DRN-4704564

Financial Ombudsman Service

The complaint

Mrs B complains that Quilter Financial Services Ltd (Quilter) gave her unsuitable advice to transfer her pension to it.

What happened

In 2021, Mrs B said she wanted financial advice as she'd reached her retirement age in her Stakeholder Pension. This was held with a provider I'll refer to as provider R. Mrs B said her objective was to reinvest the money from that pension to provide a return for her retirement.

Mrs B arranged to meet with an adviser from a business which was an appointed representative of Quilter on 5 July 2021. During that meeting, the adviser completed a fact-find on Mrs B. Quilter said that this document recorded details of Mrs B's personal and financial circumstances, alongside her needs and objectives.

Quilter said that Mrs B also completed an Investment Risk Profiling Questionnaire which specifically considered her attitude and approach to investment risk. The answers Mrs B provided led to Quilter assessing that her attitude to risk (ATR) was "Moderate". Mrs B said that she'd told the adviser that she couldn't afford to lose money.

Mrs B agreed to proceed with advice on 14 July 2021.

Quilter produced an ATR report on 14 September 2021. This stated that Mrs B had been assessed as a Moderate Investor. It defined this as follows:

Moderate investors typically have a degree of knowledge about financial matters. They usually have some experience of investment, including investing in products containing higher risk assets such as equities.

In general, Moderate investors understand that they have to take investment risk in order to be able to meet their long-term goals. They are likely to be willing to take risk with a high proportion of their available assets.

Moderate investors will usually be able to make up their minds on financial matters relatively quickly, but still suffer from some feelings of regret when their decisions turn out badly.

Quilter carried out a shortfall calculation in September 2021 which found that Mrs B had an annual shortfall of desired retirement income.

Quilter said it issued the Suitability Report (SR) dated 14 September 2021 to Mrs B on 22 September 2021. Mrs B can't remember receiving the report at this time. This SR stated:

- Mrs B was 64 and married with no financial dependents
- She was in good health
- She was employed earning just under £29K each year

- She hadn't yet decided what age she was likely to retire, but for the purposes of her retirement planning Quilter had agreed to use age 70. She didn't expect to want to access her retirement funds until at least age 70

- She wanted income in retirement of £16,000, including her state pension

- The adviser recommended that Mrs B transferred her pension with provider R to a Collective Retirement Account with Quilter. And that she considered contributing £1,384.42 each month to bridge the projected retirement income shortfall or made a lump sum contribution of £32,549. Mrs B decided to contribute £26,000 as a single contribution.

- The adviser also recommended that Mrs B had her plan reviewed on a regular basis. It said it would charge her an annual fee of 1% of her plan value for this.

- The initial fees for the recommended transfer would be 1.8% of the transferred amount. And 4.5% of any new investment. The total initial fee was estimated to be £2,051.25.

- When considering all charges in the recommended arrangement, the report noted that the new plan would need to outperform the old plan by 2% each year to cover the fact that the new plan was more expensive. It was 0.5% each year more expensive based on provider charges alone.

- Mrs B had no previous experience of equity-based investments apart from her existing pensions. The report stated her ATR was that of a Balanced Investor. It defined that as follows: *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.

- The adviser recommended that Mrs B invested both the transferred and the new funds as follows: 99.75% Quilter Investors Cirilium Balanced, 0.25% Cash

Mrs B's pension was transferred from provider R to Quilter on 4 October 2021.

Mrs B said after the first year, her fund value had reduced by almost £10,000. She said that at her first review with her adviser, the adviser said that this was to be expected.

I understand that Mrs B's original adviser left Quilter in August 2022. So it appointed a new adviser for Mrs B. He contacted her on 5 December 2022. I also understand that this adviser carried out a review of Mrs B's plan on 30 January 2023. And that this included conducting a further ATR assessment, which led to Mrs B's ATR being unchanged. The new adviser recommended that Mrs B changed pension investments to a different balanced fund.

The new adviser carried out an annual review for Mrs B on 3 October 2023. During the review meeting, Mrs B expressed her concern about the performance of her funds. And that she felt the initial adviser had told her that her pot should grow. She felt that the negative side effects of investing hadn't been sufficiently explained. Quilter raised a complaint on Mrs

B’s behalf.

Quilter issued its final response to the complaint on 9 November 2023. It didn’t think it’d done anything wrong. It felt its recommended investment was suitable and in line with Mrs B’s agreed ATR. It acknowledged that Mrs B wasn’t happy with the performance of her pension fund, but said it hadn’t guaranteed that performance.

Mrs B wasn’t happy with Quilter’s response. So she brought her complaint to this service. She said that Quilter had also told her on 1 November 2023 that she would no longer have her second adviser as her financial advisor. She said that she’d suffered sleepless nights worrying about the huge loss of her money. She also felt that she’d been encouraged to invest more and more money so that Quilter's fees would increase. And that it hadn’t had her interests at heart.

Our investigator felt that the complaint should be upheld. She felt that Mrs B should’ve been assessed as a Cautious investor. She said she hadn’t seen any evidence to suggest that a pension switch was in Mrs B’s best interests. Therefore she felt that the advice to transfer to Quilter was unsuitable.

Quilter didn’t agree with our investigator. It made the following points:

- It felt our investigator had incorrectly concluded that Mrs B was a Cautious investor based on looking at only 5 of the 12 questions its ATR assessment had been based on. It acknowledged that in isolation, the answers to those questions could suggest that Mrs B was a Cautious investor. But said that she’d also agreed with the following statements:

“*I feel comfortable about investing in the stock market.”*

“I associate the word “risk” with the idea of “opportunity.”

It therefore felt that based on the full questionnaire, it had correctly identified Mrs B as a Balanced investor. It said this view was further supported by the fact that the second adviser had carried out a new ATR questionnaire and the result was the same.

- Quilter also said that it had assessed that Mrs B would have a shortfall in her desired pension income because she had insufficient funds in her pension to achieve her income goals in retirement. And that it was this, rather than the performance of the recommended fund, that had caused the shortfall. It said that her retirement goals wouldn’t have been met unless she made further contributions into her pension. And that the fact that the one-off contribution of £2,500 that she’d made wasn’t going to achieve this had been clearly set out and explained.

After Mrs B questioned the £2,500 Quilter had stated, it corrected this statement. It said that it should’ve said £26,000, in line with the SR.

As agreement couldn’t be reached, the complaint has come to me for a review.

What I’ve decided – and why

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

Having done so, I’m going to uphold it. I’ll explain the reasons for my decision.

I first considered the regulations in place at the time of the 2021 advice.

Regulations in place at the time of the advice

In 2009 the Financial Services Authority (now the FCA) published a report and checklist for pension switching that is still applicable. That checklist identified four main areas where consumers had lost out:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason
- They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits at an earlier than normal retirement age
- They had switched into a pension that doesn't match their recorded ATR and personal circumstances
- They had switched into a pension where there is a need for ongoing investment reviews but this was not explained, offered or put in place.

Mrs B said that she'd sought advice because she'd reached her retirement age in her pension with provider R. Her objective was to reinvest the money from that pension to provide a return for her retirement.

I've seen no evidence that Quilter explained that Mrs B could almost certainly simply leave her pension invested with provider R. The SR doesn't consider the option of staying in the current arrangement. I think that if it had, and Quilter had provided a comparative illustration of staying in the existing plan, it's more likely than not that the existing plan would've had the higher projected value and would've therefore appeared to be the more suitable option. This would mean that any other benefits of the transfer would have to be more than sufficient to offset that apparent loss. But it's unclear that there were any other benefits from the transfer.

I say this because although the SR contained a reasonably lengthy "*Reasons for transferring*" section, most of the points it listed weren't really advantages of the recommended arrangement over the existing plan. The following points were listed as advantages of transferring the pension.

- Clear charges – It was noted that Mrs B felt happier that the charges would be more transparent moving forward. But I don't consider that this made sense when she was paying an annual total of 0.5% in the existing arrangement but would be paying so much more under the recommended arrangement.
- The potential for future fund discounts if Mrs B paid a lot more money into her new arrangement – But this wasn't a benefit of this specific advice. It was simply a potential benefit in the future. From what I've seen, this in itself was always unlikely to make up for the higher charges in the new arrangement compared to the existing one, so I don't consider it could reasonably be used as an argument for the current recommendation.
- The benefits of the ongoing advice service, and the fact that Mrs B could cancel this at any point – Again, I can't see how this in itself was a benefit of the current recommendation to transfer. In any event, Mrs B could choose to take an ongoing advice service with her current arrangement if she wanted to.

- Benefits of a fully active fund using wider asset classes – The report stated that periodical rebalancing would ensure that the investment mixture stayed the same so Mrs B wouldn't inadvertently end up investing in something outside of her risk tolerance. It also said that the inclusion of additional assets within the portfolio could reduce the volatility of Mrs B's investments as such holdings behaved differently to traditional assets. – From what I've seen, Mrs B didn't need this level of complexity. I say this because she had a relatively short investment horizon, and she was clearly an inexperienced investor.

In addition, the SR stated:

We strongly recommend that your plans are reviewed on a regular basis. Taking into account your circumstances and the complexity of your arrangements we have agreed that you would like your plan to be reviewed annually."

Based on everything I've seen, there was no need to make any recommended arrangements so complex.

The SR also went on to state that the adviser had discussed the more complex and expensive arrangement she was recommending with Mrs B. And that Mrs B had said that she was: "*happy to pay this in return for the understanding that you may earn more from active management and/or wider asset classes, with the comfort of knowing that a manager is actively doing something about market falls and that you are diversified as much as possible*". It also said that Mrs B understood that there were no guarantees that this would be the case, but that she could switch to a cheaper option at any time.

Based on everything I've seen; I think the adviser should've explained to Mrs B that she almost certainly had the option of staying with her existing provider. And that this would most likely be a more suitable option than switching to a new, considerably more complex and expensive arrangement.

Even if the adviser was correct to say that Mrs B wasn't currently invested in the right assets for her ATR, Mrs B could've changed her investments with her current provider to more suitable ones. I say this because I've seen no compelling evidence that there was a reasonable potential for Mrs B to be better off to make the advice suitable.

As I noted earlier, there's no evidence that Quilter showed Mrs B a comparison between her existing pension and the new one. I think that if it had, she would've stayed with that provider. All the SR did was briefly mention that Mrs B's current investments with provider R were in cash and fixed interest, and therefore that they didn't match her ATR. But there was no mention of other investments that would've been available with provider R. Instead, the SR simply focused on the recommended transfer.

I've also seen no evidence that the reasons for recommending the transfer were sound. I say this because for this to be the case, the potential to be better off has to be enough to more than compensate for the risk that the consumer might end up worse off. I'm not satisfied that this was the case here. The SR noted that Mrs B's new investments would have to outperform her existing ones by 2% each year simply to cover the costs of the advice. Given the short time horizon available here, I'm not persuaded that the transfer could be justified on the basis that the new investments, which were inherently more risky than the existing ones, could be relied upon to even cover the additional charges, let alone do better for Mrs B over the period of investment.

Overall, I think that Mrs B was advised to switch to a pension that was more expensive than her old one without good reason. I also consider that the complexity of the recommended arrangement made ongoing advice necessary, where it hadn't been before. I next went on to consider whether Quilter reasonably assessed her ATR.

Was Quilter's assessment of Mrs B's ATR reasonable?

Quilter said that the funds Mrs B was invested in with provider R were too cautious for her ATR.

As I noted earlier, the SR stated that Mrs B was currently invested in cash and fixed interest. The adviser explained that these funds were too cautious given she'd been assessed as a Balanced investor. I agree that such investments don't match the needs of Balanced investors. But I've gone on to consider whether Mrs B's ATR was fairly assessed as Balanced.

I've been provided with the full ATR questionnaire used for the 2021 advice. I've copied the questions and whether Mrs B agreed or disagreed below:

People who know me would describe me as a cautious person. - Agree

I feel comfortable about investing in the stock market. - Agree

I generally look for safer investments, even if that means lower returns. - Disagree

Usually it takes me a long time to make up my mind on investment decisions. - Disagree

I associate the word "risk" with the idea of "opportunity". - Agree

I generally prefer bank deposits to riskier investments. - Agree

I find investment matters easy to understand. - Agree

I'm willing to take substantial investment risk to earn substantial returns. - Disagree

I've little or no experience of investing in stocks, shares, or investment funds. - Agree

I tend to be anxious about the investment decisions I've made. - Disagree

I'd rather take my chances with higher risk investments than have to save more. - Disagree

I'm not comfortable with the ups and downs of stock market investments. No strong opinion

The ATR questionnaire reported that Mrs B had been assessed as a Moderate Investor. It then stated that Moderate Investors might typically invest around 65% of their investments in equities, 21% in fixed interest, 10% in property and 4% cash.

The SR stated that Mrs B was a Balanced Investor, not a Moderate Investor. While the definitions are similar, these are two different ATR categories, as evidenced by the fact that both are defined in the ATR report. A Balanced Investor is ranked as slightly more risk-averse than a Moderate Investor. I've not been provided with any explanation for why this change was made between the ATR questionnaire and the SR.

Quilter maintains that it was correct to assess Mrs B as a Moderate investor, and then to make recommendations in line with that assessment. But I'm not persuaded that this was a fair assessment.

I say this because, although I acknowledge that Mrs B did agree to a couple of the more riskseeking questions she was asked, her answers to the remaining questions didn't show that she was particularly comfortable with investments.

Therefore, although I acknowledge that the second adviser carried out a second ATR questionnaire in which he made the same assessment, I think the first adviser should've further investigated Mrs B's responses to the ATR questionnaire before determining that she was a Moderate or Balanced Investor. I say this because her answers weren't completely consistent. And I think this suggests that she didn't fully understand the questions she was being asked. I think that if her answers had been further investigated, a more appropriate assessment would've been that of a Cautious investor.

So while I agree that the investment recommendation might've been suitable for someone with a Balanced outlook on investing, I don't consider that Mrs B's answers to the questions matched the description of a Balanced investor.

I also note that Mrs B was already almost 65 and that her investment time horizon was therefore far shorter than the "average" Balanced or Moderate investor. Therefore I question why the ATR questionnaire included a sample investment breakdown for a typical investor with similar characteristics.

I also considered Quilter's other points.

Other points

Quilter said that Mrs B was always going to have a shortfall in her desired pension income, as she had insufficient funds in her pension to achieve her income goals in retirement. And that it was this, rather than the performance of the recommended fund, that had caused the shortfall.

While I agree with Quilter that Mrs B didn't contribute the full amount the adviser had said she would need to contribute in order to make up the income shortfall, I'm not persuaded that this means that its advice to transfer was otherwise appropriate. I say this because I'm satisfied that it would've been clear to the adviser that it was even less likely that Mrs B would meet her retirement goals if she transferred to the new arrangement, given the high initial charges, the greater ongoing charges and the short-term investment horizon available. I think that the adviser should've known that Mrs B was no more likely to reach her retirement income goal if she transferred.

Quilter also told this service that Mrs B was looking for additional flexibility that wasn't available with provider R. And that she was unhappy with the performance of her existing plan. But I've not seen any documentary evidence of either of these points. So I've not been able to consider them any further.

I don't think Mrs B would've transferred her pension if she'd fully understood it was unlikely she'd improve her benefits and it would cost her more to transfer. Therefore I uphold the complaint.

Putting things right

My aim in awarding fair compensation is to put Mrs B back into the position she would likely have been in, had it not been for Quilter's unsuitable advice. I think this would've meant she remained invested with provider R.

Any loss Mrs B has suffered should be determined by obtaining the notional value of the pension from provider R on the basis that it had been in the fund she was in at the point of the switch, and subtracting the current value of the pension from this notional value. If the answer is negative, there's a gain and no redress is payable.

The compensation amount should if possible be paid into Mrs B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mrs B has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

My final decision

For the reasons explained above, I uphold Mrs B's complaint. I require Quilter Financial Services Ltd to take the steps detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 13 May 2024.

Jo Occleshaw
Ombudsman