DRN-3666407

The complaint

Mr H has complained that Quilter Financial Limited gave him unsuitable advice to transfer his existing pension policies to new arrangement on two separate occasions – in 2003 and 2010. Mr H has said that he's suffered financial disadvantage as a result.

What happened

Mr H met with a representative of Quilter in early 2003, at which point he held a personal pension policy (PPP) with Prudential. He was advised at this point to transfer this to a stakeholder pension plan (SHP) with Norwich Union.

In support of this recommendation, Quilter issued a financial planning report in January 2003, which showed his existing PPP had a value of £18,046 and a transfer value of £17,353. A market value adjustment (MVA) due to the policy being invested in the With Profits fund accounted for the difference.

At the time, Mr H was 42, and was recorded as having disposable monthly income of around £260. Mr H was making monthly contributions of £60.33 into his PPP, and Quilter recommended that he redirect these into the SHP, increasing them to £100 pm. The pension funds would be invested equally between the Norwich Union Index Linked Gilt Fund, the Property Fund and the Global Bond Fund.

In the financial planning report, Quilter said that the rationale for the transfer was the choice of funds and cost. It said the plan was an approved SHP, and that Norwich Union was one of the most competitive providers in terms of charges. It further said that Mr H should invest in a company which conformed to the "Stakeholder guidelines" for charges.

It said the following:

"When we compared like for like illustration between your existing provider and the proposed plan, Norwich Union projected a larger fund value at retirement due to the lower charging structure of their Plan, you were also concerned at the lack of fund choice offered by Prudential and the fact that this plan is all in the With Profits Funds, you felt it was important to have a much broader fund choice.

As discussed, I cannot guarantee that the Norwich Union fund will outperform your existing pension fund, some funds are more volatile than others. If you choose to invest in one of them, Norwich Union will write to you five years before your selected pension age to ask whether you wish to move your money to a safer fund. You are able to switch your investments between any of the Norwich Union pension funds, without charge.

I have considered the following alternative products; switching your funds within your existing company, however internal fund switches are not available."

Mr H accepted the recommendation and the SHP was established in February 2003.

Mr H held a further meeting with Quilter in 2010, during which his pension arrangements were once again reviewed. Mr H's plan value was by that time £31,854, and was invested in the Aviva Index Linked Gilt Fund (S2), the Aviva Property Fund (S2) and the Aviva UK Ethical Fund (S2).

An illustration dated August 2010 projected an estimated pension fund of £112,000 at age 65 (March 2025), assuming a mid growth rate of 7% pa and that monthly contributions of £128 continued to retirement.

A further financial planning report issued in August 2010 recorded Mr H as being interested in the principle of "platform" accounts, which Quilter said it believed was *"the way to provide out clients with the long term relationship, the service levels and the value that they deserve".*

It was further recorded that the offering of model portfolios to match Mr H's attitude towards risk would help Quilter review the portfolios on a quarterly basis with its new strategic partners, which included a company called Nucleus.

Mr H was described as having a moderate risk to his retirement planning, which was described as follows:

"This range will best suit the investor who seeks relatively stable growth from their investable assets offset by a low level of income. An investor in the moderate risk range will have a higher tolerance for risk and/or a longer time horizon than either of the previous investors. The main objective of an individual within this range is to achieve steady portfolio growth while limiting fluctuations to less than those of the overall stock markets."

Mr H was at that point employed, earning a net monthly income of £1,000, with monthly expenditure of £800. He was married, with no financial dependants, was in good health and had no mortgage.

Quilter recommended a transfer and redirection of regular contributions to a self invested personal pension (SIPP) with Nucleus, investing in a model portfolio. The stated rationale was to simplify the process of investing. It said that there would be no financial penalty on transfer, that the SIPP would allow a wider range of investments, including shares, units trusts and property, that Mr H's pension could be invested within a Wrap, providing greater flexibility and control, and that he could seamlessly transition into flexible income drawdown or phased retirement.

Other options, including transferring to a new SHP, transferring to a new PPP, and remaining in the existing plan, were discounted.

In support of this, Quilter said that the disadvantage of remaining in his existing plan was that it may not be very competitive compared to others in the market place, it wouldn't assist in the consolidation of his pension arrangements, and that the currently held funds didn't match his investment objectives. Whilst switching funds was possible, the range of funds within the SHP was limited, Quilter said.

It further said that, whilst the costs and flexibilities offered by a new SHP were advantageous, a transfer to a new provider would be administratively more cumbersome than an internal fund switch, that the SHP fund range was very limited, and a SHP offered few "bells and whistles" such as the option to enter income drawdown or phased retirement directly from the SIPP.

A transfer to a new PPP would offer the same flexibility as a SHP, Quilter said, and it would offer a wider range of funds, but again, it said it was administratively more cumbersome than an internal fund switch and the charges might be greater than the SHP.

Quilter said that a transfer to a SIPP would offer a much wider range of funds than either a SHP or a PPP, had the same rules as a SHP/PPP, but had a greater variety of assets in which funds could be invested. But it again noted that this would be more cumbersome than an internal fund switch and the charges tended to be higher to reflect the greater number of options. As such, Quilter said, Mr H could be worse off in retirement.

An illustration projected that, with the new plan, Mr H could expect a fund value of £92,100 with a 7% pa rate of growth, but that with the same rate of growth Mr H could expect £112,000 with his existing plan. The reduction in yield for the new plan was 2.5% pa, whereas that for the existing plan was 0.89% pa. This meant that the new plan would need to outperform the existing plan by 1.34% net of charges to match the projected benefits of the existing plan.

This was due in large part to the initial charge for the SIPP of 3.025% (incorporating an advice fee of 3%) and annual charges of 2.24% (again incorporating ongoing advice fees of 1% pa).

Quilter recorded, however, that Mr H nevertheless wished to proceed, saying the following:

"Although you have been made aware of these additional fund charges, you liked the idea of monthly rebalancing to capture gains and manage your risk profile, as well as the benefits of investing with major asset managers and increased levels of service."

Mr H accepted the recommendation and the transfer occurred on 20 September 2010.

Mr H complained to Quilter in September 2020, saying that his pension plan was significantly lower in value – by some £50,000 - than a family member who'd taken out a similar contract at the same time, and with a similar level of contributions. That family member had remained in the original contract instead of transferring several times as had been recommended by Quilter, Mr H said, and was also paying a lower ongoing advisory fee.

Mr H further said that he'd been informed that the average return on his pension plan had been 3.68% pa, but had previously been advised that it was averaging 6% pa.

Quilter declined to uphold the complaint, saying in summary that it was unlikely that the plan and adviser charges would have accounted for the differences in the fund values cited by Mr H. It also said that for an industry standard ongoing advisory fee of 1% pa, Mr H was receiving a comprehensive advisory service, but Mr H could discontinue that service if he wished.

It considered that the difference in fund values could be attributed more to investment performance, but this wasn't in itself something that it would investigate, it said, explaining that it wasn't possible to predict how different funds might perform. Whilst it acknowledged Mr H's disappointment with the return on his pension funds, it hadn't given any guarantees as to future performance, Quilter said.

Quilter added that it was unaware as to how the growth figure of 6% quoted by Mr H had originated, but it could confirm that the average rate of return on Mr H's pension funds had been 4.25% pa – it was his ISA which had achieved the lower figure of 3.68% pa.

Overall, Quilter considered that the advice which had been given to Mr H in 2003 and 2010 seemed suitable, and it could find no evidence that Mr H had queried any aspect of the financial reports which had been produced at the time, or since.

Dissatisfied with the response, Mr H referred the matter to this service. One of our investigators considered the complaint and thought that it should be upheld. In summary, he said the following.

Although there was limited information available from the initial recommendation in 2003, he thought that the financial planning report provided enough information to enable him to form a view on that aspect.

The investigator didn't have full details of the charges comparison undertaken at the time between the existing PPP and the SHP, but he noted that the charges on the PPP were 0.95% pa (higher if investment returns exceeded 5% pa), and those on the SHP couldn't have been higher than 1% pa.

He acknowledged that a transfer for the prospect of a wider range of funds might have appealed to Mr H – a fund switch wasn't possible within the PPP – but he didn't think the recommended transfer was appropriate as it didn't provide Mr H with the broader fund choice as indicated.

In support of this, the investigator noted that the replacement fund choices were in fact a narrower range of assets than that in which Mr H would already have been invested through the With Profits fund.

And so the investigator didn't think that the initial transfer was justified on the premise set out by Quilter.

As to the later recommendation to transfer in 2010, the investigator said that the review of Mr H's pension arrangements seemed to be driven by a new approach to services being offered by Quilter, as opposed to a specific objective of Mr H for his pension arrangements to be reviewed and alternatives considered.

It placed Mr H into a more complicated arrangement, which didn't seem consistent with Mr H's objectives or investment experience, the investigator said.

The charges associated with the SIPP were also significantly higher, with much lower benefits being illustrated at retirement on a like for like basis – a difference of some £20,000.

And although Quilter recorded that Mr H still wished to proceed with the transfer despite this, the investigator noted that Mr H wasn't a sophisticated investor and the evidence didn't support the position that he required the options provided by the SIPP, over and above those available with his existing provider.

The investigator considered that Mr H would have been better served by remaining where he was, given the significantly higher costs of transferring, and although he noted that the alternative options were outlined in the financial report, together with the risks of transferring, he didn't think that the provision of such information would render an unsuitable recommendation suitable.

Further, the investigator said, the reasons for discounting the alternatives were generic rather than specific to Mr H.

As such, the investigator recommended that a comparison be undertaken between the performance of Mr H's SIPP and one of our benchmark indices – the FSTE UK Private

Income Total Return Index - reflecting the level of investment risk which the investigator considered Mr H was willing to take. If this demonstrated a loss, the investigator recommended that Quilter pay this into Mr H's pension plan if possible, or otherwise directly to him with a notional deduction for income tax.

Quilter disagreed, however, saying that a suitability report alone, from 19 years ago, didn't provide enough information to enable the investigator to form a rounded and informed view on the transfer. It wasn't uncommon, Quilter said, for investors in the early 2000s to consider a switch from a With Profits fund following the decrease in bonus rates in the 1990s. This was especially the case if it represented the entirety of their pension provision.

As noted, an internal fund switch wasn't possible, and Quilter didn't think it was sensible for Mr H to have remained in the With Profits fund, despite the proposed argument that it exposed him to a wider range of asset classes. A With Profits fund also wasn't best suited for his regular contributions to capitalise on "pound cost averaging", it said.

The Norwich Union plan was a stakeholder arrangement and so was more competitively priced than the PPP – but no guarantee of outperformance was ever given, Quilter added. Over time, the merits of transferring away from the With Profits fund outweighed the potential disadvantages, and so was the suitable course of action.

That Mr H remained in the same recommended funds in 2010 indicated a "conservative" attitude to risk and one which had changed little over the intervening years, Quilter argued. It therefore didn't agree, if this aspect of the complaint were to be upheld, that it was fair or reasonable to suggest that the FSTE UK Private Income Total Return Index be used for comparison purposes, and Quilter suggested that a more conservative benchmark be used.

As to the second recommendation in 2010, Quilter said it was disappointed with the investigator's proposed outcome, but acknowledged that the SIPP was less competitively priced and that the clear benefits may have been lost on Mr H. He was, as noted by the investigator, not a sophisticated investor, despite the recommendation seeming suitable at the time.

The investigator replied, saying that he thought there had been some confusion regarding what he'd said about the initial transfer, in that he hadn't concluded that switching from the With Profits fund was unsuitable. Rather, he'd said that the replacement selection of funds hadn't offered the same breadth as the With Profits fund.

Taking into account the initial funds selected, and what Mr H was invested in by 2010, which included around 14% in a higher risk UK Ethical Fund, the investigator thought that Mr H was more likely than not to have been prepared to take some risk with his pension funds. He also noted that Mr H had been attributed a risk rating of "moderate" in 2010, which, given the smaller timeframe until retirement, was likely to be indicative of his risk attitude at the earlier point as well.

Quilter noted the investigator's position, but thought that, on the basis that he'd agreed that a transfer from the With Profits fund was suitable in 2003, the further points relating to fund selection were therefore irrelevant and would fall under "ongoing advice" and servicing.

As agreement couldn't be reached on the matter, it's been referred to me for review.

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.

Having done so, I broadly agree with the investigator's assessment, and for similar reasons. I've noted what's been said by all parties relating to the later transfer in 2010, and I agree. I don't think that the benefits of transferring to the SIPP would have been obvious to Mr H at the time – and moreover, given the costs involved and the associated projected difference in the fund value at retirement, it's also objectively difficult to see the overall benefit to Mr H of the transfer to the SIPP. As such I'll focus my attention on the more contentious point of the transfer in 2003.

I'd firstly say that I think it's arguable that Mr H ought to have retained his existing PPP in 2003, and within the With Profits fund. The most compelling argument for this is the MVA which was applied upon transfer – approximately £700 or just under 4% of the fund value. This wasn't an insignificant amount in the context of the overall fund value, and there would have needed to be a reasonable prospect of enhanced fund performance in the SHP over Mr H's remaining term to retirement to justify paying this.

But I also acknowledge the points which have been made around With Profits fund performance at the time, and that due to the downturn in financial markets after 2000, annual and terminal bonuses in such funds were being curtailed, in some instances to zero, with such funds effectively being operated as "closed books". I don't think that extreme scenario applied to Mr H's PPP, but the same principle, i.e. concern at the potential for With Profits funds to achieve reasonable levels of growth, would have applied in 2003.

Further, as far as I can tell, there was little ongoing cost difference between the PPP and the SHP, as the latter was designed to keep such costs to a minimum. And so I agree that a transfer from the With Profits fund, even taking into account the MVA, wasn't necessarily an unsuitable course of action at the time.

But I think the investigator has a point in saying that the objective of exposing Mr H's pension to a broader range of funds than was available within the PPP wasn't really achieved by the funds actually chosen by Quilter in the SHP – and I agree that it's arguable that the actual range of assets in which Mr H would have been invested within the PPP's With Profits fund was in fact greater.

And although I've noted what Quilter has said about the initial advice being suitable, and that therefore issues relating to fund choice become irrelevant, I'm afraid I disagree. The fund choice in the replacement SHP would have been an integral part of providing suitable advice to Mr H on transferring out of his existing arrangement.

As with the investigator, I've also noted that although there's no documented risk rating from 2003, Mr H's attitude to investment risk was recorded as being "moderate" in 2010. And I agree that, as Mr H was seven years closer to retirement, it's not unreasonable to infer from this that he might have had a similar risk attitude in 2003.

As such, I think Mr H is likely to have been willing to take some risk with his pension funds, and I think the benchmark index proposed by the investigator is probably the right one.

And so I think it would be fair and reasonable to uphold the complaint on the basis, as set out by the investigator, of the replacement funds, rather than the replacement policy in 2003.

Putting things right

To compensate Mr H fairly, Quilter Financial Limited should:

- Compare the performance of Mr H's SIPP with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Quilter Financial Limited should also pay any interest set out below.

- If there is a loss, Quilter Financial Limited should pay into Mr H's SIPP, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Quilter Financial Limited shouldn't pay the compensation into the SIPP if it would conflict with any existing protection or allowance.

- If Quilter Financial Limited is unable to pay the compensation into Mr H's SIPP, it should pay that amount direct to him. But had it been possible to pay into the SIPP, 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. As set out by the investigator, 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%.

- In addition, Quilter Financial Limited should pay Mr H £350 for the trouble and upset this matter has caused since he became aware there may a problem with his pension funds. As noted by the investigator, Mr H told us he was contemplating retiring in 2020 as he needed to take time away from work to look after his wife. But he said he was concerned he'd been financially disadvantaged due to the advice received from Quilter.

- Provide the details of the calculation to Mr H in a clear, simple format.

Income tax may be payable on any interest paid. If Quilter Financial Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's deducted. It should also give Mr H a tax deduction certificate in respect of interest if Mr H requests 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
Nucleus SIPP	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date of initial investment with Norwich Union (now Aviva)	Date of this decision	8% simple pa from the date of this decision to the date of settlement, if settlement isn't made within 28 days of Quilter

					being notified of Mr H’s acceptance of the decision

Actual value

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

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sums paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawals from the investment 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 you total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I’ve chosen this method of compensation because:

- Mr H was a moderate risk investor was therefore likely to be willing to accept some investment risk.

- 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 – a moderate risk investor.

- Although it is called an income index, the mix and diversification provided within the index is close enough to constitute a reasonable measure of comparison, given Mr H's circumstances and risk attitude.

- There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-ombudsman.org.uk/businesses/resolving- complaint/understanding-compensation/compensation-investment-complaints.

My final decision

My final decision is that I uphold the complaint and direct Quilter Financial Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 November 2022.

Philip Miller
Ombudsman