DRN-3319006

The complaint

Mr A complains that advice he was given by an appointed representative of Quilter Financial Services Ltd in regard to the transfer of his pension savings was inappropriate. And he further complains that the appointed representative has failed to provide him with the agreed on-going servicing of his pension savings.

What happened

The advice that Mr A is complaining about was provided by an appointed representative of Quilter. So although Mr A had no direct dealings with Quilter, it is that firm that is responsible for the advice he was given, and for dealing with his complaint. For ease, in this decision, I will generally refer to Quilter as the business that Mr A dealt with.

Mr A has been assisted in making this complaint by a claims management company (CMC). But, again for ease, in this decision I will generally refer to all communication as having been with, and from, Mr A himself.

I issued a provisional decision on this complaint in January 2022. In that decision I explained why I thought the complaint should be upheld and what Quilter needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

> *Mr A held pension savings in a personal pension plan. I can see that he has said his pension savings had been subject to reviews and transfers on a number of occasions. But this complaint is only dealing with the advice that was provided to Mr A by Quilter in July 2012.*
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> *In July 2012 Quilter provided Mr A with a detailed summary of its advice. In brief, it noted that his pension savings were not currently invested in line with the attitude to risk that it had measured and agreed with him. It noted that his current provider did offer an alternative investment fund that might be suitable. But it thought that there were better options offered by a different provider. And it told him that the administration costs charged by that provider were a little lower. So it recommended that Mr A move his pension savings to the new provider and invest them in the suggested fund. Mr A accepted Quilter's advice.*
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> *As per the agreement he had signed, Quilter charged 5.5% of the transferred pension savings value for its advice. It has recently confirmed that charge would only have been payable if Mr A's pension savings were transferred. And it also agreed to provide him with ongoing servicing of his pension investments. Mr A agreed to pay an annual charge of 0.5% to Quilter for that work.*
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> *In August 2019 Mr A complained to Quilter about the advice he'd been given in 2012. And he also said that he'd had no further contact with the advisor despite paying the ongoing servicing charge. When it looked into Mr A's complaint Quilter didn't agree that its advice had been unsuitable. But its advisor wasn't able to show that he'd tried to contact Mr A to arrange any reviews of his pension investments. So it upheld that*

part of Mr A's complaint and offered to refund all the servicing charges he'd paid since 2012. And it offered Mr A £250 to reflect the trouble and upset he'd had been caused. Mr A didn't accept Quilter's offer so he brought his complaint to this Service.

In its final response to Mr A Quilter accepted that it was unable to demonstrate that he had been provided with the ongoing servicing of his pension investments that he had paid for. So it correctly offered to refund the fees that he had paid. I do think that compensation needs some further enhancement to reflect the investment growth that Mr A has lost in the intervening period, and I will explain more about that later in this decision. But I don't think there is anything further I need to decide about this part of Mr A's complaint.

Within the FCA's handbook, COBS 2.1.1R required a regulated business to "act honestly, fairly and professionally in accordance with the best interests of its client". And it is on that basis that I will consider the advice that was provided to Mr A about the transfer and ongoing investment of his pension savings.

I have looked carefully at the recommendation report that Quilter provided to Mr A. It seems likely that the report was supplemented by at least one meeting and so some additional information might have been provided to Mr A. But in the absence of any recordings or minutes of those discussions I think it fair and reasonable to conclude that the report reflects the entire advice that was provided to Mr A.

I think at this stage it is important to reflect on the agreement that Mr A entered into with Quilter. The firm has recently confirmed to us that its agreement with Mr A would only require him to pay a fee if he accepted its advice, and transferred his pension savings. So that immediately opens up the moral risk that advice will be given to transfer, even if that is not entirely in a consumer's best interests, so that the advice fee can be charged.

Here Quilter's report identified that Mr A's current pension investments didn't correctly match the risk profile that it had measured for him. Quilter had assessed that Mr A could reasonably be considered to be an "adventurous investor". Given what I know of Mr A's circumstances I don't think that was an unreasonable assessment.

So I don't think it would have been unreasonable to conclude that Mr A might want to consider changing the funds into which his pension savings were invested. Quilter identified that Mr A's existing provider did offer a fund that broadly matched his risk profile. But it said that other funds, only available with a different provider, might provide a better rate of return.

As I said earlier, Quilter has sent us a copy of the suitability report it says it provided to Mr A. And Mr A had also sent us a copy of that same report. I have been perturbed to note that there is at least one difference in the text contained in those two reports (that are both dated 27 July 2012). And that difference relates to Mr A's recorded preference to not invest in the fund available with his existing provider.

In the report sent to us by Quilter, it says that "You do not want to use this as it will be more expensive than a passive fund which I have recommended". And in the copy of the report sent to us by Mr A it says "You do not want to use this as it has a lower crown rating than a passive fund which I have recommended".

I think that this discrepancy might reasonably lead to a conclusion that two versions of the same report were produced. It is of course possible that Mr A suggested both *reasons for not remaining with his existing provider. But on balance I think it far more likely that Quilter, in its report, was simply attempting to provide a degree of explanation for its decision to recommend a transfer – I'm not persuaded that either reason fairly reflected Mr A's own independent beliefs.*

In its suitability report Quilter noted that the charges levied by the new provider it was recommending were a little lower. And so, it said, even if investment returns were also a little lower Mr A might still be better off by transferring. But Quilter then reassured Mr A by saying "In reality of course I believe the fund growth prospects will be as good, if not better, in your new plan".

That statement doesn't suggest to me that Quilter expected a transfer to a new provider to significantly outperform a change in investment with Mr A's existing provider. And of course I think being better off would be the basic expectation of Mr A in accepting Quilter's advice. But by Mr A accepting the transfer Quilter would be entitled to a significant fee equal to 5.5% of the transferred pension savings. That would put a long term drag on the value of Mr A's pension savings and he would need to see significantly improved investment returns over an extended period in order for the transfer to be beneficial.

I'm not persuaded that the transfer, when considering the significant charge that Mr A would need to pay, was in his best interests. I accept Quilter's argument that there was the probability of his investments performing a little better, both in terms of the provider charges being reduced, and the possibility of better returns. But I think those marginal gains were more than outweighed by the significant charge that became due to Quilter. Money it wouldn't be entitled to receive had it not recommended, and Mr A agreed to, the transfer.

So on balance I don't currently think the advice that Quilter gave to Mr A, to transfer his pension savings to a new provider, was appropriate. I currently think Quilter should also pay Mr A some compensation in relation to the advice fee he paid to the firm.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr A has said that he is delighted with my provisional decision. Quilter has said it has nothing further to add.

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.

Given that neither party has provided me with any new evidence or further comments I see no reason to alter the conclusions I reached in my provisional decision. It follows that I uphold Mr A's complaint and direct Quilter to put things right as set out in my provisional decision, and repeated below.

Putting things right

Had Quilter provided more suitable advice, I think Mr A would have left his pension savings with his existing provider. It is possible that he might have changed the fund into which those pensions savings were invested, and I think it likely that he might have received similar investment returns to those he received following the transfer. So I don't think he has suffered a direct investment loss in relation to the transfer.

But I don't think the advice fee that Mr A paid to Quilter would have become due. And, as I explained in my provisional decision, Quilter has already agreed that it should refund the ongoing service charges that it has received. Each of those charges would have benefited from investment growth had they remained within Mr A's pension savings. So any refund needs to be increased to take account of those returns.

So to put things right Quilter should;

- Refund the advice fee that Mr A paid in 2012

- Refund any ongoing servicing charges it has received from Mr A's pension savings

- Add investment returns to each of those refunds in line with the benchmark set out below, from the date the charges were taken to the date of my final decision.

- Additional interest at a rate of 8% simple per year should be added to the total calculated above from the date of my final decision to the date of settlement if the compensation is not paid to Mr A within 28 days of Quilter receiving Mr A's acceptance of my final decision

The benchmark that I consider to be suitable is the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index). It 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. Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr A's circumstances and risk attitude.

The compensation should be paid into Mr A's pension plan. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Quilter is unable to pay the compensation into Mr A's pension plan, it 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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr A won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age. In the absence of any comments on my provisional decision I think it is reasonable to assume that Mr A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, as Mr A would have 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%.

My final decision

My final decision is that I uphold Mr A's complaint and direct Quilter Financial Services Ltd to put things right as detailed above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 March 2022.

Paul Reilly
Ombudsman