Financial Ombudsman Service

The complaint

Mr W complains that an adviser from Quilter Financial Services Ltd (Quilter) gave him unsuitable advice to transfer his pension. He feels that the advice was negligent and that it led to a financial loss.

Mr W is represented in his complaint. But I'll only refer to him in my decision.

What happened

I understand that Mr W's adviser contacted him so that he could perform his annual review on his pension plan with a provider I'll refer to as provider A. Mr W also had a pension with a provider I'll refer to as provider B.

Mr W met with his adviser on 15 November 2013. At the time of the review he wasn't in work and was receiving state benefits of £350 each month. He was 55 years old, married and in good health. He owned his own home, which had a mortgage. But didn't have any other assets.

Mr W had a personal pension with provider A with a value of £111,000, and a personal pension with provider B that had a value of £46,019.32. Around £36K of the funds were invested in provider B's Managed Series 3 fund and the remaining funds were invested in provider B's Security Series 3 fund. Mr W was making regular contributions of £50 each month into this pension. He also had an emergency fund of £2,000. Mr W's preferred retirement age was 65.

During the fact find, Mr W's priority was recorded as "*retirement planning – to transfer [name's] pension plan into a scheme which has multi asset multi manager funds accessible*".

The notes section of the fact find stated that Mr W only wanted to discuss his pension with provider B and whether he should transfer it. It also noted the following:

"… [Mr W] asked if I could review his [provider B] plan and see if it was potentially a good idea to transfer this away as he is receiving no service and reviews on this plan. I explained to [him] that now have access to a platform and we discussed whether he should be transferring his pension onto that or into his current [provider A] personal pension. [Mr W] was keen on the platform because he feels eventually he could move all of his pensions and any other investments he may come across onto it for ease of admin. Also he liked the idea of gaining access on line 24/7. I ran through the atr profiler with [Mr W] and also we read through "your guide to investing" brochure. [Mr W] decided for this part of his pension he would like to invest it into a multi asset, multi manager fund. I explained to [Mr W] the different options now available for paying my fee and [he] chose to pay it by deduction from his pension fund from the new provider".

Mr W completed a risk questionnaire at the time of the advice and his attitude to risk (ATR) was initially assessed as "Balanced". But then after discussing his personal circumstances, attitudes and financial objectives, his agreed risk rating was "Conservative".

The fact find recorded the following about Mr W's ATR:

"*You felt with only 9 years until retirement you would not want to risk your fund any more than conservative. You feel this small amount of risk is needed to allow potential growth above inflation.*

You would not like to see any large fluctuations in your pension with only 9 years until retirement as it could be hard to make up any losses in the short term".

The adviser issued a Suitability Report (SR) dated 6 December 2013. The report stated that Mr W had asked the adviser to exclusively focus on his retirement provision, paying particular attention to making the most of his existing arrangements only. It said that Mr W didn't want to review other areas the adviser had listed. The adviser recommended that Mr W transfer his personal pension with provider B to a new Self-Invested Personal Pension (SIPP) with provider A. And that he continued to make monthly contributions of £50. He also recommended that Mr W invest in the Cirilium Conservative fund.

The SR said that the adviser had established that provider B had no multi asset funds that currently aligned with Mr W's risk profile, required strategic asset allocation and required fund type of multi-manager.

The SR included the following reasons for the recommendation:

- *"To give you access to a far wider range of specialist investment options, opportunities and fund management groups than are currently available to you from [provider B] or from a Stakeholder (see below) pension plan*

- *To allow you to benefit from the multi-asset class, multi-manager approach offered by the Cirilium funds which includes automatic rebalancing in line with your attitude to risk. Again, I will review the selected investments, investment funds and performance with you on an ongoing basis to ensure continued appropriateness and relevance*

- *To allow me to provide regular ongoing reviews and advice regarding your pensions."*

The disadvantages of the recommendation were also noted in the SR. These were the £25 exit penalty that would be applied to Mr W's fund with provider B on transfer and the higher charges under the new arrangement, which were stated to be 0.02% each year.

The SR stated that the charges for the advice would be as follows:

- An initial charge of 5% of the amount invested. Based on a fund value of £45,994.32, this would be £2,299.71.

- 1% each year for ongoing services

Mr W followed the recommendation and I understand that the transfer completed in January 2014.

Mr W said he first became aware that he might have cause to complain on 26 August 2022. Neither Mr W nor his representative has provided any further information as to what happened on this date.

Mr W complained to Quilter through his representative on 30 October 2023 about the advice he'd been given. He wanted to be put back into the position he would've been in but for the unsuitable advice.

Quilter issued its final response to the complaint on 22 December 2023. It didn't feel that it was required to consider the merits of Mr W's complaint as it thought the complaint had been brought out of time. It said that Mr W had had six years to complain since the event he was complaining about took place; or, if later, three years from the date upon which he became aware or ought reasonably to have become aware that he had cause for complaint.

Quilter felt that Mr W had been provided with the 6 December 2013 SR, a personalised illustration, fund fact sheet and Key Features documents at the time of the advice. It also said that provider A had sent him annual statements over the years. It felt that these would've alerted Mr W to any concerns regarding the performance of his pension. And said that six of these statements would've been received more than three years ago. It therefore felt that even if Mr W hadn't appreciated the nature of the advice in 2014, he would've reasonably become aware that he had cause for complaint on receipt of the annual statements more than three years ago.

Unhappy, Mr W brought his complaint to this service in March 2024.

Our investigator issued a view on the jurisdiction of the complaint on 28 March 2024. She felt that the complaint had been brought in time and was one that this service could consider. She acknowledged that the event being complained about had happened more than six years ago. But didn't feel that the annual statements Mr W had been sent over time were enough to raise his awareness that he had a cause for complaint.

Quilter didn't agree with our investigator. It said that Mr W's complaint was that the transfer was unsuitable. And that he wasn't made aware of the higher cost of the SIPP. It felt that the documentation provided at the time of the advice had provided a full breakdown of the charges. And that the SR had compared the existing charges with the recommended arrangement. It said that Mr W was therefore aware of the slightly higher cost of the SIPP at the time of the advice in 2013. Quilter also said that the fund its adviser had recommended was lower risk, so wouldn't have had significant volatility. Therefore it felt that there wouldn't have been any specific event that would've triggered Mr W to raise any concerns.

Our investigator considered Quilter's points. But still felt that the complaint was one this service could consider. She said that Quilter had acknowledged that there wouldn't have been a specific event that would've triggered Mr W's awareness that he had a cause for complaint. She acknowledged that the annual statement would've provided details of the charges being paid from the plan. But didn't think this was enough to raise Mr W's awareness that he had a cause for complaint. She also agreed that Mr W had been made aware in the SR that the charges would be higher. But she didn't think this was enough for Mr W to have been aware that he might be worse off as a result of the advice.

Our investigator then considered the merits of the complaint. She felt that there hadn't been any real need to transfer and that the advice to transfer was unsuitable. She thought that Mr W should've remained in his provider B personal pension. To put things right, our investigator wanted Quilter to put Mr W as close as possible to the position he would probably now be in if he had been given suitable advice to stay with provider B.

Quilter still disagreed that the complaint had been brought to this service in time. It said it didn't understand why Mr W had cause for complaint in respect of the performance of his plan, given there'd been no significant drop in value and as he'd had regular statements from provider A. It said that investment performance wasn't something we could consider. It therefore felt that Mr W's complaint about performance, 10 years after the advice, should fall outside of the time limits.

Quilter felt that Mr W had been made aware of the higher charges of the SIPP at the time of

the advice. It also said that Mr W had been given a projection of the benefits if he continued with provider B at the time of the advice. As such, it felt he'd been fully informed of the 0.02% increase in fees. And it didn't think the complaint could still be considered within time.

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.

I first considered whether the complaint was one this service could consider. Quilter has used the information Mr W was given at the time of the advice to suggest that he should reasonably have been aware at that time that the advice was unsuitable.

Quilter said that Mr W should've known that, at the time of the advice, the transfer could affect him adversely. So it considers that he had three years from that date to complain. But I reject that argument. If Mr W was aware that he had cause for complaint at the time Quilter gave its advice, then I think his remedy would've been to reject that advice and refuse the transfer. So I don't think Mr W would've realised, at the point of advice, that it may not have been suitable for him.

I next considered the merits of the complaint. Having done so, I'm going to uphold it, for largely the same reasons as our investigator. I consider the advice was unsuitable. I'll explain the reasons for my decision.

The evidence shows that Quilter didn't include their own ongoing adviser charges of 1.00% each year, or its initial adviser charge of 5% of the funds transferred, when it showed Mr W a comparison of charges of his new SIPP and his old pension. The additional 0.02% it quoted therefore didn't show that the new arrangement was quite a bit more expensive over the 9 years Mr W felt he had to invest than his old plan.

I do appreciate that the fact find noted that one of the reasons for Mr W wanting to transfer was that he wasn't sure how well his current pension arrangements were performing, or whether they still matched his risk profile. He also said that he hadn't had any contact with any of his pension providers since he'd taken out his plans. So while I recognise that there could've been some value for Mr W in having ongoing reviews, I've not seen any evidence that the adviser considered other, more cost-effective ways for Mr W to achieve this.

The adviser did note in the fact find that he had discussed stakeholder pensions with Mr W. And that he'd explained that these were generally cheaper. He'd also told Mr W that this was because they usually had less fund choice. I'm not persuaded that a stakeholder pension wouldn't have been suitable for Mr W, as I don't consider that his investments had to be complex.

I've also found no evidence that the adviser suggested to Mr W that his best option might be to remain with his existing provider, perhaps changing to a different investment more suited to his ATR. Instead, the adviser recommended a complex, multi asset, multi manager arrangement, despite Mr W having a relatively low ATR and capacity for loss. The SR stated:

"*In many cases, an existing pension arrangement will remain fit for its intended purpose. However, in your case I am satisfied that your existing [provider B] plan no longer meets your needs and objectives in full for the reasons that are set out in the following:*

Multi-asset, multi manager approach most suitable."

I'm not persuaded that such complexity was necessary for Mr W – a conservative investor with a relatively short time horizon. I'm satisfied that, when considering the additional costs involved, such a recommendation was extremely unlikely to produce a better outcome for Mr W than his existing arrangement. I have therefore concluded that the adviser shouldn't have recommended the transfer.

The SR noted that Mr W was a conservative investor who wanted to know that his capital was safe, rather than seeking higher returns. I'm satisfied that this also shows that there was no justification for a complex management structure, high initial charges and ongoing servicing fees.

The SR did note that there would be a £25 exit penalty on the transfer of the provider B pension. It stated:

"*Following a discussion of this you have confirmed that you are willing to accept this penalty because you feel it is a small fee to pay to gain access to a more superior plan*".

I'm satisfied that this shows that the additional cost of the initial charge – which itself was over 0.5% each year over the 9-year time horizon – plus the 1% annual ongoing fee, weren't fairly considered alongside the other downsides of the transfer. And that this meant that the adviser didn't take reasonable steps to ensure that Mr W fully understood the impact of the charges on his eventual retirement benefits.

This is backed up by the comparison of charges in the SR. This stated that these would be 0.02% higher than the old plan. The SR said:

"*Part of the reason for the overall investment approach we have taken, while this is the approach that best meets your investment objectives it is important for you to be comfortable that this extra return would need to be generated by the investment approach and that while there are sound reasons to believe that this is a reasonable expectation it is not guaranteed*".

The report did later on state that the comparison of charges didn't include the cost of the initial advice or the ongoing service charge. But I consider that overall, the SR reads as if all the new investment had to do was to outperform the old investments by 0.02% each year and then Mr W would be better off. I'm therefore not persuaded that the adviser made it clear that Mr W would also need his fund to outperform to cover the other additional costs the recommended transfer would require.

Mr W doesn't appear to have been an experienced investor at the time of the advice. From what I've seen, I don't think the additional cost of a more complex arrangement was justified in his circumstances.

Quilter had an obligation to make sure Mr W ended up with suitable investments for his circumstances. From what I've seen, his existing arrangement with provider B appears to be more suitable for him that the recommended arrangement, given the costs involved.

I say this because although Mr W appears to have been invested in funds with provider B that weren't in line with his ATR, provider B had other funds available which met his risk appetite. I understand that provider B offered 16 different funds at the time, so I'm persuaded that Mr W could've found one which was suitable for him.

Provider B's projections for Mr W's pension at age 65 also showed that he was likely to be better off at retirement if he stayed invested with them, rather than moving to provider A and

investing in the Cirilium Conservative fund. I've got no way of knowing if this was because of the impact of the transfer fees, or because of the higher level of investment risk with provider B. But in any event, I'm not persuaded that the adviser identified sufficient good reasons for recommending that Mr W transferred away from provider B. I therefore uphold the complaint.

Putting things right

My aim in awarding fair compensation is to put Mr W back into the position he would likely have been in, but for the unsuitable advice.

I think Mr W would've remained with provider B. However I can't be certain that a value will be obtainable for what the previous policy would've been worth. But I'm satisfied what I've set out below is fair and reasonable, taking this into account and given Mr W's circumstances and objectives when he invested.

What must Quilter Financial Services Ltd do?

To compensate Mr W fairly Quilter must:

- Compare the performance of Mr W's investment with the notional value if it had remained with provider B, with no initial advice fees having been paid. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Quilter must also add any interest set out below to the compensation payable.

- If there is a loss, Quilter must pay into Mr W's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Quilter shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If Quilter is unable to pay the compensation into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

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

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

- Provide the details of the calculation to Mr W in a clear, simple format.

If payment of compensation is not made within 28 days of Quilter receiving Mr W's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr W how much has been taken off. Quilter should give Mr W a tax

deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP with provider A	Still exists and liquid	Notional value from provider B	Date of investment	Date of my final decision	8% simple each year

Actual value

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

Notional Value

This is the value of Mr W's investment had it remained with the previous provider until the end date. Quilter should request that the previous provider calculate this value.

Any additional sum paid into the SIPP with provider A should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP with provider A should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept all those payments to be totalled and then deducted at the end to determine the notional value instead of deducting periodically.

If provider B is unable to calculate a notional value, Quilter will need to determine a fair value for Mr W's investment instead, using this benchmark:

For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr W wanted Income with some growth with a small risk to his capital.
- If provider A is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr W's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr W into that position. It doesn't mean that Mr W would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr W could've obtained from investments suited to his objective and risk attitude.

My final decision

For the reasons explained above, I uphold Mr W'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 Mr W to accept or reject my decision before 6 August 2024.

Jo Occleshaw
Ombudsman