

The complaint

Mr C complains that he has suffered financial loss due to the poor level of service provided by his independent financial adviser (IFA), Quilter Financial Planning Solutions Limited trading as Positive Solutions. I have referred to the business as Quilter in the rest of this decision.

What happened

In October 2018, after receiving advice from Quilter, Mr C transferred his defined benefit pension scheme into a personal pension plan with Transact. His transfer value at that time was around £830,000. Mr C was assessed as having an 'adventurous' attitude to risk (ATR). It was agreed that Quilter would provide Mr C with ongoing advice in relation to his pension plan, for a charge of 0.5% per year. This complaint does not concern the advice received at the time of transfer.

By July 2019, Mr C's pension plan had increased to around £996,000 in value. Mr C says that as a result, he contacted his adviser because he wanted to, as Mr C referred to it, 'sandbank' the profits made and put this into a lower risk fund to 'protect' it from any decrease in the overall fund value. He had in mind placing around £100,000 in cash. He contacted his IFA to discuss and arrange for this strategy to be invoked.

Mr C said there was a long delay in his IFA getting back to him on this and it was not until the end of September 2019 that the adviser arranged a meeting with him to discuss this option. Quilter said, in summary, as Mr C's proposed strategy was not necessarily consistent with an 'adventurous' ATR, Mr C's adviser considered it appropriate to have a meeting to see if Mr C's circumstances and ATR had changed. Mr C didn't consider that such a meeting was necessary as his ATR had not changed. He cancelled the meeting the day before it was due to take place. Mr C said because he had lost trust in his adviser.

By October 2019, Mr C's plan value had decreased to around £919,000. Mr C takes the view that he lost around £76,000, as a result of the poor service provided by his IFA.

Mr C raised his concerns with Quilter. To put things right, Mr C wanted Quilter to cover his financial loss. Further, he wanted to be put in touch with a new adviser and all charges associated with the plan to be cancelled and some of the adviser charges already paid to be refunded.

Quilter responded in November 2019. It did not uphold Mr C's complaint. However, it did agree to put him in touch with a new adviser. Also, as Mr C had been paying his ongoing

charges in advance, it agreed to refund charges taken from March 2019 onwards. It also agreed to pay him a notional amount calculated as if these charges had been invested in line with Mr C being an adventurous investor. For the purposes of calculating this notional amount, Quilter used a benchmark which it said was appropriate for an adventurous investor. It also made an adjustment for tax, so that if Mr C wished to pay this amount back into his pension plan he would be in the same situation as if this amount had been invested.

Mr C didn't agree with Quilter's view. He referred his complaint to our service. Our investigator looked into it and didn't uphold it, finding, overall, that Quilter had responded fairly and reasonably to Mr C's complaint.

Mr C didn't accept our investigator's view and asked for his complaint to be referred to an ombudsman. In summary, Mr C said that:

- He paid Quilter for their expertise and to act with integrity;
- The fact he wanted to remove some of his fund and place it in cash to protect it from a change in market position was nothing to do with his ATR. His new IFA agrees this is a prudent way to protect his pension assets;
- It was a simple process and had his IFA told him how to go about it, he would have made it happen;
- The fact that he subsequently made a profit is not the issue. Markets rise and fall – he questions what would have happened had his funds dropped by £70,000 and stayed at that level;
- He gave his IFA a clear instruction to execute the transfer;
- He finds it strange Quilter can't evidence that calls were made by his adviser, mobile phone records should show this; and
- He had to contact Quilter twice before he was put in contact with a new adviser.

Mr C's complaint comes to me for a decision.

What I've decided – and why

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

Where there is conflicting evidence, I have to decide what is more likely to have happened than not, based on the balance of probabilities. Having considered all of the evidence, I am not going to uphold Mr C's complaint, I'll explain why.

Contact with the adviser

Mr C contacted his adviser as follows:

- 12 July 2019 – he phoned and asked how he could move some profit into a lower risk fund to protect it from any market movements;
- 16 August 2019 – Mr C sent a text message to his adviser chasing a response. That day, Mr C received a response from his adviser saying he was away for a week but would meet with Mr C when he returned stating that what Mr C was looking to achieve was not an easy process; and
- 20 September 2019 – Mr C received an email from his adviser asking to arrange a meeting on a date convenient to Mr C.

Quilter says:

- The adviser confirmed during the phone call on 12 July 2019 that he would need to arrange an appointment to discuss the matter. The adviser spoke to Transact about the issue and attempted to contact Mr C on his return, but received no reply.
- After the exchange of text messages on 16 August 2019, the adviser tried to contact Mr C again on two more occasions, but didn't get any response; and
- After the email which was sent on 20 September 2019, Mr C replied on 30 September and an appointment was arranged for 4 October 2019. However, this appointment was then cancelled by Mr C on 3 October 2019.

As our investigator said, Mr C's and Quilter's timelines for *actual* contact made are the same. The main difference here is that Mr C's IFA said he attempted to contact Mr C in between times, without success, and Mr C's said, in essence, these calls were unlikely to have been made because his adviser can't provide evidence of this and he had no missed calls during this period. Quilter said that the adviser enquired with his mobile phone company and it doesn't retain information like this, due to the nature of his call plan. Mr C appears to think this explanation is not credible.

Based on what I've been told by both parties, the evidence here is insufficient to establish whether Mr C's adviser made these additional calls or not. Like our investigator concluded, I can't fairly say that the adviser didn't make additional attempts to contact Mr C based on what's available.

I also accept what Mr C's said about not being aware of any missed calls. I've noted his reasons for cancelling the meeting, the day before it was due to take place. I appreciate Mr C may have lost confidence in his adviser, but, I think having a meeting was an important part of the advice process.

Did Mr C instruct the adviser to transfer £100,000 into cash in July 2019 or August 2019 when he discussed matters with him?

Mr C said he instructed his adviser to transfer £100,000 into cash, which that adviser did not execute. From what I've seen, I don't consider that Mr C's instruction was that specific or precise. I think a one-off switch in this way probably would have been relatively simple to arrange. When Mr C contacted Transact about a switch, I understand it explained the process of transferring some money into cash, and that this was something Mr C could do without professional support. But from what Mr C's said, I think what he discussed with his adviser went beyond a one-off switch. It seemed he wanted to put in place a regular process where the profit made from the investment was switched into cash ('sandbagged'), so that it did not decrease in value. As I see it, what Mr C had in mind formed part of his investment strategy and therefore it was appropriate that he fully understood the consequences of such a strategy.

So, I can't see that Quilter failed to execute an instruction given by Mr C at that time.

Financial loss

Mr C said his strategy to 'sandbag' profits, placing some funds in cash had nothing to do with his ATR. I disagree, a strategy like this, as Mr C identified himself is deployed for 'protection' purposes. If money is held in cash, it will be protected from market variations in terms of losses, but also it won't be able to benefit from market rises. Holding money in cash will lead to loss over time, due to depreciation. Mr C's fund had risen by £166,000 (nearly 10%) in the period of less than a year since Quilter became his adviser. If there was less in the fund to invest, due to this 'sandbagging' strategy, this could also impact on

investment gains. So, as I see it, it was right and proper that Quilter discussed this strategy with Mr C. Particularly, as I understand it, this was not intended to be a one off situation. So, I think his ATR to risk was an appropriate consideration.

So, like our investigator, I think it was a prudent course of action for his adviser to want to discuss matters fully with him to ensure that Mr C could make an informed choice in relation to his investment decisions. I can't see that Mr C said he wanted an urgent meeting. But, I also think the adviser could've responded in a more timely way, after all he only told Mr C he was away for a week during this period.

As an adventurous investor, the highs and lows in terms of investment performance are likely to be more significant than is the case with someone who has a low risk investment strategy, for example keeping money in cash. As our investigator highlighted, pension plans are long terms investments, so increases and decreases have also to be seen within that context. I understand that Mr C's plan subsequently made a profit. It seems his fund value increased again to just over £1.5 million. The money that Mr C had in mind to place in cash off course remained in his plan for longer, and was able to benefit from any investment returns. Looked at as a whole, I can't see that Mr C has suffered a financial loss as a direct consequence of the adviser failing to act in a timely way. Mr C queries what would have happened if his plan had lost £70,000 and then remained at that level of loss, rather than later increasing in value again, as his plan did. Had that been the situation, Mr C's case would have been considered on that set of facts and circumstances.

I've also noted that the risk questionnaire Mr C completed at the outset said he had a risk tolerance level of 25% i.e. he was prepared to have a decrease in the value of his investment of up to 25% at any given time. Mr C's not told us that his ATR was assessed wrongly. The reduction in the value of his fund between October 2019 and July 2019 (July being when Mr C says he instructed Quilter to move it) was less than 25%, so within his tolerance level.

So, overall, I can't see that Mr C has lost out financially, as a result of the service provided by Quilter. I think there was some delay organising the meeting, so I have considered this in the context of the charges paid by Mr C.

Charges

Mr C appears to accept that he agreed to pay 0.5% per year to Quilter for ongoing charges. He also agreed to pay a charge for the advice he received on transfer. Based on what I have seen, I don't have any grounds for requiring that any of his transfer advice charge is repaid. Mr C states that given the poor level of service he received, ongoing charges should be refunded.

I've concluded that Quilter could've been quicker to arrange the meeting to discuss Mr C's proposed 'sandbagging' strategy and how to implement that, if appropriate.

I've looked carefully at Quilter's proposal in relation to the return of charges. It has agreed to pay a notional uplift, to put Mr C back in the position as if these 'charges' continued to be invested in line with his 'adventurous' ATR. I think Quilter's response is fair and reasonable, to refund the charges Mr C paid in advance, between May 2019 and October 2019, with the notional uplift. I couldn't fairly have ordered it to do more than it has offered to do, so I do not uphold this aspect of Mr C's complaint either.

New adviser

Mr C said he lost confidence in his old adviser. He asked Quilter to put him in contact with a new adviser. Mr C said he had to chase Quilter for this information. I can see that Mr C would've found this frustrating, given he already felt that Quilter had let him down. But, I think Quilter did what it was required to do here by refunding the charges with an uplift to put matters right and it did provide him with details of a new adviser. So, I don't think this warrants a separate compensation award.

My final decision

For the reasons explained above, I do not uphold Mr C's complaint and leave Mr C to decide if he wishes to accept Quilter Financial Planning Solutions Limited's trading as Positive Solutions, offer of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 January 2022.

Kim Parsons
Ombudsman