DRN-4544003

The complaint

Miss S has complained that her adviser at Quilter Financial Services Ltd failed to advise her appropriately on whether to switch her pension funds into cash from April 2022 onwards and/or failed to act on her requests to do the same. This led to a financial loss when she successfully switched into cash in September 2022.

What happened

Miss S says that she approached Intrinsic Financial Services' adviser for advice as he had been a financial adviser to three members of her family for over 30 years.

The adviser completed a fact find in February 2018 setting out that Miss S was looking to plan for her retirement in 8-10 years. She was nearly age 58, single without dependants and in good health. She was self-employed and looking to save on higher-rate income tax (caused by her £14,500 property income and £64,500pa trading profits) by contributing to a pension.

Her self-employment hadn't given her the regular cash flow to be able to make regular pension contributions, so she had agreed with the adviser to invest lump sums at the end of the tax year if she could afford to do so

The adviser noted that she hadn't invested outside of cash assets before, and was looking to take a conservative investment approach. Although Quilter's risk questionnaire placed Miss S broadly within the 'balanced' risk category on Quilter's scale, this was with a suggested spread of assets at the more cautious end of that category (45% bonds, 43% shares, 13% property).

Miss S has confirmed that she isn't complaining about the suitability of the advice she received to contribute to the pension, so I'll summarise for completeness here that the 'balanced' risk description was described in Quilter's advice as:

"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."

At an early point in the process the adviser established that Miss S had strong views on ethical investing. His fact find recorded a discussion that ethical funds, containing a smaller spread of assets than the market as a whole, can display higher volatility and hence risk.

On 21 March the adviser completed some research into sustainable investments which resulted in the selection of two funds from the wider market (rather than restricted to those available in Quilter's standard advice offering) in a 50/50 split in the following funds, which broadly reflected the division between shares and bonds for Miss S's risk profile. The funds had outperformed the sector average for balanced investments over the past ten years. A third party had rated them as 5/5 using criteria which included past performance, cost and manager longevity:

- Liontrust UK Ethical Fund Class 2
- Rathbone Ethical Bond Fund

The adviser sent his advice report to Miss S on 27 March 2018 which explained that he hadn't been able to find suitable multi-asset funds that met Miss S's ethical investment criteria. A Royal London fund was eventually rejected because of their stance on testing on animals. He went on to explain:

"REGULAR REVIEW SERVICE
The nature of your arrangements is such that reviews should be carried out each year. Your provider will write to you annually with a policy valuation and statement for review. You should contact me on receipt to arrange our review which, typically, comprises the following services:

- *An assessment and review of investment performance and markets relative to your specific pension investment as well as a wider economic overview.*
- *An update and appraisal of your financial and personal situation, needs, circumstances and objectives.*
- *A summary of the impact of any legislative or statutory changes that might impact on your retirement strategy, for example, changes in taxation law or State pension benefits and applicable qualifying rules.*
- *A review of your attitude toward investment risk and volatility linked specifically to the performance of your pension funds, to ensure continued appropriateness. This will help ensure that your risk tolerance continues to match the fund(s) being used.*
- *…*

After discussing this with you, you have decided that at this time you don't want me to provide you with an ongoing review of your pension. You have confirmed that as and when you require a review of your pension you will contact me. I have explained that in this situation I would be happy to advise you further as and when you require a review of your pension but that we would need to agree a fee before any review could take place.
…
Re-balancing
While it is vital to have different types of investments, or assets, a problem can occur if one of them does particularly well and your investment, while benefiting overall, finds itself over exposed to that type of asset just before it falls. It is therefore vital that when one of the assets does well some of the gains are sold and the proceeds used to buy more of the assets that have fallen in value. This can be done automatically with either a passive Strategic [sic] or by an expert manager with tactical active.

Taking this into account you decided that you would like to invest tactically and actively using wider asset classes. You also agreed that you would want to ensure that the investment was monitored and rebalanced to make sure that it stayed within the Balanced risk profile.
…
However, we discussed that due to your requirement to only look at investing ethically I have recommended a fund that we will not be able to continually monitor to ensure that it is always taking the right amount of risk for you. This can of course be reviewed in the future if you require a review meeting from me. If you do not review your investments regularly it will not be possible to see if they are still aligned with your agreed investor risk profile…"

The section describing Miss S's attitude to risk said:

"There will inevitably be times when the value of your investment could drop quite sharply. You need to be aware and be comfortable that you have the necessary capacity for loss to

accept this. For example, in a single bad year this loss could be 10% or worse and the chances of this happening are 1 in 20 each year. This is acceptable to you as you understand that investments can fall as well as rise in value and that investing for the medium to longer term will give you a greater opportunity to generate capital growth. In addition, as a significant portion of the lump sum you are investing will benefit from higher rate tax relief you are taking that into account as well."

The reference to higher rate tax relief here relates to the fact that Miss S would gain an additional 20% tax relief back through her tax return (over and above the basic rate tax relief added to the pension contribution itself). But when she drew benefits from the pension she was more likely to be just a basic rate taxpayer, so her cashflow would benefit from the additional 20% relief.

Miss S subsequently made total contributions of £90,000 (gross) to the pension over the period until March 2022. The agreed ongoing service level was 'none', which meant Miss S would not get *"Relevant & Pertinent Information", "Annual Progress Meeting", or "6 Monthly Progress Meeting"* – as these services attracted an additional charge.

By the time of Miss S's March 2022 contribution the split between the two funds was about 52% Liontrust UK Ethical / 48% Rathbone Ethical Bond, so they hadn't moved significantly out of balance. About a year earlier they had been split about 55%/45%.

On 2 April 2022 Miss S's plan had reached a value of £93,443, but by the end of that month it had fallen to £90,884. Miss S says she then spoke to the adviser and was encouraged to wait and see for three months. Quilter doesn't have a record of this call but it accepts his likely advice would have been to wait to see if the markets recovered as it was such a volatile time.

By 2 July the policy value had fallen to £83,674. On 19 July she emailed the adviser, having received her latest statement. She asked him to *"clarify the pros and cons"* of switching out of the funds which had been falling. In the adviser's reply he emphasized under 'cons' that Miss S would miss out on a potential rise in the markets which tends to happen at some point after they have fallen, and she would be crystallising a loss. He included some statistics on how costly 'timing the market' could be.

Miss S responded, *"yes I have weighed that issue and consider that we are likely to have very poor rises in the next year or so [inflation at 9.4% and bank interest rises that have been unprecedented for 13 years]…therefore can I hold the money and reinvest in a pension when I see fit? either the same or a different ethical fund?..."*

The adviser clarified that Miss S wouldn't lose the tax advantaged status of her pension by switching it into cash, but it would still attract charges.

On 21 July 2022 Miss S had a phone call with the adviser. The value of her plan on that day was £86,229. Quilter doesn't have a recording of this call. She says she specifically asked the adviser to cash in the funds, but was advised to another month to see how the market was going. I note that she says *"I was absolutely in disagreement with him but I deferred to his experience as he was acting as my financial advisor…Naturally and in retrospect, I deeply regret heeding his advice."*

Quilter also asked the adviser about this. His recollection was that Miss S decided to remain invested and she (not he – as she wasn't paying for the review service) would keep her portfolio under review.

The adviser left Quilter on 19 August 2022, as confirmed on the Financial Conduct Authority's register although Miss S says she didn't know this at the time. She had a further conversation with him (apparently at his new firm) on 13 September 2022, after she returned from holiday and following receipt of another statement. She says she again asked him to sell the funds, which he did – using the following day's dealing point as the instruction was after 5pm. An exchange of text messages the next day confirms this. It appears the value of the plan when it was cashed in was £84,109, and Miss S then drew out her tax-free cash sum (which was what she was wanting to do earlier in 2022). The tax-free cash was invested in an ISA and the pension remains in cash funds.

In November 2022 Miss S complained to Quilter about the performance of the recommended plan, as in a year the value went down 20%. Quilter noted she thought the adviser hadn't given her good advice and she'd lost money as a result. Specifically, Miss S claimed she told the adviser to get out of the fund (here she only referred to the Liontrust fund specifically) in July 2022, but he didn't act on her instruction and said he would monitor the situation, whilst the policy kept falling in value.

Quilter didn't uphold Miss S's complaint. It revisited the circumstances of its original advice, including that Miss S had declined the ongoing review service. In respect of the events in 2022, it explained its advisers were discouraged from supporting clients' wishes to 'time the markets' and to encourage them to remain invested in line with the aims of a long term investment.

Miss S didn't agree with Quilter's response. In summary, she said:

- She agreed that the funds were suitable for her both in 2018 and 2022 as the standard fund options from Quilter's panel could not meet her requirements. This was not the basis of her complaint.
- She couldn't recall the adviser offering her an ongoing review service, but would have declined it had it been mentioned as she did not want a paid-for ongoing service. She felt she could monitor the funds herself, and a regular fixed cost didn't fit with her irregular income.
- However, she didn't think that should have an impact on the extent to which Quilter was responsible for its advice.
- She accepts that the global markets have suffered loss, and the adviser wasn't in control of the "exceptionally poor performance" of the two funds she invested in.
- Initially the funds had performed well, but since suffered 'staggering' losses. Most people she's spoken to only lost 8-10% from their pensions.
- Quilter had admitted that it discouraged its advisers from 'timing the market', which indicates why the adviser acted the way he did and suggests he is constrained by Quilter in a way an independent adviser would not be.
- It was entirely her decision to switch to cash, to prevent even greater financial loss.
- She sought compensation for the fall in value between 21 July and 14 September 2022; not only up to 19 August 2022 as she was unaware the adviser had left Quilter.

Our investigator didn't consider the complaint should be upheld. She considered the crux of the matter was whether Quilter did anything wrong in the emails and phone calls in July 2022. In that regard she thought the adviser provided balanced information to allow Miss S to make an informed decision about whether to remain invested, given her planned retirement at age 68 and knowing there were no guarantees of future value. Miss S had chosen to remain invested at that time based on this advice, and at the latest point Quilter (as the advising firm) was responsible for how Miss S was invested on 19 August 2022, the value of the policy was actually £1,200 higher than on 21 July 2022.

Miss S didn't accept this. In summary, she said:

- She was seeking compensation for her full loss incurred between April and September 2022. (This differs from the period she claimed to Quilter and represents a longer period of greater loss.)

- The investigator was wrong to exclude the period after 19 August 2022 (when the adviser left Quilter but she was not aware of this) in her analysis.
- The answers she provided on her attitude to risk questionnaire in 2018 included that she was seeking safe investments as she found investment decisions difficult to understand and became anxious about them.
- The adviser refused to carry out her instructions on at least two occasions, citing his inability to predict the market.
- His messages failed to recognise her distress and were contrived to *"be seen to be giving sound advice".* But why would she want to stay in a fund with such poor return?
- Quilter must explain how the adviser was able to access her account to make the disinvestment when he was no longer in its employ. In fact he is still showing as her adviser on the account.

Miss S also informed the investigator in a phone call that she doesn't remember any conversation about the risk of the funds she invested in, and she could not afford to lose money with less than 10 years to retirement. Our investigator explained that this service has an inquisitorial remit to consider the suitability of the advice Miss S originally received, given that she was questioning whether she was in the right funds.

She notified Quilter of this (I note in this regard Quilter had also reviewed the suitability of its original advice when it first responded to the complaint, even though at the time Miss S didn't consider she was complaining about this.) Quilter maintained that its advice was suitable for Miss S in 2018 and subsequently.

The investigator reviewed the matter and concluded that the investments made from 2018 onwards suited Miss S's attitude to investment risk, her capacity for loss, the term she wanted to invest for, and ethical investing. And she considered Miss S was made aware of the risks associated with the funds. Miss S's response to this was to again agree that the funds were suitable for her, which she said had always been her position and was not the focus of her complaint.

The investigator went on to review the likely advice Quilter had given Miss S in April 2022. She didn't think it was unreasonable for the adviser to suggest Miss S wait three months and review the situation, given the term of her investment and that the economic climate was going through a volatile time.

If at any point Miss S felt the adviser wasn't acting on an explicit instruction she'd given, the investigator said Miss S would have been able to take matters into her own hands and give a direct instruction on the Quilter platform online (or through a new adviser). However the evidence suggests she accepted his advice at the time and continued to deal with him about other matters, such as her mortgage.

Miss S continued to disagree with this part of the investigator's findings, largely for the same reasons as I've set out above. She noted that the funds she switched out of have continued to go down, so her instincts were correct. As agreement couldn't be reached, the complaint has been referred to me for a decision.

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.

Miss S's acceptance of the risks

I'm not looking at the suitability of the advice Miss S received to contribute to her pension, or the funds originally selected – which Miss S agrees met her needs at the time. However, Miss S's acceptance of this point needs to be taken into account in the rest of the complaint. As I've set above in more detail, the background to this complaint confirms that:

- Miss S ought to have been aware from the advice she was originally given that investing for the longer term (8-10 years) involved accepting some risk that the funds could go down.
- Miss S has referred to losses of 21% but this was contemplated in the adviser's comment at the outset, "*For example, in a single bad year this loss could be 10<u>% or worse</u> and the chances of this happening are 1 in 20 each year."* The poor performance of the markets in 2022 was widely unexpected.
- Someone with Miss S's attitude to risk is prepared to accept that riskier investments are likely to give better longer term returns. And in Miss S's case in particular, the added factor of restricting the choice to ethical investments meant she was likely to experience greater volatility and didn't benefit from as diversified a performance across the whole market.
- They can also suffer from regret when decisions turn out badly, which I suggest is what has happened here.

The lack of an ongoing review service

Miss S has suggested that her choice not to select this shouldn't affect Quilter's responsibility to compensate her if something has gone wrong. I agree, but this presupposes that Quilter is at fault. If Quilter gave Miss S her wrong advice, such as when she asked for its opinion on whether to sell her funds from April 2022 onwards (and I'll consider this below), it doesn't of course matter that she wasn't paying for the ongoing review service.

But where it does matter is in Miss S's comments that Quilter remained liable for the underperformance of her funds up until she sold them in September 2022. Firstly Quilter was her adviser, and advising her on request. It had no responsibility to pro-actively suggest – at any point between April and September 2022 – that now was the right time to sell her funds.

In fact even if Miss S had been paying for an ongoing review service, I doubt Quilter would have given that advice on its own initiative, and I wouldn't have expected it to – for the same reasons I'll explain below when I look at the advice it did actually give Miss S.

I therefore consider it's a moot point for the outcome of this complaint that Miss S didn't know her adviser had left Quilter. It's self-evident from what she's said that she can't have become a client of the adviser at his new firm any sooner than he spoke to her in September 2022, or signed up to some form of ongoing review service at that firm either. So, whilst I'm not looking at a complaint about the adviser's role at that new firm, I should manage Miss S's expectations that it's likely to be difficult for her to hold the adviser's new firm responsible for any losses.

Miss S is naturally concerned how the adviser was still able to access Quilter's platform at his new firm, in order to process her sale instruction in September 2022. But again, this isn't being said from the point of view that the sale instruction was invalid or performed incorrectly: Miss S wanted to sell the funds in that call, and is in fact complaining that the adviser should have done it earlier, when at Quilter.

Miss S is free to ask Quilter Financial Services Ltd to explain further how the adviser's access to the system was affected by his leaving the firm. And she is also free to ask the separate part of Quilter which administers the platform itself (Quilter Life & Pensions Limited) how that access was gained. But I'm satisfied the technical explanation of what happened there it won't make a difference to the outcome of the complaint I'm considering.

Miss S's requests for advice on selling her funds from April 2022 onwards

Quilter accepts that there was likely a discussion at the end of April 2022 and I see no reason to disagree. The obvious place to look for what the adviser likely said at the time is in his emails in July 2022. I don't find it unreasonable that he would suggest that Miss S should try to avoid making a 'knee jerk' reaction and sell the funds when they were already down, as this would crystallise a loss.

Miss S suggests that this was a 'party line' that Quilter required him to adopt, and a fully independent adviser would have advised differently. I disagree. I accept – as Quilter has confirmed this – that it gives guidance to its advisers that they should not try to 'time the markets'. But I consider that is sensible guidance. Selling a fund intended for longer-term investment after it has already fallen, with the intention of reinvesting when it has gone back up, inevitably results in the bottom of the market being missed and the lost investment returns being compounded. I would not expect an independent adviser to recommend Miss S did this either, unless it was unavoidable.

If Miss S was about to retire in 2022, then it would have become a much more difficult situation for the adviser to make recommendations in – because in the shorter term the funds could continue to fall, as Miss S has observed. But in my view, although Miss S was closer to retirement than when she'd started the plan in 2018, she had sufficient time for the fall in value to potentially recover without having to sell the funds completely.

So I'm satisfied that a competent adviser would have done what the adviser did here and recommended that Miss S try to remain invested, if she could manage to do so. That is consistent the risks Miss S was accepting in 2018 and at subsequent points when she made further investments into her pension. I wouldn't have expected Miss S to invest on the basis she did, or be agreeing now that this advice was suitable for her, if she wasn't prepared to accept those risks.

I appreciate that she's found the situation stressful, and I'm sure she is not alone amongst investors navigating the market situation in 2022. But the fact that the fund continued to fall after she sold it doesn't demonstrate that the adviser gave the wrong advice. That can only be seen with hindsight.

Quilter's adviser ignoring Miss S's instructions

I have some doubt that Miss S actually gave an instruction to cash in her funds in April 2022, which the adviser then ignored, as opposed to simply seeking some advice on this. I say this as it didn't originally form part of her claim to Quilter that it had caused her losses from this point. Either way, there is no reliable evidence that there was an instruction Miss S gave in April 2022.

Even in July 2022, Miss S initially approached the adviser by email seeking advice, not giving an instruction. The adviser's initial response highlighted the risks of missing out on a recovery in the markets, which was reasonable. Miss S's response to this was then to ask a question – not give an instruction: *"can I hold the money and reinvest in a pension when I see fit? either the same or a different ethical fund?..."*

I realise Miss S was proposing moving the money out of the pension altogether, but I can also see why the adviser didn't interpret her question that way. She would incur tax at up to 40% on the 75% of any withdrawal from the pension which wasn't tax-exempt, and the adviser would not have wanted to advocate that. The alternative, if necessary, was to leave the money within the pension but move it into a cash fund – and he reminded her that this would attract charges and potentially mean the return on her money wouldn't beat inflation.

The similar risk of losing against inflation existed with what Miss S has now done – drawing the tax-free component out of the pension only and investing that in cash.

Whilst I can't verify what was discussed on the phone the following day, on the balance of probabilities I think it's unlikely it was substantially different. If Miss S gave an instruction that she considered the adviser had ignored, I'd expect to see a further email or even contact made directly with the Quilter platform or the adviser's superiors at Quilter. It ought to have been important to Miss S to ensure her explicit instructions were recorded in writing. Instead she refers to "*heeding his advice"* rather than wishing to ignore his advice at that time.

As I've noted above, for the rest of the time the adviser was employed by Quilter no mandate had been given to him by Miss S to proactively give further advice. She wasn't paying him for that service. That would be the case whether Quilter remained liable for his actions (or inactions) after 19 August 2022, or not. And in any case, for the reasons I gave above I couldn't fairly say it would have been suitable advice to recommend Miss S switched out of these funds. It would always have needed to be her decision, because it had the potential to make her predicament worse.

'Exceptionally poor performance' of the funds

Miss S says that other people's pensions underperformed by half the amount hers did in 2022. This may be a feature of the fact that she's using ethical funds which, due to their screening criteria, aren't able to access the markets as widely as pension plans without these restrictions. Their performance may be more volatile, and I can see that this was explained to Miss S when she took the pension out.

She was also invested more in bonds than other pension policyholders might have been, as bonds have historically displayed lower volatility (but less growth) than shares. They form a greater share of a more cautious portfolio. Unfortunately the events of 2022 affected the bond markets particularly badly. Both of these points may explain the differential performance of her pension versus those she's compared it with.

My final decision

I do not uphold Miss S's complaint and make no award. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 February 2024.

Gideon Moore
Ombudsman