DRN-3268599

The complaint

Mrs H says an Appointed Representative ('AR') of Quilter Financial Services Ltd ('Quilter') gave her unsuitable investment advice in 2017 that mismatched her novice investor profile, that was too risky, that was implemented without associated risks being properly explained to her and that depleted her capital through the deduction of a fee for ongoing advice that she did not receive. She seeks compensation for financial loss and a refund of the initial advice and ongoing advice fees she incurred.

Quilter disputes the complaint. It says the 2017 recommendation was suitable for her, that she was made aware of associated risks and that it has offered her compensation for the ongoing review it missed in 2019.

What happened

One of our investigators looked into the matter and concluded that it should be partly upheld. She did not find that the investment recommendation to Mrs H was unsuitable, but she found that Quilter had more to do to compensate her for not providing an annual review service in 2019. In the main, the investigator said:

- The requirement upon a firm to give suitable advice is as set out in COBS (Conduct of Business Sourcebook) 9.2 of the regulator's Handbook. This required the AR to consider the balance between Mrs H's knowledge, experience, financial situation and objectives.

- He met Mrs H in July 2017 and presented his suitability report/recommendation in August. The report shows that Mrs H had surplus capital savings of around £135,000; had the objective to invest for capital growth over five years or more; was debt free and had surplus monthly income after expenditure; was advised to reserve £35,000 for emergencies and to invest £100,000; was advised to invest £20,000 out of this in a New Individual Savings Account ('NISA') and the remainder £80,000 in a Collective Investment Account ('CIA'); was initially assessed as having a 'moderate' risk profile but, upon discussion, agreed with the lower 'balanced' risk profile (which was for clients with modest financial knowledge, a preference not to take much risk, but readiness to do so to an extent and in order to get better longer term returns); and was recommended a Multi Asset Multi Manager ('MAMM') Fund and the Old Mutual Cirilium Balanced Portfolio (the 'portfolio') for the NISA and CIA.

- The recommendation, including use of the MAMM fund and the portfolio, matched Mrs H's overall investor profile (including her objective and risk profile), so it was not unsuitable.

- Risk warnings/information associated with the recommendation were given over two of the suitability report's pages, so Mrs H was aware of the risks in the investment.

- Evidence shows Mrs H was paying for ongoing advice at the rate of 0.75%. The recommendation was made in 2017, she had an annual review in 2018 but received none in 2019. Quilter says much of what would have happened in the 2019 review (an update and review of her profile, review of her investments and their performance, valuations, investment commentary and advice review) were covered by performance discussions in emails sent to her in February, March, June and \November 2019; and in withdrawal advice given to her in June 2019. However, it accepts a review should nevertheless have taken place in 2019 and it has offered £100 compensation in this respect. This is not enough and should be increased to £375 – in addition to the £100 Quilter has offered Mrs H separately for the trouble and upset the matter caused her.

Quilter accepted this outcome, but Mrs H strongly disagreed with it. She said her assets had a zero risk background, with her money not previously invested in the stock market but instead held in savings, so she should have been considered a conservative/low risk investor and the notion of a portfolio with 92.5% exposure to the stock market was totally unsuitable. In addition, she said assets in the portfolio should not have been bought if short term withdrawals were planned, but those assets were bought despite her disclosure to the AR that she "… *may be making Ad Hoc withdrawals*". Mrs H also asserted that the ongoing advice fee was 1%, not 0.75%, and that the AR was not an independent (whole-of-market) adviser as she was led to believe he was – instead, he was tied to Quilter.

The investigator was not persuaded to change her view. She noted that the recommendation was not automatically unsuitable just because Mrs H's capital did not have previous exposure to risk, and that suitability required assessment of her overall profile at the time; that if she had wanted to maintain her capital in the same savings status she could have done so without need for an adviser; that her objective suggested otherwise and reflected that she might want to make withdrawals but she wanted to invest for a period of five years; and that there is documentary evidence in which the ongoing advice fee rate of 0.75% is stated.

The matter was referred to an ombudsman.

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.

There are a number of key elements to consider in terms of suitability (or otherwise) of an investment. They are – the investor's profile at the time of the recommendation (objective(s), attitude to risk ('ATR'), investment experience and affordability status); whether (or not), on balance, the recommendation matched the investor's profile; and whether (or not), on balance, the investor was informed about the nature of the recommended investment and its risks.

Mrs H is correct about the status of her capital prior to the fund/portfolio investment in 2017. Her money was held completely in savings and there is evidence to support this. However, there is also evidence that she actively sought something different at the time. She does not appear to have disputed the contents of suitability report that was sent to her – there does not appear to be evidence of such dispute, so I consider the report to be reliable.

The implication that arises from the absence of her objection (at the time) to the report's statements of facts is that she agreed with the report's description of her objective – and of the other parts of her circumstances. That description was as follows:

"*You would like to look at how this money could be invested to provide you with potentially higher levels of capital growth. This is the main purpose of your investments because you* *are hopeful that you can achieve returns over and above those produced by a bank or building society and achieve improved tax efficiency concurrently.*"

and:

"*You asked me to consider investments for a period of 5 years or more, and you don't expect to need access to your capital during this term which I have taken into account in my recommendation.*"

The above shows that despite the fact Mrs H's capital was previously held in savings, she wanted to change that and she wanted to do so in order to have the chance of achieving returns that were better than what she could get from holding her capital in savings. This means it would be unreasonable to take a view on the AR's recommendation in the context of how her money was *previously* held. She no longer wanted that, she wanted better returns, so her pursuit for that is the correct context in which to consider the other aspects of suitability in her case.

The above analysis leads to the issue of Mrs H's ATR. She has referred to the conservative/low risk profile as the profile that was suited to her. Above this profile was the balanced profile, and above that was the moderate profile. The suitability report addressed a number of factors in its assessment of her overall ATR. The assessment was not just limited to the risk profile category. As the investigator said, assessment for this category first arrived at the moderate profile, but both sides discussed further and agreed on the balanced profile. This is reflected in the report. Beyond, but relevant to, the profile selection the assessment also considered *management type* and *investment strategy* (including *rebalancing*). Having already confirmed agreement on the balanced profile the report proceeded to also say:

"***Chosen Investment Strategy***

… you would like to invest tactically and actively using wider asset classes <u>but you want to ensure that your Conservative risk profile is retained and agreed that you would want to invest in a fund that is monitored and rebalanced for this purpose</u>." [my emphasis]

Overall, I consider that Mrs H probably had a risk averse background – illustrated by her capital being previously held in savings; she also probably had a conservative/low risk outlook in general – as she presently says and as the AR reflected in the quote above; but she had a specific pursuit in the 2017 investment (for which she sought/received advice), which was to expose her capital to better prospects of better returns; the risk and reward correlation is widely known in investments and it is evident in the suitability report that she was informed about this, and informed that pursuing higher returns required exposure to more and higher risks (information in the report makes this quite clear to her, so it is likely that the verbal discussions that were held did the same); and it appears to be in this context that she struck a *compromise* between the moderate profile that was assessed as matching her pursuit and the conservative outlook she naturally had, the result being the balanced profile she agreed to. This finding extends to cover Mrs H's novice investor profile and lack of stock market experience at the time. Neither means the recommendation was automatically unsuitable, especially given that she appears to have wilfully departed from both in order to pursue something new based on the *compromise*.

On balance and for the above reasons, I do not consider that Mrs H's ATR for the investment was conservative, it was balanced, and the balanced model portfolio matched that ATR. There was also suitability in the MAMM fund that was recommended and in the use of a NISA alongside the CIA. The MAMM fund provided access to and diversification in sub-funds (and asset types) and managers without having to face too many layers of fund and management related costs. The NISA is a mainstream tax efficiency related investment wrapper and it, and the CIA, were invested in a dedicated/model balanced portfolio – with the CIA also playing the role of an annual feeder to the NISA, in the context of tax efficiency.

I note Mrs H's point about exposure to the stock market. Evidence about the model portfolio does not appear to support her reference to 92.5% exposure. In 2017, the portfolio appears to have had equities content totalling around 40%, balanced by a mix of other asset classes (including around 7% cash, around 5% property and around 7% high yield bonds). Overall, it was a portfolio that was targeted for a balanced profile.

Mrs H had the financial capacity (affordability status) for the investment. She was debt free, she had surplus income and the capital that was invested appears to have been earmarked for nothing. She reserved a relatively significant amount – £35,000 – for emergencies and there is no evidence that any planned expenditure, with regards to the £100,000 that was invested, was overlooked in the AR's advice. Mrs H says she raised the possibility that she *might* make *ad hoc withdrawals*, but that was not the same as confirmation of a definite or planned short term need for withdrawals, and the suitability report – as quoted above – refers to her agreement to the five years (plus) investment term that was recommended.

Mrs H was issued a suitability report that was informative and that explained the AR's recommendation, the context for it and the reasons for it. Overall, on balance and for the above reasons, I conclude that the recommendation was not unsuitable for her. I also have not seen evidence to establish, on balance, that the AR misrepresented his tied association with Quilter or that his association in that respect caused a detriment to Mrs H. Like the investigator, I am satisfied that there was sufficient (and clear) content in the suitability report that explained, to Mrs H, the risks associated with his recommendation. She does not appear to have been misled in this respect.

With regards to the ongoing advice matter, the suitability report and the 2017 service authorisation document Mrs H signed both confirmed the fee rate of 0.75% for ongoing advice. The initial advice was given in 2017. There is evidence of the 2018 review she received. Then there is evidence of the 2019 withdrawal advice she received. It is not disputed that there was no annual review in 2019, and she appears to have terminated the AR's service by the end of 2019. The contents of the 2019 withdrawal advice document include the following:

"*We last met as part of our annual review on … 25th September 2018*"

"*You confirmed to me that there have been no changes in your circumstances since our last meeting where we completed a full review.*
You confirmed to me that there are no other foreseeable changes likely in the future that will impact on the advice I provide today, and that there are no other planned material expenditures or liabilities due in the next year that will be impacted by the advice I'm giving you now."

"*We agreed that*
As you are paying me an ongoing service fee there will be no further charge for this advice."

In the above context, whilst the AR missed the 2019 official annual review Mrs H was entitled to (and paid for), the withdrawal advice event appears to have served a purpose somewhat beyond the specific withdrawal itself. It appears that the AR considered matters akin to what would have featured in an annual review and that, because of Mrs H's entitlement to ongoing advice, she was not charged for the withdrawal advice. Nevertheless, it remains an undisputed fact that she did not receive the 'official' annual review in 2019 that she was entitled to and this is the part of her complaint that I uphold – but it is upheld in the above context.

Overall, on balance and for the above reasons, I agree with the investigator's recommendation of £375 in compensation to Mrs H for being deprived the official annual review she was entitled to. I am not persuaded by her claim for a full refund of the initial and ongoing advice fees because she received the initial advice in 2017 (which was not unsuitable), she received ongoing advice/annual review in 2018 and she received withdrawal advice (and some considerations by the AR akin to a review) in 2019 as captured in the quotes above. In these circumstances a full refund of fees would be unfair.

Putting things right

I agree with the £100 that Quilter has offered Mrs H for the trouble and upset caused to her by the missing annual review and I endorse (and incorporate) the investigator's finding that she should receive an additional £375 as compensation for the annual review service failure, making a total of £475. I order Quilter to pay Mrs H £475 for these reasons.

My final decision

For the reasons given above, I partly uphold Mrs H's complaint and I order Quilter Financial Services Ltd to pay her £475 in total compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 26 April 2022.

Roy Kuku
Ombudsman