complaint

Mr M complains about advice from an appointed representative of Quilter Financial Services Ltd (‘Quilter’), to transfer his pension in 2011. Mr M says his objectives could have been better met by an internal fund switch. By doing so, he would have avoided the additional costs and risks of transferring.

For clarity, I refer to Quilter throughout my decision.

background

Mr M met with Quilter in May 2011. At the time, Mr M held two personal pensions worth approximately £80,000. He was 61 years old with a retirement age of 65 which would have been on 29 September 2014.

Mr M was employed as a maintenance engineer and had little to no investment experience. His objective was to reduce the level of investment risk within his retirement savings in order to avoid large falls in value of his pension in the few years before his planned retirement.

Quilter prepared a suitability report for Mr M. It made a number of recommendations about his pension.

According to the report, Mr M’s objectives were:

“As you now have just over 3 1/2 years until retirement you tell me you are concerned by the volatility that your (existing) pension funds have shown. You also have two occupational schemes (one current and one paid up) both run by your employer and has already taken steps to 'de- risk' these. At our initial meeting you were confirmed to be a cautious investor whilst your current (provider) funds would be classed as either balanced or adventurous and therefore no longer match your requirements.”

It was noted that Mr M had been disappointed by the performance of his existing plans and was ‘*shocked*’ by their exposure to equities. The report also stated that several options were discussed to meet Mr M’s objectives of de-risking his pension. An internal fund switch with his existing provider was discounted because Mr M wasn’t happy with the performance of the cautious funds he was shown, and he felt the £25 fund switch charge *‘further rubbed salt into the wound’.*

Quilter recommended that the pension be switched to a personal pension with another provider. Quilter received commission of 3% of the transfer value for its advice. A £528.69 penalty was applied to Mr M’s existing plan for early withdrawal.

Quilter also produced a switching report to compare how the proposed transfer would impact Mr M. The report used the charges of both plans and took into consideration the cost of transferring. It showed that at an assumed 5% growth rate Mr M could expect his pension to be worth £88,800 at age 65 in the proposed new plan. If left in the existing plan, Mr M’s pension would be worth £92,500. The proposed plan would, according to the switching report, therefore have to produce a rate of return of 1.24% each year in excess of the existing plan to match its value, assuming the growth rate of 5%.

Mr M accepted the advice to transfer. He chose not to retire at 65. His new provider updated his retirement age to 70.

Quilter recommended that the pension be switched to a personal pension with a new provider. Quilter received a commission of 3% for advice, and a £528.69 penalty was applied to Mr M's existing plan for early withdrawal.

Mr M complained to Quilter about the advice in 2018 but the complaint was not upheld.

Intrinsic said that all the charges had been declared, the risk profile of the recommended investments was suitable for Mr M's objectives and that the commissions were reasonable for that time.

Mr M disagreed. He referred his complaint to this service.

An adjudicator asked Intrinsic for permission to look at the historical merits of the case.

Intrinsic declined. It said Mr M ought reasonably to have been aware that he had cause of complaint on his 65th birthday. It was his designated retirement age when he would be accessing his personal pension in order to provider an income in retirement. As more than three years had passed from Mr M's 65th birthday. Intrinsic said that the complaint was out of time to be considered by this service.

The adjudicator considered Intrinsic's time bar argument. In the course of this, he contacted Mr M's new provider.

It confirmed Mr M did not take his pension at age 65, had not accessed tax free cash and his plan remained invested for growth. In these circumstances, Mr M's new provider further confirmed it had adjusted Mr M's designated retirement age to 70.

In these circumstances, the adjudicator did not agree with Intrinsic that the complaint was out of time. He said because Mr M had not engaged with his new provider or taken benefits from his pension he would not have had any reason to have a raised a complaint with Intrinsic about the advice he had received.

Intrinsic did not agree. It reiterated that Mr M's complaint was made more than three years from when he ought reasonably to have become aware of cause to complain.

As agreement was not reached, the matter was referred to me. I then issued a jurisdiction decision. I decided Mr M's complaint had been brought in time, for the same reasons as set out by our adjudicator.

Our adjudicator then considered the merits of Mr M's complaint.

He concluded the advice to transfer was unsuitable. He did so on the basis that Mr M had incurred unnecessary costs, that the new arrangement was unlikely to exceed the benefits of Mr M's existing plan such that those costs would be justified and that with only three years to Mr M's retirement age, to exceed the foregone benefits by transferring meant the new arrangement would more likely than not require a higher risk investment strategy than was suitable for Mr M.

He therefore set out a redress proposal. Mr M agreed it represented a fair and reasonable conclusion to his complaint.

Intrinsic did not respond save to ask for an extension to the deadline to respond. The adjudicator agreed to extend the deadline to 28 February 2020 but Intrinsic has not responded with any further submissions.

The matter has therefore again been referred to me.

my findings

I have carefully considered all the available evidence and arguments to decide a fair and reasonable outcome to this complaint.

Having done so, I agree with the conclusions of our adjudicator and for the same reasons as set out in his assessment.

Mr M's objective of de-risking his pension was sensible given he had only three years until retirement but in my view this could have been achieved by remaining with his existing provider rather than transferring to an entirely new provider with the associated costs and risks.

It is not clear why Mr M was transferred at all. The suitability report said he was disappointed with his existing provider's cautious performance and unhappy with the £25 switching fee.

But by transferring, Mr M incurred significantly greater costs than £25 per switch to transfer to other internal funds at his existing provider. I appreciate Mr M found the past performance of his existing provider's cautious funds disappointing compared to his other funds. However, I would have expected Intrinsic to have explained to Mr M that overall, his funds as were matched his risk profile. I would also have expected it to stress to Mr M that the plan he was transferring to was projected to produce a *lower* return at retirement than his existing plan and so the transfer was not in his best interests. I have not seen evidence to persuade me that Quilter appropriately did this.

Furthermore, looking at the range of funds available from his existing provider at the time, many would have been suitable for a cautious investor. There were several funds available from Mr M's existing provider similar to the ones chosen in the new plan. In addition, funds from other providers were also available. In my view, given that there were around fifty funds available I am not persuaded that suitable investment funds could not have been identified in preference to transferring to a new provider.

This should have been clear to intrinsic. Its switching report showed that at assumed growth rates of 5% and 9% Mr M would be worse off as a result of the transfer. In fact, for Mr M's pension to be worth the same amount after the transfer, it would have had to outperform his existing plan by over 1% every year. There was no obvious reason to think this would happen.

COBs rules and regulator guidance has been issued on the subject of pension switches, the term given to non-occupational pension transfers. A 2008 report from the FSA listed *'extra costs added for no reason'* as one of the most common reasons for an unsuitable switch. I am persuaded by the evidence I have seen that this applies to Mr M.

The switch from Mr M's existing provider gave him no tangible advantages that could not have been achieved by a simple fund switch within his existing provider.

I have therefore concluded that suitable advice would have been for Mr M to remain with his existing provider and to effect an internal switch to an appropriate fund, thus avoiding both the costs of transferring, the early exit penalty from his existing provider and the investment risk of the new plan given he had only three years to retirement.

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr M as close as possible to the position he would probably now be in had he been given suitable advice.

I think Mr M would have invested differently. It is not possible to say *precisely* what he would have done, given the number of different funds available from his existing provider but I am satisfied that what I have set out below is fair and reasonable given Mr M's circumstances and objectives when he invested.

What must Quilter Financial Services Ltd do?

To compensate Mr M fairly Quilter Financial Services Ltd must:

- Compare the performance of Mr M's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable. Quilter Financial Services Ltd should also pay any interest set out below.

- If there is a loss, Quilter Financial Services Ltd should pay into Mr M's pension plan, a sum 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 Financial Services Ltd shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If Quilter Financial Services Ltd is unable to pay the compensation into Mr M's pension plan, Quilter Financial Services Ltd should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income.

- Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

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

- For example, if Mr M is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- In addition, Quilter Financial Services Ltd must pay Mr M £250 for the disruption to his retirement planning and his consequential trouble and upset.

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

Income tax may be payable on any interest paid. If Quilter Financial Services Ltd considers that it is required by HM Revenue & Customs to deduct income tax from that interest, Quilter Financial Services Ltd should tell Mr M how much they have taken off. Quilter Financial Services Ltd should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	Benchmark	from (“start date”)	to (“end date”)	additional interest
Mr M's personal pension	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of transfer	date of settlement	not applicable

Actual value

This means the actual value of Mr M’s transferred pension at the settlement date.

Fair value

This is what the fund value of the previous plan on the date of transfer would have been worth at the end date had it produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, Quilter Financial Services Ltd should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. It must apply those rates to the investment on an annually compounded basis.

Any withdrawal, income or other distribution out of the investment should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If a large number of regular payments, to keep calculations simpler, I will accept if Quilter Financial Services Ltd totals all those payments and deduct that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr M wanted capital growth with a small risk to his capital.
- 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 M'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 M into that position. It does not mean that Mr M would have invested 50% of his money in a fixed rate bond and 50% in an index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the return Mr M could have obtained from investments suited to his objectives and risk attitude.

my final decision

I uphold this complaint.

Quilter Financial Services Ltd must redress Mr M as I have set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 25 April 2020.

Terry Connor
ombudsman