and a copy of the Will provided to change the ownership.

- The bond provider retracted this on 7 October 2022, saying that as the estate was above the small estate limit of £36,000 probate was required.

- Mr A hasn't provided advice regarding suitability but has simply provided administrative assistance and as such Miss C and Miss C1 aren't its clients.

- It accepts that fees removed from the bond for ongoing servicing should have been stopped and as such it was upholding the complaint. It said it was going to refund the fees between December 2021 and October 2022 - when the last fee was deducted – amounting to £1,306.80.

- In addition it would offer £300 for the trouble and upset caused.

Miss C and Miss C1 didn't accept the offer made by Quilter and referred the complaint to our service. One of our investigators considered the complaint. He made the following key findings:

- There is no dispute that the estate was misadvised in 2018 about the bond passing directly to the two sisters on the death of Mrs M.

- The adviser made a further error in 2021 when he led the estate to believe that a grant of representation wouldn't be needed.

- The mistakes by Quilter led to delay in 50% of the bond being encashed in which period bond markets fell in value and it is responsible for the loss in value over the period.

- The benchmark that Quilter has used to calculate redress isn't appropriate and it should use the actual bond value to calculate redress.

- Quilter agreed that the fees for servicing for the bond should have stopped when Mrs M died and has offered to refund the fees charged after death.

- The period that Quilter has used to calculate redress is wrong as it hasn't taken account of the delay caused by its wrong advice about not needing a grant of representation. It should calculate redress between 15 September 2022 and 17 January 2023.

- The £300 offered for distress and inconvenience is reasonable.

- The costs for obtaining the COC are costs the estate would have incurred in any event and it didn't need to instruct lawyers to refer a complaint to our service and those costs are its responsibility.

Miss C and Miss C1 agreed with the redress set out by the investigator but Quilter didn't agree with his findings. It said that it was the provider that made the errors as to what was required in December 2021 and later. It said it isn't responsible for investment losses caused by delay in the transfer of ownership or removal of 50% of the bond assets from the estate. It said the solicitors for the estate were responsible for advising as to what was required.

It said that the adviser simply sought to assist the beneficiaries of the estate who weren't clients and also argued that the benchmark was appropriate in the circumstances.

As Quilter didn't agree with the investigator the matter has been referred 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.

Mr A advised Mrs M about the bond and she invested just over £98,000 into this in or around August 2018 following his advice. Miss C and Miss C1 were present at the meeting and say that their understanding was that the bond was set up so that it would pass to them automatically on the death of Mrs M.

Mr A said to Miss C in an email dated 6 September 2022 that he had assumed the bond would transfer automatically and that he should have made sure it was in both names. I think that this amounts to an acknowledgment on his part that it had always been intended that the bond would transfer to Miss C and Miss C1 automatically on the death of Mrs M and that the bond should have been taken out in joint names so this could be achieved.

As Mr A didn't advise that the bond should be taken out in joint names, Miss C and Miss C1 were only ever lives assured under the bond. This meant that whilst the bond didn't come to an end on the death of Mrs M, there was no change in ownership and so it fell into her estate.

This meant that Miss C and Miss C1 as executors of her Will either needed to assign the bond to themselves as the beneficiaries of the estate - so that they owned the bond going forwards - or surrender it. However, they couldn't take either step without first obtaining the relevant grant of representation giving them authority to deal with the estate of Mrs M and with the bond within it. In this case, the relevant grant of representation was a COC from the Sheriff Court.

Having said all the above, Quilter isn't responsible for the suitability of the original advice, as it didn't have regulatory responsibility for Mr A's actions at the time – he was only employed by its appointed representative in October 2018, a few months after he advised Mrs M to invest in the bond.

However, there is no question that Mr A misinformed Miss C about the bond when she contacted him in December 2021 following the death of Mrs M. He was fully aware that Mrs M was the only owner of the bond and that Miss C and Miss C1 were only lives assured. He should therefore have known the bond wouldn't pass automatically to them when Mrs M died.

Quilter has made the point that Mr A wasn't responsible for advising Miss C and Miss C1 about the need for a grant of representation. However, it is fair and reasonable to expect him when providing information about the bond to Mrs C to ensure that this is accurate and not misleading.

In making that finding I note that Quilter has sought to argue that Miss C and Miss C1 weren't clients. However, Mrs M was a client and they are named as executors under Will and as such I am satisfied that they were entitled as representatives of her estate to clear, fair, and not misleading information from Mr A about the bond.

Mr A failed to provide such information to Miss C, as in response to queries she raised following her providing the death certificate – which he had already forwarded to the bond provider – he stated, incorrectly, that Mrs M's name would be removed from the bond and that Miss C and Miss C1 were now the owners and that no one needs to be informed.

The adviser may well have been trying to be helpful but regardless of his reasons for

providing information to Miss C I think it is fair and reasonable to expect him to have provided the correct information and for Quilter to be responsible for his failure to do so. The failings by Mr A didn't just consist of providing the wrong information initially but included his failure to act on the information provided by the bond provider in December 2021 following receipt of the death certificate.

Quilter has said it isn't in issue that the bond provider's response made clear that Miss C and Miss C1 hadn't become owners of the bond on the death of Miss C. So, it appears that Mr A had the opportunity almost immediately to clarify the position with Miss C following him providing the wrong information to her initially but he didn't do anything.

In summary, I am satisfied that Mr A provided the wrong information to Miss C and this led to her and Miss C1 wrongly believing that the bond became theirs on the death of Mrs M such that they didn't need to take any action before asking the bond provider to encash the bond in full or in part.

I think it is more likely than not that if Mr A had provided the correct information about the bond – namely that whilst the bond didn't come to an end on the death of Mrs M it hadn't transferred to them automatically - they would have made further enquiries of the bond provider at that time and been made aware they couldn't do anything with the bond without a COC. I am further satisfied that this would have led to them obtaining a COC before September 2022 and being able to cash in half the bond as they wanted to at that time without any delay.

In making the above findings I note the point Quilter has made about the responsibility of the estate solicitors but from what the executors have said they didn't appoint anyone at the time to deal with the estate – which is unsurprising given the only asset of any value was the bond which they had been told by Mr A was now theirs.

Mr A did suggest they notify the family solicitor for information purposes but there is no reason to think that he would have been aware that Mr A had provided the wrong information about Miss C and Miss C1 being the owners and that the bond instead formed part of Mrs M's estate. In the circumstances I am not persuaded that his involvement breaks the chain of causation in relation to Mr A providing the wrong information about the bond.

Putting things right

Miss C contacted Mr A on 4 September 2022 to encash part of the bond and the reason this couldn't go ahead at the time was because the bond wasn't in the names of Miss C and Miss C1 and no COC had been obtained that would have provided them with the authority to encash the bond as executors of Mrs M's Will. It wasn't until 17 January 2023 that a COC was granted by the Sherriff Court.

Even if Mr A wasn't responsible for ensuring the bond was in joint names following the annual reviews he should have provided the correct information to Miss C in December 2021. If he had done so she and Miss C1 would, more likely than not, have made enquiries of the bond provider and obtained a COC before September 2022 and provided this to the bond provider at the time such that they would have been able to encash part of the bond without delay.

I think it is fair and reasonable to find that but for the misinformation provided by Mr A as set out above the bond would have been encashed on 5 September 2022 on the basis that the bond provider would already have bene in receipt of the COC. I accept it might have taken longer for the bond provider to encash half the bond but I don't think it is unreasonable to use the day following the decision to encash as the start date. Quilter is responsible for any

loss in value in the bond between that date and the date the bond was encashed in 2023.

Quilter has already agreed to repayment of the ongoing servicing charge so this isn't something I need to make findings on.

In short, Quilter should calculate redress as follows:

- Calculate what the value of the bond would have been on 5 September 2022 and compare this with the value of the bond on encashment.

- If the value of the bond on encashment was lower than there has been a loss and Quilter must pay 50% of the difference.

- Repay the fees of £1,306.80 deducted from the bond.

I have considered whether interest should be awarded on any loss Quilter calculates arose because of the delay but am not satisfied it should. The purpose of awarding interest is to compensate the complainant for being kept out of their money in circumstances it isn't known what they would have done with that money. However, in respect of the money paid out to Miss C1 it is she who has been kept out of her money and she isn't the complainant.

In terms of the fees that were deducted it isn't appropriate to award interest because those fees would have remained within the bond. I accept that if they had remained within the bond they might have provided some return but am mindful that the available evidence suggests that the bond dropped in value between Mrs M's death and encashment so I am not going to require Quilter to carry out a calculation to work out if some small return might have been achieved if those fees had remained in the bond.

I have also noted that Quilter offered £300 for trouble and upset and the investigator agreed with that offer and awarded the same amount for distress and inconvenience. I have also noted what Miss C has said about the psychological consequences of the mistakes made by Quilter and the time she has spent in relation to this matter and the cost of this in terms of loss of income from her self-employment.

I acknowledge the points she has made and don't doubt the impact on her and on Miss C1 but they act as representatives of Mrs M's estate, not in their personal capacity. In other words they are not the complainant and I have no power to award an amount for distress and inconvenience to someone who acts in a representative capacity for a complainant.

This doesn't mean that Quilter can't offer an amount for this and there is no reason it cannot honour the offer it has already made in this respect, and I would recommend it do so.

My final decision

I uphold this complaint for the reasons I have set out above and Quilter Financial Services Limited must calculate and pay redress as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 23 February 2024.

Philip Gibbons
Ombudsman