

The complaint

Mr S says he was given unsuitable advice to switch personal pensions into a self-invested personal pension (SIPP) and make unsuitable high-risk investments. The investments have since failed, and Mr S has lost the pension money he invested. Mr S says Quilter Financial Limited is responsible for that advice.

What happened

Mr S says he was contacted by phone by a financial adviser wanting to discuss his pension. Mr S says he cannot recall the firm that person was calling from. Mr S says he was told he would be better off transferring his pension into a SIPP as his existing pensions were only making 1% returns per annum. Mr S says the adviser then recommended an investment with Global Agricultural Services (formerly Verdant Australian Farmland) ("GAS") and Vista Santa Fe ("Vista") – both involved investing in plots of land. The adviser said that both of these investments would create 12% returns a year and he assured Mr S the investments were safe, secure and guaranteed to bring regular returns.

Mr S believes his details were then forwarded to Bridgewater Financial Services Limited to conduct the next steps in switching his pensions. At the time of advice, Bridgewater was an appointed representative of Paradigm Financial Advisers Ltd which later became Caerus Financial Ltd, now Quilter Financial Limited.

In June 2010, Mr S signed a Lifetime SIPP application form and the SIPP was opened in July 2010. In August and September funds were transferred to the SIPP from Mr S's existing pensions. IFA fees of around £2,000 were paid out and around £70,000 paid out to the investments.

Later in 2019 Mr S complained to Quilter about the advice he had been given by Bridgewater.

Quilter said it was not required to consider the complaint as it was made outside of the time limits set by the regulator. It said Mr S received an update letter in October 2014 about one of the funds and this ought to have given Mr S cause for complaint. It also said Mr S would have received annual statements showing his fund had reduced in value. It says this combined with the fact Mr S raised some concerns with the fund managers direct in 2012, shows Mr S had cause for complaint more than three years before he complained.

Mr S then referred his complaint to the Financial Ombudsman Service.

An investigator and then an Ombudsman reviewed the complaint. The Ombudsman issued a jurisdiction decision on the time bar point. He said the complaint was made in time and could therefore be considered by the Financial Ombudsman Service. In summary, he said:

- The event complained about is the advice given in 2010 which is more than six years before Mr S complained in 2019.

- Quilter says Mr S received an update letter in October 2014 about the GAS fund and would have received annual statements showing the fund had reduced in value. And Mr S raised some concerns about the investment in 2012.
- The investments were complex and beyond Mr S's level of investment knowledge and understanding. Account was taken of this when considering whether Mr S ought to have had cause for complaint.
- The 2012 correspondence, and the 2014 update and Mr S's comments on them were considered by the ombudsman who also noted what Mr S said about a lack of annual statements.
- The ombudsman said Mr S received a statement in 2017 which put him on notice of significant losses and he complained within three years of that knowledge. The ombudsman was not satisfied that Mr S should have known he had cause to complain any earlier and his decision was that the complaint was not time barred.

The ombudsman said a different jurisdiction point, whether Bridgewater was acting beyond its authority from Quilter, would have to be considered separately.

A different investigator considered the authority point. On that point the new investigator said:

- Bridgewater advised Mr S to switch his personal pensions to a SIPP.
- The investments were made a short time after the SIPP was set up and the advice about the investments was given at the same time as the advice to switch pensions to the SIPP.
- The complaint is about these acts and so it's a complaint about regulated activities.
- The available evidence showed advice was given by Bridgewater and it was at the time of the advice an appointed representative of what is now Quilter.
- A principal (Quilter) of an appointed representative (Bridgewater) is responsible for the activities it authorises its appointed representative to carry on.
- Quilter says it had no business relationship with GAS and Bridgewater was not authorised by it to advise on investments with GAS or Vista.
- Quilter has not been able to provide a copy of the appointed representative agreement between it and Bridgewater. It did however provide a generic agreement in use at around that time which it says shows the terms of the agreement with Bridgewater.
- That agreement did not limit Bridgewater's authority in such a way that it could only advise on "authorised institutions". Quilter provided no other evidence to support its position that Bridgewater's authority was restricted in the way it says.
- Quilter is therefore responsible for the advice the complaint is about.

The investigator went on to consider the merits of the complaint and in summary said:

- In 2013 – that is after the advice in this case - the FSA issued an Alert about pension transfers with a view to investing pension monies in unregulated products through a SIPP.
- The Alert was a reminder of obligations that existed at the time of the advice in this complaint.
- The investments in this case represented a high risk strategy and were not suitable for most people.
- There is little evidence of Mr S's requirements at the time. Mr S said he was low-medium risk investor and that he could not afford to lose his pension funds.
- Recommending switching pensions in order to invest in the GAS and Vista

investments was unsuitable.

- Quilter should pay compensation to Mr S based on comparing his present position to the likely value of his pensions if he had not switched them. Quilter should take ownership of the investments. It should also pay compensation in respect of fees on Mr S's SIPP if he can't close it down. And pay him compensation for the distress and inconvenience he had been caused.

Mr S agrees with the investigator. Quilter does not. It says:

- The contract between Bridgewater and Quilter confirms that in order for Quilter to be responsible the client must have been introduced or submitted an application to an approved institution.
- Bridgewater therefore acted outside its contract with Quilter.
- Quilter has no business relationship with Verdant Wealth Australia/GAS.
- It disagrees with the conclusions my fellow Ombudsman reached on the time bar issue. It thinks the letter of 2014 would have given Mr S enough knowledge for him to know he had cause for complaint. It says another Ombudsman in another case came to that view about the same letter.

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.

First I will deal with jurisdiction – which is dealt with on the basis of the relevant rules and law and not on the basis of what is fair and reasonable in all the circumstances.

Each case is considered on its own facts. Another ombudsman has considered the evidence in this case and has come to a decision on time bar based on the circumstances of this case. The ombudsman explained why in the circumstances of this case he did not consider the complaint time barred. Quilter disagrees with that view but it has not produced any new evidence or made any points that have not already been considered.

For the reasons already given by my fellow Ombudsman in his jurisdiction decision of 29 December 2020 this complaint is not time barred.

On the issue of authority, I agree with the investigator. Quilter says Bridgewater was only authorised to advise on investments from approved institutions. But it has not provided a copy of the appointed representative agreement with Bridgewater that includes that restriction. The version of the appointed representative agreement it says was in use does not include that restriction. The investigator explained this to Quilter. It has had the opportunity to correct the position if it has provided the wrong version of the agreement. It has not done so. Nor has it put forward any reason why it thinks the investigator's reading of the appointed represented agreement it did provide is wrong.

I have considered the version of the appointed representative agreement Quilter has provided. If that is the version that was used – which is Quilter's position – then Bridgewater was authorised to give investment and pension advice including advice on pension transfers. That authority was not restricted only to advising on investments with authorised institutions.

Quilter is therefore responsible for the disputed advice in this case.

Turning now to the merits of this complaint – which I must decide on the basis of what is fair and reasonable in all the circumstances - as the investigator explained there is ample evidence that Bridgewater advised Mr S to transfer his pensions to a SIPP.

For example an email from Bridgewater to Mr S in June 2010 said:

"I understand from [name given] that you are looking to invest in Verdant Australian farmland. I am also aware from Sceptre that you have been looking at their investments. These can all be facilitated.

I am going to be in your area on Friday of this week and would be happy to see you then. Alternatively I could see you on another day if that does not suit you.

Please would you give me a call to arrange a meeting to sort out the necessary paperwork."

Another email said:

"Your report has now been finalised and approved by our compliance department. As discussed I am recommending that you transfer the two Prudential and the Halifax pensions but not the Standard Life Money Purchase pension. The reason for recommending that you keep the latter is that you will lose a substantial entitlement to tax free cash and you will suffer a very heavy penalty on exit.

When you have read through the report, please print off, sign and then scan/email the last page to me. I will then send off the forms on your behalf."

Bridgewater sent the SIPP application to Lifetime SIPP together with the request to transfer the pensions to it. And Bridgewater was paid fees from the SIPP.

It is also clear that Bridgewater was aware of the investments Mr S had been introduced to and was going to invest in in his SIPP.

As the investigator said the FSA issued an Alert in 2013 which reminded advisers about their existing obligations. It said:

"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers' retirement savings to self-invested personal pensions (SIPPs) that invest wholly or primarily in high risk, often highly illiquid unregulated investments (some of which may be in Unregulated Collective Investment Schemes). Examples of these unregulated investments are...overseas property developments...

The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs...), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating.

For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable."

I agree that the above described approach to ensuring suitability applied at the time Bridgewater advised Mr S in 2010. It is clear it advised on transferring existing pensions to a SIPP without properly considering the suitability of the proposed investments to be made in the SIPP after the transfer. The investments were higher risk esoteric investments that were not suitable for pension investments for most retail investors. Mr S was not a sophisticated investor and there is no evidence that these investments were suitable for him. I agree that advice to transfer existing personal pensions to a SIPP in order to make such investments was not suitable advice for Mr S.

Like the investigator, I'm satisfied that, had Mr S been given suitable advice, to leave his personal pensions where they were, and had he understood the risks of the proposed investments, he would not have switched his pensions to the SIPP, or made the investments into GAS and Vista.

Putting things right

My aim is that Mr S should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

Quilter should therefore calculate fair redress by comparing the current position to the position Mr S would be in if he had not switched from his existing pensions. In summary, Quilter should:

1. Calculate the loss Mr S has suffered as a result of making the investments.
2. Take ownership of the investments held in the SIPP if possible.
3. Pay compensation for the loss into Mr S's pension in respect of his pension loss. If that is not possible pay compensation for the loss to Mr S direct. In either case the payment should take into account necessary adjustments set out below.
4. Pay Mr S's SIPP fees for the next five years, in the event he is not now able to close his SIPP.
5. Pay compensation of £300 for the distress and inconvenience caused to Mr S
6. Pay interest on the above if fair redress is not paid with 28 days of notification of acceptance by Mr S.

I'll explain how Quilter should carry out the calculation set out above in further detail below:

1. Calculate the loss Mr S has suffered as a result of making the switches

To do this, Quilter should work out the likely value of Mr S's pensions as at the date of this view, had he left them where they were instead of switching to the SIPP.

Quilter should ask Mr S's former pension providers to calculate the current notional

transfer values had he not switched his pensions. If there are any difficulties in obtaining a notional valuation then a benchmark of 50% of the FTSE UK Private Investors Income Total Return index and 50% of the monthly average rate for one-year fixed-rate bonds as published by the Bank of England should be used to calculate the value. That is likely to be a reasonable proxy for the type of return that could have been achieved if the pensions had not been switched.

The notional transfer value should be compared to the transfer value of the SIPP at the date of this decision and this will show the loss Mr S has suffered.

Any additional sum that Mr S paid into the SIPP should be added to the notional transfer value calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the SIPP should be deducted from the fair 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 if Quilter totals all those payments and deducts that figure at the end.

2 Take ownership of the investments

Ideally, the assets in the SIPP– the investments - could be removed from the SIPP. Mr S would then be able to close the SIPP, if he wishes, and avoid paying further fees for the SIPP. For calculating compensation, Quilter should agree an amount with the SIPP operator as a commercial value for the shares. It should then pay the sum agreed plus any costs and take ownership of the shares.

If Quilter is able to purchase the shares then the price paid to purchase the holding/s should be allowed for in the current transfer value (because it will have been paid into the SIPP to secure the holding/s).

If Quilter is unable, or if there are any difficulties in buying the investment, it should give them a nil value for the purposes of calculating compensation. Provided Mr S is compensated in full, Quilter may ask Mr S to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the investment. That undertaking should allow for the effect of any tax and charges on the amount Mr S may receive from the investment and any eventual sums he would be able to access from the SIPP. Quilter will need to meet any costs in drawing up the undertaking.

3 Pay compensation to Mr S for loss he has suffered calculated in (1).

Since the loss Mr S has suffered is within his pension it is right that I try to restore the value of his pension provisions if that is possible. So if possible the compensation for the loss should be paid into the pensions. The compensation shouldn't be paid into the pensions if it would conflict with any existing protection or allowance. Payment into the pensions should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mr S could claim. The notional allowance should be calculated using Mr S's marginal rate of tax.

If it is not possible to pay the compensation into a pension the compensation should be paid to Mr S direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mr S should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using

Mr S's marginal rate of tax in retirement. For example, if Mr S is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr S would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

4. *SIPP fees*

If Mr S is unable to close his SIPP once compensation has been paid, Quilter should pay an amount into the SIPP equivalent to five years' worth of the fees (based on the most recent year's fees) that will be payable on the SIPP. I say this because Mr S would not be in the SIPP but for the unsuitable advice. So it would not be fair for him to have to pay fees to keep it open. And I am satisfied five years will allow sufficient time for things to be sorted out with the shares, and the SIPP to be closed.

5. *Distress and inconvenience*

Suffering significant loss in the value of his pension will naturally have caused Mr S distress and inconvenience. Quilter should pay Mr S £300 for the distress and inconvenience caused to Mr S accordingly.

6. *Pay interest*

Quilter should pay fair redress as set out above within 28 days of being notified that Mr S has accepted this decision. If it does not, interest on the redress due is to be paid from the date of this decision to the date of payment at the rate of 8% simple interest per year.

My final decision

For the reasons given, the Financial Ombudsman Service can consider Mr S's complaint. I uphold that complaint and Quilter Financial Limited is to pay fair redress, plus interest as appropriate, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 April 2022.

Philip Roberts
Ombudsman