DRN-4639099

Financial Ombudsman Service

The complaint

Mr C complains that Connaught Financial Consultancy (Connaught) recommended he switch his existing personal pensions to a new pension arrangement with the same provider. He says it wasn't properly explained to him that it was an adviser based product and a self invested personal pension (SIPP). Mr C says he wanted the switches to be cancelled. But eventually he was told that wasn't possible.

Mr C further says that, by early 2022, he'd lost about £60,000 which would've been avoided if funds had been switched in a review meeting in November 2021 when the adviser had refused to make any changes to Mr C's pension portfolio until agreement had been reached as to the adviser's charges.

Connaught is an appointed representative (AR) of Quilter Financial Services Ltd (Quilter). As principal, Quilter is responsible for the advice given and the service provided by Connaught.

What happened

I issued a provisional decision on 22 January 2024. I've recapped here what I said about what had happened and my provisional findings. I've corrected three typing errors, for which I apologise, where I referred to Openwork instead of Quilter.

'*Mr C's relationship with the adviser goes back to 2014 when Mr C sought advice about where to invest the proceeds of a pension sharing order. Mr C had several existing personal pension plans with Aviva. The adviser recommended a new plan, also with Aviva, which was set up in 2015.*

I'm not going to refer to everything which led to Mr C's complaint, just the main events and communications. Mr C met with the adviser for an annual review towards the end of October 2017. The possibility of making some changes to Mr C's existing arrangements was raised. There was a further meeting on 3 November 2017 and various options were mentioned although Mr C's view was that switching his older pensions into the newer plan probably made most sense. The adviser also requested information about Mr C's employer's pension scheme which Mr C obtained and dropped off with the adviser on 22 December 2017.

The adviser emailed on 23 December 2017 asking if Mr C wanted the adviser's fee of £1,315 taken from the pension funds on transfer or to pay it direct.

Mr C emailed the adviser on 28 December 2017 saying that was more than he'd been expecting to pay. He asked for a breakdown and confirmation that future annual fees would be in line with the ongoing service fees that had been agreed the previous year. Earlier in his email Mr C had referred to those as one review per year with two fund switches at an estimated cost of £375.50. The adviser replied the same day saying he understood Mr C's concerns about the fee compared to the ongoing annual review service. The adviser suggested a meeting which took place on 30 December 2017. At the meeting, Mr C signed a Letter of Authority (LOA) to allow the adviser to obtain information about Mr C's fifth existing plan with Aviva. The adviser already had authority on the other three existing plans and the newer plan.

Later the same day the adviser emailed Mr C apologising for not being clearer during the meetings over the last few months as to the scope of the advice and that it was a one-off piece of advice and not part of the ongoing service fees that had been agreed. A revised Authority to Proceed form was enclosed. The brief description of the advice/service provided section recorded, amongst other things, that '[Mr C] wants to review his pension planning – he has 5 existing Aviva personal pension plans. He wants to check if there are options for a transfer into a more competitive product.'

The adviser also reduced his fee to £800 and suggested ongoing service fees of £410 pa plus VAT with unlimited fund switches. The adviser said he'd sent the LOA to Aviva and hopefully he'd get the information in early January and that plan could be included as part of the transfer process. Mr C signed the Authority to Proceed on the same day.

The adviser emailed Mr C on 8 January 2018 saying he'd received the information about the other plan and he'd completed the analysis and included it in the recommendation. The adviser suggested a further meeting to go through things with Mr C and sign off on servicing/advice documents and revised servicing terms going forwards. I think that meeting took place on 10 January 2018.

The adviser emailed Mr C on 25 January 2018. There were a large number of attachments, including a suitability report which recommended Mr C transfer his five existing plans to a new pension product with Aviva – a Portfolio (Flex Option) Account. The email said Quilter's Compliance Team had signed off on the transfer and the adviser had completed the online application for the transfers of Mr C's existing Aviva personal pensions to the new product, a key features document for which was attached. The adviser said he'd send over a declaration document that Mr C needed to sign in a separate email. Mr C confirmed safe receipt by email on 28 January 2018 and said he'd get back to the adviser after he'd had a chance to digest everything.

In his email on 30 January 2018 the adviser confirmed the transfer process had been initiated with Aviva and the transfers were being arranged. The email noted – with underlining – that, as it was an internal transfer, it could be completed within days, not weeks. The adviser said he'd checked with Aviva and the declaration document signed by Mr C wasn't needed to get the transfer process initiated but Mr C did have the usual 30 day cancellation period. The adviser mentioned a voicemail he'd left and said he didn't want Mr C to feel that it was all happening and when he hadn't had a chance to go through the paperwork. In an email on 31 January 2018 the adviser reiterated that the transfers were in progress even though Mr C hadn't returned the signed declaration. The adviser said he didn't want Mr C to think the transfers wouldn't start without that being returned.

Mr C emailed on 10 February 2018. He said he'd spent three hours reading all the documentation and he had a few questions. He'd previously been unaware it was a SIPP and an adviser based product. Mr C emailed again on 17 February 2018 saying he'd read everything in detail and asking for some further information around the two main reasons for the transfer – flexible access and better returns. The adviser acknowledged Mr C's concerns the same day and suggested a meeting.

Mr C met with the adviser on 3 March 2018. Mr C says he made it clear to the adviser that he didn't want to proceed with the proposed transfer. The adviser agrees that Mr C was 'very negative' about transferring and raised a number of concerns. Mr C signed Aviva's Platform Product Portfolio Client Declaration. He says he did that as it was the only way he could view his pension.

The adviser said he'd check the points raised by Mr C. The adviser emailed Mr C on 5

March 2018 about three issues – why no documentation had yet been received from Aviva; why the new Aviva pension wasn't showing on Mr C's online portal; how Mr C could use the Aviva platform when not linked to an adviser. According to the adviser Mr C was comfortable with the answers the adviser had provided and which eased Mr C's concerns and when he knew he could cancel the plan once the cancellation forms were issued.

I've seen that, between the end of March 2018 and mid August 2018, there was correspondence between the adviser and Aviva about issuing the cancellation documents. The adviser kept Mr C updated as to what Aviva had said when the adviser had chased for the forms. But it seems the forms were never issued and the new plan remained in place. And Mr C says that he was told at the next service review meeting, in September 2018, that it was by then too late to cancel.

The adviser says there was a meeting before then in August 2018. As to what happened, the adviser says he apologised for a number of issues: his error in reviewing accessibility relating to Mr C's previous pension plans. That was a reference to Mr C having discovered, from Aviva, that the pension plan set up in 2015 did offer some flexible access options of which the adviser was unaware; making an error as to Mr C's address (the wrong house number) on the application for the new Aviva portfolio plan; and (on Aviva's behalf) the breakdown in the IT system and the fact that the necessary paperwork to cancel the plan hadn't been issued. The adviser offered to waive the initial transfer advice fee of £800. The merits of the new plan were discussed and Mr C was happy to continue – on the basis the adviser confirmed Mr C should still cancel as forms not issued yet and gave him an email to confirm and that new plan could be reviewed in early 2019. Mr C didn't raise the cancellation of plan after that and was happy to continue.

Moving on to what happened in 2021, there was a review meeting in April 2021. Previous reviews hadn't taken place because of Covid. The adviser wrote to Mr C to confirm the outcome of the review. Mr C's fund selection had been reviewed. The current fund selection was set out, as was the new portfolio. The letter said a complete switch to the current portfolio had been agreed. All funds would be reviewed at the next meeting. If Mr C no longer wanted the review service he could cancel the arrangement at any time by contacting the adviser. The schedule for review meetings was set out – that it had been agreed to meet up at least once a year and ideally twice a year (six months apart). The letter said the charge payable had been discussed and agreed – £275 per meeting, paid direct to the adviser.

I've seen an email the adviser sent to Mr C on 11 May 2021 about possibly switching out of one fund and amending regular contributions. The adviser set out how, based on what Aviva had told him, Mr C could contact Aviva direct to make a fund switch. The adviser offered several dates to discuss things. Mr C says the instructions didn't work and it took a lot of time and effort to make a fund switch, including overcoming technical difficulties which Mr C, an IT professional, found a challenge.

On 14 August 2021 the adviser wrote to Mr C. The letter was headed 'Checking the ongoing suitability of my advice and notifying you of fees and charges reporting'. The letter said a review was scheduled for September 2021. And that it had been agreed that the costs of the regular review service were a flat fee of £275 paid direct. But the letter added: 'We will be reviewing our fee structure at our next meeting …' The letter also said Mr C could cancel at any time if he no longer wished to receive a review service. There was a covering email which explained why the letter had been sent.

Mr C's September 2021 review had to be cancelled and was rebooked for 12 November 2021. Mr C had some concerns about his investments and wanted to discuss possible changes. But the focus of the meeting was the adviser's charges. The adviser's position was that his fees had to be agreed before a further review could take place. On 22 November

2021 the adviser forwarded a copy of the charging proposal for Mr C to review. Agreement was reached on 25 January 2022 as to the adviser's charges going forward. In his email of 27 January 2022 to Mr C the adviser said he was happy to arrange a review in February and asked if there were any days Mr C had in mind, concluding the email with 'Come to me and we can organise from there.'

Mr C emailed the adviser on 7 May 2022 requesting a servicing review. There was a discussion about the drop in Mr C's fund value. Mr C complained to the adviser who referred the matter to Quilter. After obtaining some more information from Mr C, Quilter issued a final response letter on 27 June 2022 not upholding the complaint. Mr C responded on 30 June 2022 saying his complaint had been prompted by three things: the delayed pension review meeting in November 2021; the switch to an adviser based product in 2018; and suitability. Mr C remained unhappy with Quilter's response to his complaint and referred the complaint to this service.

Our investigation

One of our investigators looked into what had happened before issuing a detailed view. He set out what he saw as the key events and dates. In summary:

- *About the switch to the SIPP, in his email of 25 January 2018 to Mr C the adviser had explained that the switch had been signed off and he'd completed the online application for the transfer of Mr C's five Aviva personal pensions to the Aviva portfolio. Other documentation was attached, including the key features for the new product. It set out what happened if the investor wanted to change adviser, that the product was designed for customers with an adviser and the restrictions that would apply if there was no adviser.*
- *Mr C had said, in his email of 17 February 2018, that he'd been unaware it was an adviser based product. But he'd gone on to sign the adviser based product declaration on 3 March 2018.*
- *Cancellation forms were never produced by Aviva. The adviser had chased them and wasn't responsible for the fact that, due to technical issues, Aviva never issued them.*
- *Mr C's position was that the disagreement over fees was instrumental in the delay in arranging the review meeting. It was in a business' interest to keep its charges competitive. But, if the customer is unhappy, they are free to go elsewhere. It isn't for this service to say what a business should charge for the services provided.*
- *The November 2021 review meeting was originally scheduled for 4 November 2021. The cancellation was unavoidable and the meeting was rearranged for 12 November 2021, only six working days later.*
- *The charging proposal was provided after the meeting. Mr C felt the proposed charges were too high. The adviser made it clear he was unable to provide services until agreement on fees had been reached. Although Mr C felt the adviser wasn't acting in his best interests, the adviser was entitled to hold off providing services until his fees had been agreed.*
- *Unfortunately the negotiations took some time. But when it was resolved and the adviser asked Mr C on 27 January 2022 for some suitable dates, Mr C didn't contact the adviser until 7 May 2022. Mr C had said the adviser should've followed up his email when he didn't get a response. But Mr C had received the email and had either overlooked it or not read it fully. Quilter wasn't responsible for the meeting not being arranged until 7 May 2022.*
- *Mr C could've removed the adviser at any point and did so once he felt the professional relationship had broken down. The fact that it was an adviser based product hadn't impacted negatively on Mr C nor was it directly related to the losses he'd experienced in 2021. The SIPP terms and conditions allowed a transfer to*

another provider at any time.
- *Overall the investigator didn't think Quilter was responsible for the drop in Mr C's fund value.*

Mr C didn't agree with the investigator's view. I've summarised Mr C's main points:

- *The adviser had instigated the switches before Mr C had a chance to understand what was proposed and when Mr C had told the adviser he was unclear.*
- *Mr C hadn't received any report on 30 November 2017 or a suitability letter on 23 December 2017, only an email with an unexpected bill.*
- *He only got the suitability letter on 25 January 2018 which was after the adviser had instigated the changes. It was only then Mr C saw the 30 November 2017 document which was attached to the email. He suggested the adviser had deliberately not sent it earlier. If Mr C had seen it and understood the switch was to an adviser led product he'd have rejected the proposal. It was by then too late to stop the switch but he did ask the adviser to cancel it.*
- *Mr C hadn't signed a document on 3 March 2018 agreeing to the switch. Once the adviser had initiated the switch, Mr C lost all access to his pension online – he couldn't even see he had a pension, which was very worrying. When the adviser came to his house he told Mr C that, to view his pension, he'd have to agree to use the new Aviva software and sign a form to that effect. Mr C signed the form but made it clear to the adviser that he wasn't agreeing to the switch and if he wanted he could still cancel it. The adviser understood that and continued to confirm in person and emails that he was trying to cancel the plan. The adviser should've made a direct request to Aviva to cancel the change, with or without a form, and not used the form as an excuse not to do so until it was too late.*
- *The flexible access the adviser had promoted as the main reason to switch was due to a change in the law and it had nothing to do with switching to a new product.*
- *The new online platform was untested and unreliable. The adviser had no prior practical knowledge of the new system and couldn't demonstrate it.*
- *In the April 2021 review meeting, the adviser made more switches than usual as none had been made during the pandemic. But Mr C still felt his pension was left in several funds which he considered too high risk. If he'd have thought there'd be a problem with the later review, he'd have asked for all the switches to be completed at the first meeting.*
- *The meeting in November 2021 was the second of two reviews planned for that year, the charges for which had been agreed in advance and so he wasn't expecting to re-negotiate those charges. He was expecting to discuss charges for 2022 at some point, but not in the meeting in November 2021, for which he'd booked time off work.*
- *Between the two meetings Mr C had become concerned about risky funds and he'd tried to switch some money himself. The adviser had indicated there was that functionality or Mr C could do it by emailing Aviva. By the time of the meeting in November 2021 it was clear that Mr C couldn't easily make fund switches himself.*
- *Although he could've removed the adviser Mr C didn't know the implications. He did remove the adviser when it became clear that the professional relationship was over. That left Mr C with an inappropriate product which was more expensive than his previous pensions, in funds which were riskier, more difficult to manage and which haven't performed as well.*
- *He was also disappointed we hadn't said if it was unreasonable and an abuse of his position for the adviser, at the November 2021 meeting, to demand a 400% increase in charges, with no prior warning and to refuse to make changes to Mr C's pension unless and until Mr C agreed. The fact that it took two months to agree even a temporary charging basis was a direct consequence of the adviser's behaviour and demands in the meeting in November 2021.*

- *Even if Mr C had missed or misunderstood the email the adviser sent on 27 January 2022, a review wouldn't have been done until February 2022 and not completed until March 2022. By then the situation in Ukraine was developing (as referenced in the adviser's email) and by the time any changes would've been made, losses would already have resulted.*

The investigator made some further enquiries with Quilter and shared Quilter's response, which included a breakdown of events, before writing to Mr C again to explain why, despite Mr C's comments, his view hadn't changed. The investigator said, although Mr C's email of 25 January 2018 showed he was concerned about the new product, that wasn't enough for the adviser to cancel the switch – Mr C hadn't made an express request to cancel and it appeared a cancellation period would apply. The investigator maintained the adviser wasn't responsible for the fact that Aviva hadn't issued the cancellation forms. If Mr C had been unhappy, he could've switched adviser or transferred out of the new product at any time. The investigator also considered the overall suitability of the advice to switch. He referred to the reasons given in the suitability report. He didn't think the recommendation was unsuitable.

Mr C remained dissatisfied and made further comments, some of which reiterated what he'd said earlier.

As agreement couldn't be reached the complaint was referred to me to decide. Mr C prepared a detailed updated summary. I've read and considered all he's said there and earlier. More recently he provided [a] screenshot which he says shows his five personal pension plans were transferred to the new SIPP against his wishes and the written instructions he'd signed at the end of December 2017 and before he'd had time to read the suitability letter dated 25 January 2018, let alone respond to it.

We raised a number of points with Quilter. Amongst other things we said Mr C had said he was looking for a cheaper product and the new SIPP was more expensive. We asked Quilter to explain why the higher charges were justified. We said Mr C had wanted to be able to switch funds himself and, because it was an adviser led product, he'd lost that functionality. There'd also been reference to a limited number of funds being available with his existing arrangements which had restricted Mr C's investment choices and we asked for further details about that. We also asked why it hadn't been considered suitable to switch Mr C's plans into the newest plan, set up in 2015, and if that plan incorporated the flexible options introduced by the Pensions Freedoms. And, about what had happened in November 2021, we said Mr C's position was that he'd agreed charges for the year in advance and which included two reviews and so he wasn't expecting to renegotiate charges until 2022.

I don't think Mr C has seen Quilter's response which we'll share with him. In summary, Quilter maintained the new product was suitable for Mr C. It offered access to a wider range of funds, fully flexible access at retirement and online visibility and enhanced reporting. The higher charges had been discussed in detail with Mr C and were clearly set out in the suitability letter. The new charging structure was within 0.3% pa of four of the existing plans and just over 0.5% pa of the newest 2015 plan. Mr C was comfortable that the increased charging level was justified and would hopefully be outweighed by the benefits and increased growth. The chances of increased fund performance were supported by an analysis of the performance of the 2015 plan with the new arrangement using a profiling tool. Mr C was made aware it was an adviser led product. He did raise concerns which were discussed. The adviser confirmed, after checking with Aviva, that it was still possible for the client to make changes direct with Aviva. Mr C had made switches himself in June 2021 and February 2022.

The adviser had checked with Aviva about the flexi-access options offered by the 2015 plan. Aviva had 'bolted on' some options but these were limited. Further, most of the funds Mr C's *new plan has been invested in weren't available in the 2015 plan. Those included the Baillie Gifford American Fund. It had performed extremely well in 2020 and Mr C had organised his own fund switch in June 2021 to partially switch out of that Fund and take the growth over the previous 12 to 15 months.*

The adviser said it wasn't the case that the charges for 2021, and that there'd be two review meetings, had been agreed in advance. The charges were on a rolling basis and could be reviewed or renegotiated at any point by either party. He'd charged Mr C the agreed adviser fee of £275 for the first meeting during early 2021. That was set out in the signed off servicing agreement. During 2021 a review of fees for all servicing clients was prompted by Quilter. The adviser mentioned in his letter to Mr C in August 2021 that the fee structure would be reviewed at the next meeting. Mr C got that letter as he emailed in response with some thoughts about investments. If Mr C had thought he'd agreed fees in advance for both meetings he'd have mentioned it. The second review meeting was planned for early October 2021 but had been delayed by a month.

What I've provisionally 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.

As to Quilter's position, Mr C has pointed out that the adviser didn't work for Quilter at the time and Mr C is unclear how Quilter can say what happened. But, as I've set out above, Connaught is an AR of Quilter. An AR is a firm that conducts regulated business on behalf of a directly FSA authorised firm, who is the principal. The principal firm takes regulatory responsibility for the AR which means Quilter is responsible for Connaught. In dealing with Mr C's complaint, Quilter will have liaised with the adviser.

Mr C is disappointed with the outcome suggested by the investigator. Mr C says we've placed insufficient weight on the evidence he's provided, including the adviser's own emails. And that we've accepted what Quilter and the adviser have said and when Mr C didn't agree. Mr C has given us, at various stages, his detailed version of events. I've taken into account all he's said and the information he's provided in reaching my (provisional) conclusions. But I have to be fair to both parties and bear in mind all the evidence, which includes what Quilter and the adviser have said. Here some of the adviser's recollections differ from Mr C's.

Where conflicting accounts are given it can be difficult to work out what really went on. Especially if there are issues which might, in part at least, depend on one party's perception of the other's position. For example, the extent to which Mr C engaged in the advice process and understood what was recommended and if he definitely wanted to cancel the new arrangement or if he was somewhat ambivalent about it. Where, as here, there's a dispute, I have to reach my conclusions on the balance of probabilities, that is what I consider is likely to have happened, based on all the available evidence and information and the wider circumstances.

I've read and considered everything although I'm only going to refer to what I see as central. I've considered Mr C's complaint under three broad headings: first, what happened in 2017/2018 and how the switches to the new product came about and if they should've been cancelled; secondly, whether the new product was suitable for Mr C; thirdly, what happened in 2021.

<u>The switches to the new product</u>

Mr C was happy with the personal pension set up in 2015. When changes were contemplated toward the end of 2017, Mr C initially thought he'd be switching his older, *smaller pension plans into the newer larger plan. He was prepared to consider that although he wasn't in any particular hurry as he didn't find his existing plans difficult to manage. And his newer pension with Aviva had only been set up a couple of years earlier and Mr C had paid what he considers was quite a large fee to the adviser. Against that background, the adviser's email of 23 December 2017 came as somewhat of a surprise to Mr C, as did the amount the adviser planned to charge. In his email of 30 December 2017 the adviser accepted he could've made things clearer to Mr C and, in particular, that the work he was undertaking was separate to and didn't form part of the agreed review service, for which Mr C paid a fee. And, in recognition of that, the adviser reduced his fee.*

So I accept there was some initial confusion. But, once Mr C knew what was being contemplated and that he'd be charged extra for it, he didn't tell the adviser not to proceed further or say he wasn't prepared to pay the adviser's (reduced) fee. And Mr C signed two documents on 30 December 2017 to allow the adviser to continue: a LOA to enable the adviser to obtain information about Mr C's fifth existing plan with Aviva and an Authority to Proceed. I understand what Mr C says about the LOA – that the adviser already had authority on the other four plans so it made no difference. But I think it confirmed to Mr C that the adviser was looking into things with a view to recommending changes to Mr C's existing arrangements.

Mr C says he and the adviser agreed the wording of the Authority to Proceed, limiting it to providing options for Mr C to review. And that by signing the form Mr C wasn't authorising any switches and, if the adviser was proposing any changes, he'd have to explain them clearly in writing. But the Authority to Proceed form recorded that '[Mr C] wants to review his pension planning – he has 5 existing Aviva personal pension plans. He wants to check if there are options for a transfer into a more competitive product.' That did capture what the adviser was considering and the work he was undertaking. I don't think it's particularly significant that the form, in error, referred to Mr C as 'she' or that evidences it was completed in a hurry. What's more important is that Mr C knew the adviser was reviewing all five of his existing pension plans with Aviva, with a view to transferring them – including the newest plan – into a new product. There's no suggestion that, by signing the form, Mr C was agreeing to the switches and/or the new product. The next step would be for the adviser to provide a recommendation report for Mr C to consider.

I note what Mr C says about the adviser being persuasive and that the meeting (in Mr C's home) had been difficult and Mr C wanted to bring it to an end. So he signed the Authority to Proceed. But, if he'd really not wanted the adviser to continue, and if he'd felt he couldn't get that across at the meeting, Mr C could've got in touch the next day and said, on reflection, he didn't want to proceed any further. And he knew, on 8 January 2018, when the adviser emailed about the fifth plan, that it had been added into the earlier recommendation and which involved a new product. So as things stood, Mr C would've been aware that the adviser was looking into whether changes should be made to all five of Mr C's existing Aviva pension plans.

Mr C says the adviser's email of 25 January 2018 came as a further surprise to him. It had 14 documents attached, including the suitability report, which Mr C was asked to read and sign a declaration agreeing with the proposal. Mr C says, having signed the Authority to Proceed, he expected the adviser to set out any options clearly and in writing. I think the report did that and was in line with the Authority to Proceed. The report is dated 23 December 2017 and Mr C says he didn't see it before it was emailed to him, with all the other documents, on 25 January 2018. Quilter has explained that the documents were created during the advice process but had to be checked by Quilter's Pre-Advice Checking Team, which is a Quilter Network compliance requirement. I think that, along with the fact that the report as originally drafted may only have dealt with four and not five of Mr C's pension plans, accounts for any delay in forwarding it to Mr C.

The report said it had been agreed that merging the four older plans into the newer plan wasn't appropriate. Mr C says that wasn't agreed. It might have been helpful if the report had expanded on that and set out why that option had been rejected. But Mr C knew when he got the report that what was proposed involved transferring all five of his existing pension plans to a new product – Aviva's Portfolio (Flex Option) Account. I've considered below, and in looking at suitability, if Mr C's other pension plans could've been switched into the one set up in 2015 instead.

The adviser's email of 25 January 2018 said he'd already instructed Aviva to implement the proposal. This is one of Mr C's central concerns – that the switches were instructed before he'd had a chance to read and understand the recommendation report, much less agree to what was being proposed. As I've said above, in signing the Authority to Proceed, the next step would be for a recommendation report to be provided for Mr C to consider – by signing the Authority to Proceed he wasn't agreeing to any changes.

According to Quilter, Mr C had given the go ahead at a meeting on 13 January 2018. Mr C says that didn't happen. If that's the case I can understand Mr C would've been upset by what might appear to be presumptive behaviour on the adviser's part. But it would be unusual, not to say unwise, for an adviser to start to implement changes to which a client hadn't agreed. That would likely lead to disagreement and a breakdown of trust. I wouldn't have thought the adviser would've initiated the switches unless he'd understood Mr C had agreed. So it seems there may have been some misunderstanding here.

However the adviser did make it clear that the switches had been instructed and, as they were internal, could go through within a matter of days. If Mr C wasn't convinced about the new product or, if he was concerned about how things had been handled and that he was being rushed into things, he could've asked the adviser to put the switches on hold until he'd had time to go through the documents properly and decide what he wanted to do. I note the adviser left a voicemail saying he didn't want Mr C to feel it was all proceeding too quickly. That might suggest some uncertainty on the adviser's part as to whether Mr C had made a firm decision to proceed. But, on the other hand, I haven't seen (for example a letter or email) that Mr C gave an explicit instruction at that stage that he didn't want to go ahead.

From the screenshots Mr C has provided, it seems the switches were actioned on 1 February 2018. That's consistent with a letter sent by Aviva to Mr C on that date which I understand he didn't receive as his address was incorrect – the house number was wrong. So, as at 25 January 2018, things could've been put on hold. There's also the adviser's email of 31 January 2018 which reiterated that the transfers were in progress, even though Mr C hadn't returned the signed declaration. And said (with underlining) that the transfers might well be completed within a number of days rather than a few weeks. So Mr C would've known the switches had been instructed and could be completed quickly. I haven't seen he gave a clear instruction that he didn't want that to go ahead.

Mr C met with the adviser on 3 March 2018. What was discussed isn't agreed. Mr C says he challenged the adviser about why the new SIPP was better than the plan set up in 2015 and if that plan facilitated flexible drawdown. Mr C also says he asked for the switches to be cancelled. The adviser accepts Mr C did raise some concerns. In fact the adviser says Mr C was 'very negative' about the switches. But the adviser doesn't agree that Mr C said he didn't agree with the proposal and didn't want to proceed. Again it seems there may have been some misunderstanding. But, if Mr C really didn't want to proceed, I'd have thought he'd have emailed the adviser to that effect. And/or contacted Aviva to stop the process or reverse the switches if they'd by then gone through.

And Mr C did sign Aviva's Platform Product Portfolio Client Declaration at the meeting. The *adviser had made it clear that, although Aviva would require that form at some point, the switches would go ahead without it. I've considered what Mr C says about why he signed the form and what he understood he was agreeing to – essentially that he couldn't see his pension plans at all and felt he had no choice but to sign the form. But the form is clearly an application form. I think it would've been apparent to Mr C that, by completing and signing the form, he was applying for the product shown with Aviva.*

But, regardless of what happened at the meeting and if Mr C could've made his position clearer, the adviser continued to reassure him that Aviva had confirmed he'd still be able to cancel once the cancellation documents were issued. So Mr C would've thought everything could still be unwound if he ultimately decided he didn't want the new plan. I've seen there were exchanges between the adviser and Aviva from about the end of March 2018 to mid August 2018 about Mr C's right to cancel, when the cancellation documents would be issued and what would trigger the 30 day cancellation period. I don't think the adviser could've done much more. From what I've seen, he made efforts to ensure Mr C did have the right to cancel. I can see Mr C's point about a particular form not being necessary and that the adviser could simply have told Aviva that Mr C wanted to cancel. But, as I've said, it doesn't seem Mr C gave an express instruction to the adviser (or Aviva) that he wanted to cancel.

As I've mentioned, there was an issue with Aviva getting in contact with Mr C because Aviva had been given an incorrect address. So several documents about the switches and the new plan were sent to an incorrect address. And, as the other property was in a different block, the wrongly addressed post didn't reach Mr C. He says the adviser had access to the letters via Aviva's website but didn't provide copies at the time. It was only on 23 September 2018 that he got a letter from Aviva confirming the switches were complete.

But, regardless of any issues arising from the incorrect address, I've seen that, as late as 16 August 2018, the adviser confirmed to Mr C that the cancellation documents hadn't been generated and, as Mr C had never received them, the 30 day cancellation period hadn't started to run so Mr C could still cancel. Mr C would've had by then plenty of time to decide if he did in fact want the new product. He could've contacted Aviva (direct or through the adviser) then or when he got Aviva's letter of 23 September 2018 to say the switches and the new product should've been cancelled. And, if Aviva had demurred, taken that up with Aviva then and explained that he'd understood, from what Aviva had told the adviser, and because of the IT problems that had prevented the cancellation documentation being issued, that he could still cancel and insist that he be allowed to do so.

But that didn't happen and the upshot was the new product and the switches weren't cancelled. I don't think that was the adviser's fault. I think Mr C could've made things clearer to the adviser (or direct to Aviva) by, at the latest, August/September 2018 that he wanted to cancel. The plan has been in place since early 2018 so some six years. It's now too late to reverse the switches and 'unwind' the new plan.

<u>Was the new plan suitable for Mr C?</u>

I've considered the overall suitability of the new plan. It allowed Mr C to consolidate his five existing pension plans into one account, which was something he was interested in doing and which would've made it easier for him to view, manage and monitor performance of his pension fund. It seems he'd have been happy if his plans had been consolidated into the newest of his five plans which had been set up in 2015. It might've assisted if the suitability letter had been more detailed as to why that option was rejected. But, from what I've seen, it was discounted for valid reasons.

Amongst other things, the fund choice available for that plan (although wider than for Mr C's other four plans) was narrow compared with the options for the new plan. There'd been *some issues about fund choice and so it seems Mr C did require the wider fund range the new plan offered. And I note that most of the funds that Mr C's new plan has been invested in weren't available under the 2015 plan. For example, the Baillie Gifford American Fund, which I've referred to further below.*

From what I've seen, a detailed performance comparison was undertaken. It appears there was a realistic prospect, based on the analysis undertaken and the assumptions made, that the new plan would perform better than if the plans were merged into the newest of Mr C's existing plans.

The new plan also offered more flexibility in terms of retirement options. The adviser accepted that initially he didn't think the plan set up in 2015 offered any flexibility but, on checking with Aviva, he discovered it did, but the options were limited. I note what Mr C says about some of the new options having been made available by the introduction of the Pension Freedoms. But that legislation isn't overriding and didn't mean that Aviva was obliged to offer all of those options on all of Mr C's existing arrangements, including the plan set up in 2015.

The new plan was more expensive. But the suitability report clearly stated that – it said in bold and capitals and underlined that the charges for the recommended plan were higher than the charges for all of Mr C's existing plans. And that the new plan would need to achieve growth of between 0.37% and 0.61% more each year to achieve the same as the existing plans based on Mr C retiring at age 65. But, based on the research and analysis the adviser undertook, I think there was a reasonable prospect that the new plan, even though higher charging, would outperform Mr C's existing plans.

Mr C says the fund value at the time was too small for a SIPP, especially an adviser led SIPP, and when the substantial contributions Mr C later made weren't anticipated. Mr C refers to the total fund value being around £150,000 at the time. But I think that was just the fund value for the newer 2015 plan – the suitability letter indicates a fund value of around £151,935 in October 2017 for that plan. Adding in the four other pensions gives an overall fund value of around £180,000. I think that was sufficient for what was proposed.

Mr C's other main reservations were Aviva's new untested platform and that the new plan required an adviser in place and which impacted on Mr C's ability to make fund switches himself. It may be that there were some initial problems with the new platform. I don't think it's unusual for there to be some 'teething' problems. But that would be more Aviva's responsibility, rather than the adviser's – he'd have believed in good faith that a major provider such as Aviva would be able to provide and host a robust platform and to sort out any initial access issues that may have arisen for users. And it seems that any initial difficulties didn't persist. Mr C hasn't said that the problems continued. He doesn't seem to have been unhappy with the plan until 2021 when the issues about the reviews arose. I'd assume that Mr C was able to view and monitor his plan and access the performance reporting – the latter being a feature that wasn't available with Mr C's previous plans.

The fact that the new plan was an adviser led product was made clear. Mr C was supplied with the key features for the product. It set out what happened if the investor wanted to change adviser and that the product was designed for customers with an adviser. If there was no adviser, the restrictions and conditions referred to would apply. And Mr C noted that it was an adviser led SIPP in his email of 10 February 2018. And at section 7 of the Platform Product Portfolio Client Declaration form it said, amongst other things: 'If at any time I no longer have an adviser the relevant section within the product portfolio terms and conditions will apply until such time as I appoint an adviser.'

Mr C has referred to problems he's had when he tried to make fund switches himself. But it *seems, before the new plan was set up, all fund switches had been made with the assistance of the adviser. So, having to continue to do that with the new plan, wouldn't have been a huge departure for Mr C. And it seems that it was possible for him to make fund switches himself anyway, even if doing so wasn't particularly straightforward.*

All in all I'm not going to say the new plan was unsuitable for Mr C.

<u>*What happened in 2021*</u>

I've considered what happened in 2021 and if it was Quilter's fault that fund switches Mr C says he'd have made in November 2021 or earlier didn't happen.

Mr C says, during the April 2021 review, he'd requested some significant changes to his pension funds, taking into account his personal and financial circumstances, preferences and plans. Mr C says that not all of the fund switches were completed, due to time constraints, but he expected them to be completed during the next review which the adviser had agreed would be in September 2021. As to whether the review would've been then, October 2021 has been mentioned but the adviser's August 2021 email about amending his charges did indicate September 2021. So I accept that September was agreed.

The adviser wrote to Mr C after the April 2021 review confirming what had been agreed. Mr C's fund selection had been reviewed. The existing funds were set out, as was the new portfolio. The letter said a complete switch to the current portfolio had been agreed. All funds would be reviewed at the next meeting. So it seems changes had been agreed, all of which were implemented and Mr C's portfolio was fully updated following the April 2021 review meeting. The letter doesn't indicate that any agreed fund changes hadn't been implemented, whether due to time constraints or for any other reason. Mr C may have wanted to continue to monitor his fund and some investments in particular with a view to possibly making further changes at the next review meeting. But I think that's what would usually happen, especially during periods of market volatility. I don't see that Quilter is responsible for any losses Mr C considers he's suffered in consequence of any fund switches not being made in April 2021.

The letter also said, if Mr C no longer wanted the review service, he could cancel the arrangement at any time by contacting the adviser. The schedule for review meetings was set out – that it had been agreed to meet up at least once a year and ideally twice (six months apart). The letter said the charge payable had been discussed and agreed – £275 per meeting, paid direct to the adviser. I think that was the fee charged for the April 2021 review. I can see Mr C may have assumed he'd pay the same for the second review later that year. But the letter didn't actually say that and I haven't seen any fee agreement which confirms that the fees for 2021, and for two reviews, had been agreed in advance. I think the fees were on a rolling basis and were subject to adjustment. The fact that Mr C could cancel the review service at any time indicates that fees hadn't been agreed in advance. And, if he'd thought, when he received the adviser's letter in August 2021, that was contrary to what had earlier been agreed about reviews for 2021, I'd have expected Mr C to have pointed that out so the issue could've been addressed in advance of any meeting.

Mr C's position is that he was anticipating making further changes at the next review. I note all he's said about not wanting more than 5% of his total fund value in any one fund and that he had 10% or more in some funds which he considered too risky – for example, the Baillie Gifford American Fund. Some of his holding in that Fund was sold following the April 2021 review. I'm not sure but it seems Mr C, albeit with some difficulty, may have made a further fund switch himself and before the next review. I think that was because he wanted to lock in gains in case the Fund value fell. Although Mr C has said that undertaking a fund switch himself was problematic, I've seen, from the adviser's email of 11 May 2021, that he did offer to assist Mr C with a fund switch.

Mr C anticipated selling the rest of the Fund when the second 2021 review took place. He also says he wanted to review the UK government gilt funds and, in particular, a Vanguard fund. I don't doubt that, given market conditions at the time, Mr C was monitoring his pension fund closely with a view to making further fund switches. I've considered very carefully what happened and if it was Quilter's fault that Mr C's pension wasn't reviewed until May 2022.

As I've said, I think the second review was pencilled in for September 2021 but the meeting didn't take place until 14 November 2021. The adviser says there was a delay of about a month. Given the adviser's personal circumstances, I think the delay was probably unavoidable. So I've concentrated on what happened when the meeting did actually take place. The adviser accepts that he didn't start the meeting off well and Mr C was upset as the focus of the meeting was on the adviser's charges. Mr C refers to being quite 'stunned' at what happened. He'd booked time off work and was expecting to discuss his pension fund and agree on further changes, rather than argue about the adviser's fees. I can see that but some warning had been given. The letter sent in August 2021 did say the adviser's charges were changing and would be reviewed at the next meeting. So I don't think the discussion about the adviser's fees should've come as a complete surprise to Mr C.

Mr C was unhappy with the new charges proposed. And he's disappointed that we haven't said if we consider the increase was unreasonable. But the regulator doesn't set maximum fees and it's a commercial decision for the business concerned as to what it will charge for its services and on the basis that the business would presumably want to remain competitive.

I know Mr C feels that the adviser abused his position by insisting an agreement as to fees was reached before he'd discuss Mr C's pension fund and any changes. Mr C's relationship with the adviser went back some years and I can understand that Mr C may have been upset by what happened and would've preferred to deal with his pension first and then come to an agreement about charges. But equally the adviser would've wanted, before undertaking any further work, to know that his charges had been agreed. I don't think the adviser was wrong to adopt that stance. It then unfortunately took some time to come to an agreement. And in the end, the review meeting didn't take place until May 2022.

I've noted all Mr C has said about why it took that long to arrange. Including that what happened at the meeting in November 2021 made things uncomfortable between him and the adviser and it took some time to agree even some temporary changes. Mr C also says the adviser was busy dealing with personal matters. But Mr C also had heavy work commitments in December 2021 so it seems it wouldn't have been possible to meet then in any event. And I can't see that Mr C was pressing for a meeting. And, when the adviser did email on 27 January 2022 asking Mr C for some dates, Mr C didn't get back to him. Mr C says, in normal circumstances and if things had been as before, the adviser would've resentthe email or checked it had been received if Mr C hadn't responded. But the fact of the matter is that the adviser had offered a meeting and Mr C, for whatever reason, didn't respond. I don't think the adviser needed to do any more or chase Mr C for a response or a date for the meeting.

I further note all Mr C has said about why he didn't feel able to remove the adviser. Mr C had been with the adviser for some years and so finding and instructing another adviser may have been somewhat daunting, as well as time consuming and perhaps expensive. Mr C is also unhappy that we've referred to the fact that he didn't remove the adviser when he'd checked with us if doing so would affect his complaint. So I can see he was uncertain about any implications. But, and prior to any involvement on our part, Mr C was faced with a situation where he wanted to make urgent changes to his portfolio and was worried that not *doing so could result in substantial losses.*

When considering any losses sustained we generally take the view that a consumer should take any steps they reasonably can to avoid or mitigate the loss. It was open to Mr C to appoint another adviser and/or try to make the fund switches himself (and which it seems he did anyway in February 2022) if he considered that was a priority and even if doing so wasn't straightforward. I don't think it would be fair to say Quilter is responsible for any losses Mr C suffered in consequence of any fund switches Mr C says he'd have made in November 2021 or early 2022 which didn't take place. Particularly as, when a review was offered, Mr C didn't respond. Mr C has said his losses would've been greater if he hadn't made a direct request to Aviva on 23 February 2022 to switch some funds into cash. I'm not sure why Mr C needed to do that himself and when the adviser had by then offered to meet in February 2022. Mr C has also referred to world events in late February 2022 and which he says added to the urgency of making changes to his pension fund. But again I'd point out that a review had by then been offered.

All in all I'm not persuaded that Quilter should be responsible for any losses Mr C says he incurred as a result of fund switches he'd have requested in November 2021 not being carried out.

<u>Summary</u>

There were some issues. In particular Mr C may not have fully understood initially what was going on and what the adviser was proposing. And what it would cost. There's also some suggestion that the adviser was conscious that Mr C may have felt rushed into what was being proposed. And Mr C did express reservations at the meeting on 3 March 2018. There was also the adviser's error in the address he gave Aviva for Mr C. And the adviser accepts he didn't fully research the options available under Mr C's 2015 plan. Further the adviser says he didn't handle the review meeting in November 2021 well.

But the adviser did reduce his fees and later waived the (reduced) fee. I've taken that into account in deciding against making an award for any distress and inconvenience resulting from the shortcomings I've identified on the adviser's part.

I don't think it would be fair to say that the adviser did anything wrong in setting up the new plan and switching Mr C's existing plans when the adviser made it very clear that was happening. If Mr C hadn't wanted to switch and/or had wanted to cancel the new plan, it was up to him to make that clear and fairly quickly. First to the adviser and, if that didn't work, by contacting Aviva direct. Further the new plan wasn't unsuitable for Mr C. I also bear in mind that Mr C seems to have been happy with it for several years. Lastly Quilter isn't responsible for any losses Mr C says he's incurred because fund switches he'd have made in September 2021 weren't made because the review didn't take place until May 2022.

My provisional decision

I'm not upholding the complaint and I'm not making any award.'

Quilter didn't comment further. Mr C did. I've read and carefully considered all he said but I'm only going to include a very brief summary of some of his main points here.

Mr C went over what had happened on 30 December 2017. By signing the authority to proceed, he expected a written review of the options so he could decide what he wanted to do. He didn't authorise the adviser to proceed with the switches either then or subsequently. He didn't see the suitability letter until it was emailed to him on 25 January 2018. Once he'd read everything and realised the switches had been instructed he told the adviser to cancel them. The adviser immediately confirmed he could do that and continued to say that for six months.

Mr C didn't agree the new plan was suitable for him or that the reasons set out in the suitability report were justified. What had been said about fund switches always having been undertaken by the adviser wasn't correct. The fact that the new plan was adviser led had been 'buried' in the documentation. Mr C described the new software platform as 'Vapourware'. Aviva had told him that eventually all of his pension plans could've been migrated to it.

The adviser had said in his August 2021 letter that the fee structure would be reviewed at the next meeting. Mr C had understood that would apply to reviews in 2022 – charges had always been agreed at the end of the year for the following year, as confirmed by the documents. I'd said Quilter wasn't responsible for any losses in consequence of any fund switches not being made in April 2021. But Mr C was only claiming for losses because of what happened during the latter part of 2021 and early 2022. What I'd said about the adviser having accepted he didn't start off the meeting on 12 November 2021 well was an understatement. The adviser had been aggressive to the point of bullying. Although Mr C was sympathetic to the adviser's personal circumstances, the adviser's behaviour had led indirectly to large losses on Mr C's pension funds in 2022.

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.

I've considered very carefully all Mr C has said. But I haven't been persuaded to change my conclusions. I know this will come as a disappointment to Mr C. I can see he feels very strongly about everything that's happened. I've set out below some further comments. I'm not going to deal with every point Mr C has raised, just what I see as central.

Mr C has queried Quilter's involvement in the matter. At the time the advice was given, the adviser's firm (Connaught) was part of a network. But at the end of 2015 Connaught moved to another network, Intrinsic Financial Services which later rebranded as Quilter. Connaught is an AR of Quilter and as principal Quilter is responsible for the advice given and the services provided by Connaught. Mr C's complaint concerns the behaviour and actions of the adviser and their consequences. Mr C had no contact or dealings with Quilter until his complaint to the adviser was redirected to Quilter. But the complaint has been set up against Quilter as the entity with legal responsibility. Quilter has dealt with the complaint with input from the adviser.

It seems there was some uncertainty at the outset as to whether we could investigate all of Mr C's complaints. We'll generally need to see that a consumer has raised their complaint with the business and the business has issued a final response (or eight weeks has elapsed) before we can start to investigate the complaint. I'm sorry if we initially overlooked the fact that Mr C had raised additional points which Quilter had addressed.

On a general note, Mr C has referred to how a court might approach the matter and the basis on which a court's decision might be made. But we're an alternative to the courts. We're an informal dispute resolution service and our processes and procedures are different from those of the courts.

I have to be fair to both parties. I don't approach the complaint, which turns on its own individual facts and evidence, from the basis there may have been problems in the financial services industry generally. I've analysed the available evidence and information and reached conclusions on the balance of probabilities, that is what I consider is likely to have happened in this particular case. I don't agree, where Mr C and the adviser have disagreed about what happened or what was said, that I've always believed the adviser. It can be difficult to reach conclusions, some years after the event, about what a party may have said. Where there's a conflict I've looked to any contemporaneous written evidence to see if it helps shed any further light on what happened. And, in considering evidence such as the email exchanges between Mr C and the adviser, I've borne in mind the wider context, including all Mr C has said about what happened.

Essentially Mr C's position is that he just authorised the adviser to review his options and he didn't agree to the switches which the adviser went ahead with before Mr C had a chance to read the suitability letter which wasn't given to him until 25 January 2018. And, when Mr C found out the switches had been instructed, he told the adviser he wanted to cancel them as he didn't need the new adviser based product and his existing 2015 plan met his requirements.

I accept the suitability letter wasn't sent to Mr C until 25 January 2018. Mr C has also said there was no meeting on 10 January 2018 and so he didn't, as Quilter claims, agree to go ahead with the switches then. Further, it's clear from his email on 28 January 2018 acknowledging receipt of the suitability letter and other documents, that Mr C had other priorities and needed time to digest everything – a considerable amount of documentation was provided.

It's usual for a suitability letter to be presented, discussed with the client and then, if the client wishes to proceed, the recommendations are then implemented. But it doesn't always happen like that and, in some situations, changes may be implemented earlier. There may have been some 'crossed wires' as to what the adviser and Mr C thought had been agreed.

The adviser's email enclosing the suitability report and other documents said Quilter's compliance team had signed off the transfer and that the adviser had completed the on line application to Aviva for the transfer of Mr C's five existing Aviva personal pension plans. So it was made clear to Mr C, without him having to read the suitability report and all the accompanying documents, that the process had been initiated. The adviser's further email of 30 January 2018 reconfirmed that Aviva was in the process of arranging the transfers and the adviser's email of 31 January 2018 reiterated that.

I haven't seen that Mr C immediately reverted to the adviser to say he didn't want to proceed and the switches should be cancelled. Mr C says the fact he wanted to cancel is borne out by the adviser's acknowledgement that he could cancel. The adviser's email of 30 January 2018 said that the adviser had checked with Aviva who'd confirmed there was a standard 30 day cancellation period. But I don't think that's conclusive. There's a difference between giving an express instruction to cancel and Mr C wanting to be sure the switches could be reversed if that's what he ultimately decided he wanted to do.

Mr C didn't get back to the adviser until 10 February 2018, having by then read all the documentation. Mr C's email raises some questions, including that he hadn't known the new product was a SIPP and that he'd need a financial adviser to manage it. But the email doesn't indicate that Mr C was very unhappy about what had gone on or he considered the adviser had acted without authority. Nor did Mr C say he wanted to cancel the switches.

Mr C did email again on 17 February 2018 with further queries. He referred to a radio programme. I suspect that might have been to do with transfers out of workplace final salary pensions. Whereas Mr C's existing pensions were all personal pension plans and so technically he'd be switching (not transferring) to a new personal pension. He said he was confused and he queried the two main reasons for transferring – flexible access at retirement and the likely net returns, given the higher charges. But again he didn't say he wanted the switches cancelled.

The adviser acknowledged Mr C's queries in an email sent on 17 February 2018 and suggested meeting up to go through the points Mr C had raised and to ensure he was comfortable with how he wanted to proceed going forwards. A meeting was arranged for 3 March 2018. Mr C says he told the adviser then that he didn't want to go ahead – he says he couldn't have made that clearer to the adviser. But there's no letter or email from Mr C to that effect. I haven't seen an unequivocal written instruction to cancel the new plan. And Mr C did sign the Platform Product Portfolio Client Declaration at the meeting. Mr C says that form didn't show the pension plans he'd be switching into the new product. But it was clearly an application form for the product shown into which, in accordance with the adviser's recommendation, Mr C's existing plans would be switched.

The adviser's follow up email on 5 March 2018 did confirm Mr C's cancellation rights – he'd get 30 days from when the cancellation documentation was issued. And that was repeated in subsequent emails. But there's no email or letter from Mr C saying he did want to cancel. Given what he's said about having decided, at an early stage, that he didn't want to go ahead with the switches to the new plan and making that clear to the adviser, I'd expect to see an express instruction to cancel given to the adviser or to Aviva direct. And, when Mr C was told the plan couldn't be cancelled, that he'd have raised that with the adviser and/or direct with Aviva.

Mr C says the adviser didn't tell him it was an adviser based product and that was 'buried' in the detail of the suitability report. But Mr C did take the time to read through all the literature, which included key features for the new plan, and he knew, relatively early on, that it was an adviser led SIPP. It's clear Mr C did have some reservations about needing an adviser to make fund switches – he queried in his email of 10 February 2018 whether, with his existing plans, he needed an adviser or if he could make his own changes if he wanted to. But he added that he didn't intend to, his concern being that he'd be locking himself into a product over which he'd have less control.

I also note what Mr C has said about managing his own savings, investments and pension plans before his relationship with the adviser began in 2015. And that fund switches made then by the adviser were to align all of his pension plans with the newer one. Mr C has also referred to his own financial knowledge. But it seems, after the 2015 plan had been set up, Mr C wasn't unhappy with the adviser undertaking fund switches, presumably after these had been discussed and agreed at the review meetings. I don't think the fact that the new plan was adviser led was something Mr C wouldn't have been prepared to accept or meant the new plan was unsuitable for him. I maintain what I said in my provisional decision about suitability more generally.

Mr C refers to the new software platform as 'vapourware'. My understanding is that denotes software (or hardware) which might only be a concept or still in a development stage. I don't think it's fair, notwithstanding (and as I noted in my provisional decision) that there were some initial problems, to describe it as such. Nor do I think it's significant if, eventually, all of Mr C's existing plans would've been migrated to that new platform. Mr C might say the new system was pointed to as a feature of the new plan but that was the position at the time. It may be the case that a new system or platform will be introduced gradually but will eventually end up being available across more or all products.

As to what happened in 2021, I note Mr C isn't saying he suffered financial losses because of changes which weren't implemented in early 2021. My understanding was that some of the switches agreed at the April 2021 review meeting may not have been made due to time constraints. But it seems that wasn't the case and Mr C's claim is limited to switches which should've been made in the second half of 2021 but which weren't because of the disagreement that arose as to the adviser's charges.

Mr C's understanding was that the charges for the two reviews in 2021 had already been agreed. So it came as a surprise to him, despite the adviser's letter of 14 August 2021 and which Mr C thought would apply to charges for 2022, that the adviser wanted to negotiate a higher fee for the second review in 2021. But I haven't seen any fee agreement or other document which sets out what the adviser's fees for 2021 would be. There may have been some discussions about fees and Mr C may have thought a verbal agreement had been reached that the adviser would undertake two reviews in 2021, each charged at £275. But, although an oral contract is enforceable, establishing the precise terms can be problematic. It won't always be fair, where there's a dispute, to accept what one party says was agreed. In that sort of scenario we'd look to see if there's any other evidence which might shed light on things.

I've looked again at the adviser's letter of 14 August 2021 and what it says about a review having been completed earlier that year with a second review planned. Mr C says it's clear that the adviser knew what Mr C was expecting at the next meeting and the adviser confirmed that's what would happen. The letter records that the cost of the regular review service was a fee of £275 paid direct to the adviser's firm. Mr C had paid that fee for the earlier meeting. So it's clear that fee had been agreed. But the issue is whether it had been agreed that the same fee would apply for any second review meeting in 2021. There's nothing in the letter to indicate a fee for both reviews in 2021 had been agreed. Based on what I've seen, the adviser's fees for undertaking a review were on a rolling basis and it was open to the adviser to revise them.

Mr C says the new fees represented a 400% increase. But, as I've said, I'm not going to comment on the level of fees. I accept the meeting in November 2021 wasn't what Mr C was expecting and turned out to be difficult. I can understand that Mr C may have felt he was at a considerable disadvantage. But, if the meeting was such that Mr C felt it bordered on blackmail or coercion and such that his relationship with and trust in the adviser had been irretrievably damaged, Mr C could've taken steps then to replace the adviser. Particularly if he wanted to implement urgent changes to his pension portfolio. And, once Mr C and the adviser appeared to get back on track with the adviser offering, on 27 January 2022, to arrange a meeting, Mr C didn't then revert until early May 2022. In the circumstances I don't see it would be fair to say Quilter should be responsible for any losses Mr C says he sustained because fund switches he would've implemented in the latter part of 2021/early 2022 didn't happen.

All in all my views remain as set out in my provisional decision. I've repeated above what I said and it forms part of this decision. I know Mr C is likely to find what I've said unsatisfactory. He's mentioned the possibility of taking legal action. If he accepts my decision it will become final and binding on him and Quilter. It's unlikely he'll be able to pursue Quilter in court in relation to the same complaints. If he doesn't accept my decision then his legal rights will be unaffected and he may be able to take court action.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 March 2024.
Lesley Stead
Ombudsman