DRN-3419677

The complaint

Mr H complains an appointed representative of Quilter Financial Limited gave him unsuitable advice to move his pension to a self-invested personal pension (SIPP) where his funds were overseen by a discretionary fund management service.

What happened

Mr H's independent financial adviser (IFA) was Mr S who traded as Preston Sweeney Wealth Management and was an appointed representative of Paradigm Financial Advisers Ltd (later Caerus Financial Ltd and then Quilter Financial Ltd) between 20 December 2011 and 2 March 2016. For the purposes of this decision, I'll refer to the business as Quilter throughout.

Mr H says Mr S set up his pension in 2001. He then advised him to move it and arranged for this to happen in 2006 and 2009. In 2015, Mr H says Mr S contacted him again and advised him to move his pension to Beaufort Securities Ltd. Mr S said he was going to move abroad and retire as an IFA so Grosvenor Butterworth (Financial Services) Ltd would be Mr H's new IFA and would arrange for his pension to be moved. Mr H hadn't heard of either Beaufort or Grosvenor Butterworth before but says he agreed because Mr S persuaded him. He says Mr S initiated the move and Grosvenor Butterworth processed it.

It seems Mr H's pension was moved into a Beaufort SIPP operated by Gaudi Regulated Service Limited and the funds were then overseen by Beaufort's discretionary fund management service. At that point Mr H's pension was just under £150,000. Beaufort subsequently collapsed and left Mr H's pension worth approximately £3,500.

Mr H made successful claims to the Financial Services Compensation Scheme (FSCS) against Beaufort and Grosvenor Butterworth. In total, he's received £100,060.62 from the FSCS.

Mr H complained to Quilter about the advice he said Mr S had given him. Specifically, he said:

- Mr S had given him incorrect information about how the pension would be invested.
- The risk of moving his pension wasn't explained, including the reduction in FSCS protection.
- Mr S hadn't disclosed the fact he'd receive a share of Grosvenor Butterworth's fees – which was a conflict of interest.

Quilter replied to say it wasn't responsible. In particular, it said:

- The loss resulted from an unregulated investment.
- Mr S had merely introduced Mr H to Grosvenor Butterworth and hadn't given any advice. It was Grosvenor Butterworth that gave the advice.

- Even if Mr H had received advice from Mr S, it wasn't provided in his capacity as a representative of Quilter. Although Mr S could act as its representative in 2015, he was also free to enter contracts and agencies outside the contract he held with it. It has nothing in its database relating to the investment or introduction; no record that advice was given; and it didn't receive any remuneration.

- The appointed representative agreement it had with Mr S says he can only introduce to, or submit applications to, approved institutions. Here, the business wasn't submitted via it and it didn't have a business relationship with Grosvenor Butterworth or Beaufort.

Mr H brought his complaint to us. He said he'd understood that any pension advice from Mr S was regulated advice, irrespective of the degree of his involvement in the transaction. He also pointed out he'd had no sight of the appointed representative agreement between Mr S and Quilter but said caselaw means Quilter is responsible irrespective of whether Mr S followed its procedures.

An investigator said we couldn't consider Mr H's complaint against Quilter as she wasn't persuaded Mr S had advised Mr H. Mr H didn't agree. The issue was therefore passed to me for a decision.

I issued a provisional decision saying I was satisfied Mr S had advised Mr H and the complaint was one I could consider against Quilter as it had given Mr S authority to advise on and arrange pension transfers. I was satisfied the advice Mr S had given Mr H was unsuitable and that if unsuitable advice hadn't been given, Mr H would have left his pension where it was. I therefore proposed compensation that I was satisfied put Mr H as closely as possible into the position he would probably now be in if he hadn't been given unsuitable advice.

Quilter queried the fact I'd addressed merits in my provisional decision and also said:

- Even if Mr S had advised Mr H, once it was referred to Grosvenor Butterworth there was a break in the chain of causation and the decision to move his pension was based on the advice of Grosvenor Butterworth. Grosvenor Butterworth is therefore responsible.

- Mr S didn't carry out the regulated activity of making arrangements for someone to buy or sell or subscribe for a security or relevant investment. He had no involvement following the introduction to Grosvenor Butterworth.

Mr H replied agreeing with my conclusions on jurisdiction and merits but raising issues with the compensation I'd proposed. I've read and considered his response in detail. In summary, he said:

- The compensation should be paid direct to him rather than into his pension. He referred to the fact he's already utilising his maximum pension contribution allowance – including unused allowances from previous tax years.

- No deductions should be made for perceived current or future tax advantages as these won't exist and income tax shouldn't be deducted as his plan is to live outside the UK in retirement – probably in a country where pensionable income is taxed at 0%. In relation to income tax on interest, he can declare any interest received on his tax return.

- The interest he'll need to pay the FSCS should be calculated as a separate compensation item.

- I had said Quilter should pay him five years of SIPP fees but when he moved the money out of his Gaudi SIPP, he was told he would only be charged two fees at £198 a year. This money should be paid direct to him with no deductions.

- £160,000 is unlikely to cover his full loss.

- His previous pension had been split between a portfolio and a cash fund. The price of the portfolio has dropped significantly during the events in Ukraine and he's worried he'll be prejudiced by this. Initially he said he's taken an active approach to the investments in his pension since he started investing large amounts of money into it in the 2020/21 tax year and so if he'd still had that fund he would have mitigated the loss in value by selling the fund in mid-February 2022, meaning a notional value of his previous pension at that date should be used for compensation.

  Following questions about his current pension arrangements, he provided evidence that the last time he added to the long-term investment he's now focused on was 1 December 2021. So, he suggested using a notional value of his previous pension at that date to calculate compensation.

- Because the market is now recovering, the time gap between calculating the compensation and paying it might mean his compensation is calculated at lower prices than what will exist at the time it's paid. If that happens, he won't have the opportunity to invest at the prices his compensation has been calculated at.

My findings – jurisdiction

I've considered all the evidence that's been provided. Having done so, my decision is the same as my provisional decision. As the only new submission is about the regulated activity of making arrangements, I've repeated my provisional findings below with my additional findings on that point added.

To carry out regulated activities a business needs to be authorised (Section 19 of the Financial Services and Markets Act 2000 (FSMA)). Mr S wasn't directly authorised. Instead he was an appointed representative of Quilter. Quilter is an authorised firm. It's authorised by the Financial Conduct Authority (FCA) to carry out a range of regulated activities including advising on investments and arranging deals in investments. We can therefore consider complaints about Quilter. And this includes some complaints about its appointed representatives.

But this service can't look at all complaints. Before we can consider a complaint, we need to check, by reference to the FCA's Dispute Resolution Rules (DISP) and the legislation from which those rules are derived, whether it's one we have the power to look at.

DISP 2.3.1R says we can:

> "*consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on…regulated activities…or any ancillary activities, including advice, carried on by the firm in connection with them*".

Guidance for this rule at DISP 2.3.3G says that:

> "*complaints about acts or omissions include those in respect of activities for which the firm…is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility*".

And Section 39(3) FSMA says:

> "*The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility*".

The responsibility of a principal was considered by the judge in the case of *Anderson v Sense Network* [2018] EWHC 2834 (this case was the subject of an appeal, but the Court of Appeal issued a decision agreeing with the earlier decision). In the High Court, Mr Justice Jacobs said, at paragraph 33:

> "*There is no indication in the wording of section 39, or in the case-law, that indicates that the business for which responsibility is accepted is to be determined not by reference to the contract, but by reference to the authorisations granted to the principal which are to be found in the Financial Services register*".

So, a principal isn't automatically responsible for the actions of its appointed representatives and it's necessary to go beyond looking at the activities Quilter was authorised to do. Whether Quilter is responsible for the actions of Mr S is determined by considering the terms of the contract between Quilter and Mr S – the appointed representative agreement.

It's clear from a number of recent court cases that some terms of appointed representative agreements will work to exclude responsibility for a principal, and others do not.

To decide whether Quilter is responsible here, there are three issues I need to consider:

- What are the specific acts Mr H has complained about?
- Are those acts regulated activities or ancillary to regulated activities?
- Did Quilter accept responsibility for those acts?

What are the specific acts Mr H has complained about?

Mr H complains Mr S gave him unsuitable advice to move his pension to a SIPP where his funds were overseen by a discretionary fund management service.

Are those acts regulated activities or ancillary to regulated activities?

Section 22 FSMA defines "*regulated activities*" as follows:

> "*(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and –*
>
> *(a) relates to an investment of a specified kind;…*
>
> *(4) "Investment" includes any asset, right or interest.*
>
> *(5) "Specified" means specified in an order made by the Treasury*".

The relevant Order is the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). The rights under a personal pension scheme (which includes Mr H's previous pension and the SIPP he moved to) are specified as investments by a provision in Article 82 RAO. Advising on investments is a specified activity under Article 53 RAO. So is arranging deals in investments (Article 25 RAO).

Mr H says Mr S advised him to move his pension and started the process for that. Quilter says Mr S merely introduced Mr H to Grosvenor Butterworth who gave advice and made the arrangements.

I've thought carefully about all the evidence. Taking everything into account, I'm satisfied it's most likely Mr S did advise Mr H to move his pension.

I accept Quilter has no record of Mr H and there's no evidence of a suitability report. But although suitability reports are one of the indicators that advice was given, the absence of one doesn't mean advice wasn't given.

In the circumstances here, there are a number of other things that satisfy me it's most likely advice was given:

- Mr H's recollections of his conversations with Mr S suggest Mr S gave advice. Mr H has clearly and consistently said Mr S approached him and suggested he move his pension. I've found his recollections from the time to be detailed and plausible and it's clear he was only aware of Grosvenor Butterworth and Beaufort because of Mr S.

- Mr S was Mr H's long-standing financial adviser. It seems Mr S had advised Mr H to move his pension previously and Mr H had taken that advice.

- Mr S's recollections of the conversations also suggest he gave advice. In an email dated 1 March 2021, Mr S said

  > *I definitely introduced you to Grosvenor Butterworth. I accept that. And in fact it was they who convinced me of the merits of Beaufort. And of discretionary fund management. All that is true.*
  >
  > *But all I honestly remember is introducing you to then [sic]. They were IFAs. And as such have given advice. I don't see how I 'initiated' the transfer unless your view of initiation is that I contacted you and told you about it, which I did. And then I introduced you to Grosvenor Butterworth. They gave you the advice and gave you the terms of business and letter of recommendation…*
  >
  > *I don't agree I gave you financial advice because I didn't. Yes I spoke to you about it. But my definition of financial advice is based on being regulated for 20 years. It's the firm who formally advise and arrange the transaction.*
  >
  > *Having said that I'm not saying that I didn't say to you that I think this is a good idea. Because obviously I did do that.*

  It's clear that Mr S had been "*convinced…of the merits of Beaufort*" and that he'd told Mr H "*I think this is a good idea*".

I asked Quilter for its comments on Mr S's recollections. It said the emails "*further confirm our stance that [Mr S] did not give [Mr H] any advice and was simply an introducer to Grosvenor Butterworth*". But whilst Quilter and Mr S don't think what he said to Mr H

amounted to advice, I don't agree. PERG 8.28 sets out guidance from the FCA on the difference between advice and information. At the time, PERG 8.28.1G said:

> "*In the FCA's view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves statements of facts or figures*".

What Mr S acknowledges saying clearly goes beyond statements of facts and figures. By saying he thought the switch was a "*good idea*" he gave his opinion.

Quilter says it was Grosvenor Butterworth – who Mr S introduced Mr H to – that advised him. I've thought about this carefully. But even if Mr H did later receive advice from another business, that doesn't mean Mr S didn't also give advice.

In my provisional decision I said I also think it's likely Mr S carried out the regulated activity of making arrangements for someone to buy or sell or subscribe for a security or relevant investment as the communication between him and Grosvenor Butterworth suggests he continued to have some involvement even once the introduction had been made. Quilter has disputed that Mr S had any involvement after the introduction.

I've thought about this carefully. But I'm satisfied I don't need to make a finding on this point. I say this because, even if Mr S didn't carry out the regulated activity of making arrangements for someone to buy or sell or subscribe for a security or relevant investment, for the reasons set out above, I'm satisfied he gave advice. And as I've gone on to explain, I'm satisfied that advice is in our jurisdiction against Quilter.

Did Quilter accept responsibility for those acts?

The first question I need to satisfy myself of is whether Mr S was holding himself out as representing Quilter at the time of the advice complained about.

Quilter says he wasn't. It says he was free to enter into contracts and agencies outside of the agreement he held with it and it has nothing in its database relating to the investment or introduction; no record that advice was given; and it didn't receive any remuneration.

I've thought about this carefully but taking everything into account, I'm satisfied Mr S was most likely holding himself out as acting as a representative of Quilter at the time of the events complained about. Mr H has provided us with a letter he was sent by Mr S letting him know that he had left the company he was previously registered as an IFA at. He went on to say:

> "*I have now set up a new company which is called Preston Sweeney Wealth Management. Preston Sweeney Wealth Management is an appointed representative of Paradigm Financial Advisers Ltd which are authorised and regulated by the Financial Services Authority…*
>
> *In order to carry on providing you with advice in relation to your policies, please could you complete the attached Transfer of Agency letter and return it to me at your earliest convenience*".

Mr H had a long-standing relationship with Mr S. Over a long period of time Mr S provided him with advice in respect of his pension. And when he moved and started doing so as a representative of Quilter (Paradigm at the time) he let Mr H know. There's nothing about the way in which the 2015 advice was given that makes me think this was given in any other capacity.

Whilst there isn't any documentation for this advice and Quilter has no record of it, I'm satisfied that's because Mr S didn't view it as advice – not because he wasn't acting as a representative of Quilter at the time.

I've therefore gone on to consider the appointed representative agreement that was in place at the time. Quilter has provided a sample Caerus appointed representative agreement that's marked "*Final Version April 2014*" and which it says would have been the one in place.

Some relevant sections of the agreement include:

> "***"Relevant Activities"*** *means the activities regulated under FSMA set out in Schedule 1 which the Representative will be carrying out under this Agreement…*
>
> *2. The Firm hereby appoints the Representative as its appointed representative, subject to the terms of this Agreement. The Firm authorises the Representative to conduct the Relevant Activities…*
>
> *5. The Firm accepts full responsibility for anything said or done or omitted by the Representative in carrying on the Relevant Activities, but not for any other activities conducted by the Representative…*
>
> *23. The Representative shall comply with the provision of the compliance manual (which the Firm shall make available on its website) and adhere to the identified sales processes (as set out in the compliance manual)*".

Schedule 1 set out "*Relevant activities*" as including:

1. *Arranging (bringing about) deals in investments (article 25(1) RAO)*
2. *Making arrangements with a view to transactions in investments (article 25(2) RAO)*
3. *Advising on Pension Transfers and Pension opt outs (article 53 RAO)*
4. *Advising on investments (article 53 RAO)*

Quilter told Mr H the appointed representative agreement it had with Mr S says introductions can only be made to, or applications submitted to, approved institutions. I couldn't see where the agreement said that so asked Quilter to direct me to the part of the agreement that specified this restriction. Quilter responded to say "*I have reviewed the document in question and it does not appear to contain a statement relating to "approved institution"*". I've therefore proceeded on the basis that there was no such requirement.

On the basis of the sample documentation I've been provided with, I'm satisfied that Quilter gave Mr S authority to advise on and arrange pension transfers.

My decision – jurisdiction

For the reasons discussed above, my decision is that the Financial Ombudsman Service can consider this complaint.

My findings – merits

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

As I explained in my provisional decision, in looking at the issue of jurisdiction, I was satisfied I had enough to reach an outcome on the merits of Mr H's complaint. Having considered all the available evidence again, I'm still satisfied this is the case and my decision is the same as my provisional decision. As I have no further submissions to consider, I've repeated my provisional findings below.

Mr H was an ordinary retail investor. He wasn't an experienced investor and it doesn't seem that he could afford to take significant risk with his pension. Instead, the opposite appears to have been true – he was unemployed at the time with no other investments and limited investment experience and this was his entire pension provision. He was unlikely to be able to replace any significant losses and the SIPP and discretionary fund management service had higher costs. Mr S would have known all of this.

In these circumstances I'm satisfied the pension switch to a SIPP to use discretionary fund management wasn't suitable and should never have been made as a recommendation to Mr H.

Mr H wasn't looking to move his pension and had never heard of Beaufort. So I'm satisfied that if Mr S hadn't given unsuitable advice, Mr H would have left his pension where it was and wouldn't have switched it.

Putting things right

Mr H was unhappy with the actions of a number of different businesses. But here I'm only considering his complaint about Quilter.

I note Quilter's comments about causation. But irrespective of what Beaufort and Grosvenor Butterworth did, Quilter's appointed representative still gave advice. In my view, Mr S started the whole chain of events. And even though his advice wasn't documented, in the context of a long-standing relationship of trust over a number of years, it's most likely Mr H – quite reasonably – gave that advice considerable weight. I'm still satisfied Mr H wouldn't have moved his pension and the discretionary fund management arrangement wouldn't have happened but for his unsuitable advice. So I'm satisfied the chain of causation wasn't broken and it's fair and reasonable that Quilter should compensate Mr H for all the losses he suffered by moving his pension.

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he hadn't been given unsuitable advice. I take the view that Mr H wouldn't have moved his pension if everything had happened as it should have. I'm satisfied that what I've set out below is fair and reasonable.

I make the following additional points:

- I note Mr H's comments in response to my provisional decision about the fact he's already used his maximum pension contribution allowance – including unused allowances from previous tax years. I asked Quilter whether, in light of this, it had any objections to paying the compensation to Mr H direct rather than into his pension. It responded to say it'd be prepared to do that, so I've amended the compensation set out below to reflect this.

- I've carefully considered Mr H's comments about the value of the portfolio in his previous pension following the events in Ukraine. And I asked for copies of the statements of any active pensions he has. I appreciate the investments he has now

are different to what was held in his previous pension. But I'm satisfied that when trying to assess what actions he hypothetically would have taken, the actions that he has taken – albeit in slightly different circumstances – are a useful guide. And although there has been historic buying and selling activity on Mr H's current SIPP, there was no activity in February 2022. In these circumstances, and taking everything into account, I'm not persuaded it'd be fair and reasonable to assume he'd have sold the portfolio in his previous pension in mid-February 2022.

I also don't think it'd be fair and reasonable to use a notional value date of 1 December 2021 for Mr H's previous pension. Just because he invested in a particular investment on that date, doesn't mean he'd have invested more in it if he'd had additional funds available at the time. Although I accept he may be focussing his current pension on one particular long-term investment, he does still have diversity in his portfolio, and there's nothing that persuades me it's most likely he'd have decided to cash in his previous portfolio on that date.

I note Mr H's concerns about whether the market will change between the compensation calculation date and it being paid. But the nature of markets is that they change over time. And I don't think it'd be fair and reasonable to make changes to the compensation payable to respond to possible future changes in the market that may or may not happen.

- I've also carefully considered what Mr H has said about deductions for tax advantages and income tax. The compensation I've set out only makes deductions for income tax. I appreciate that Mr H's current plan is to move from the UK for his retirement. And I accept it's entirely possible that he'll end up living in a country where pensionable income is taxed at 0%. However, it wouldn't be fair or reasonable for me to award compensation on the assumption that this will be the case. The reality is that Mr H currently lives in the UK and is subject to UK tax and I'm satisfied that's what it's fair and reasonable to base compensation on – not a hypothetical situation that might not happen.

- In relation to any interest that becomes payable, I'm not persuaded it'd be appropriate to direct Quilter not to deduct income tax – as set out below, Mr H can reclaim any income tax deducted if appropriate.

- I thank Mr H for making me aware that it was agreed he'll only pay two years' worth of SIPP fees when he moved the cash from the SIPP. I can see one of these fees has already been taken from the SIPP. Because this was paid from the money in the SIPP, I'm satisfied the compensation I've set out below will result in this being recovered and no separate provision needs to be made for it. One further fee of £198 is still due however and so if the SIPP can't be closed, Quilter should add that £198 fee to the compensation it pays.

- I acknowledge Mr H was able to receive compensation from the FSCS in relation to both Beaufort and Grosvenor Butterworth. However, the terms of the reassignments of rights require him to return any compensation paid by the FSCS in the event this complaint is successful. So I've made no allowance for what has been paid by the FSCS. It will be for Mr H to make the arrangements to make any repayments he needs to make to the FSCS. And I don't agree any interest Mr H will need to pay the FSCS should be calculated as a separate compensation item. Interest is payable because he has had access to the money it awarded since it awarded it and that is a completely separate matter.

- I'm aware £160,000 is unlikely to cover Mr H's full loss but £160,000 is the most I'm able to require Quilter to pay in the circumstances here. If the amount produced by the calculation of fair compensation exceeds £160,000, as I expect it to, I've recommended that Quilter pays Mr H the balance – plus any interest on the balance.

What must Quilter do?

To compensate Mr H fairly, Quilter must:

- Compare the performance of Mr H's pension with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Quilter should add interest as set out below.

- If there is a loss, Quilter should pay that amount direct to Mr H. But had it been paid into Mr H's pension 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 H won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr H 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%.

- Pay Mr H £500 for trouble and upset caused. I'm satisfied Mr H has been caused significant upset by the events this complaint relates to, and the loss of, in effect, all of his pension fund. I think that a payment of £500 is fair to compensate for that upset.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr H how much has been taken off. Quilter should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Gaudi SIPP	Still exists	Notional value from previous provider	Date of pension switch	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Mr H says he's since set up a further SIPP and that only the worthless securities remain in the Gaudi SIPP. If this is correct, Quilter should take ownership of these by paying a commercial value acceptable to the pension provider. The amount Quilter pays should be included in the actual value before compensation is calculated.

If Quilter is unable to purchase the portfolio, the *actual value* should be assumed to be nil for the purpose of calculation. Quilter may require that Mr H provides an undertaking to pay it any amount he may receive from the securities in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Although if Quilter chooses to limit compensation to our award limit, the undertaking should only apply to any amounts received once Mr H has been fully compensated in line with this decision. Quilter will need to meet any cost in drawing up the undertaking.

Notional Value

This is the value of Mr H's pension had it remained with the previous provider until the end date. Quilter should request that the previous provider calculate this value.

Any additional sum paid into the pension should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the pension should be deducted from the notional 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 to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Quilter will need to determine a fair value for Mr H's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

It seems as though the Gaudi SIPP only exists because of illiquid assets. In order for the Gaudi SIPP to be closed and the further fee that is to be charged prevented, those investments need to be removed. I've set out above how this might be achieved by Quilter taking over the securities, or this is something Mr H can discuss with the provider directly.

Third parties are involved and we don't have the power to tell them what to do. If Quilter is unable to purchase the securities, it should pay Mr H an upfront sum of £198 (the remaining annual wrapper fee).

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr H wanted Capital growth with a small risk to his capital.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 H'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 H into that position. It does not mean that Mr H would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr H could have obtained from investments suited to his objective and risk attitude.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Quilter Financial Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Quilter Financial Limited should pay the amount produced by that calculation up to the maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Quilter Financial Limited pays Mr H the balance plus any interest on the balance as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 May 2022.

Laura Parker
Ombudsman