DRN-3685440

The complaint

Mrs L complains that Quilter Financial Services Ltd (Quilter) gave her unsuitable advice to switch her Personal Pension (PP) with her original provider (provider A) to a Self-Invested Personal Pension (SIPP) with another provider (provider B).

Mrs L is represented in her complaint by a Claims Management Company (CMC). But I'll only refer to her in my decision.

Mrs L's adviser worked for a different business when he advised Mrs L on the switch at the heart of this complaint. But Quilter are responsible for this complaint. And I'll only refer to them in my decision.

What happened

Mrs L started to contribute to her PP in May 1991. She invested her contributions in the With Profits fund. Her only other pension provision was her State Pension entitlement.

Mrs L first met her adviser on 24 November 2014 to discuss her financial position. I understand that at this time, her PP was a "paid up" policy, and that Mrs L appointed the adviser to be the servicing agent. I also understand that the adviser provider Mrs L with disclosure documentation and completed a fact find at this point.

Quilter said that at the time of the advice, Mrs L was unhappy with the way her PP with provider A had been performing.

At the time of the advice:

- Mrs L was aged 48
- She was married, with no dependants.
- She was employed and earned around £23,000 each year.
- She owned a property worth around £100,000.
- The PP with provider A was worth around £13,000, with a potential terminal bonus of £2,619.35 also being available if she transferred.
- Mrs L wanted £12,000 each year in retirement at age 67.
- Her estimated income at retirement, including state pension, was £7,400 each year.

Mrs L had a second meeting with her adviser on 24 April 2015. At this meeting, he advised her to switch her PP with provider A to a SIPP with provider B. And to invest 99% of her funds into a named fund, which he felt matched her "conservative" attitude to risk profile. The other 1% of her funds was to be held in the SIPP cash account. Mrs L's adviser said that the fund he recommended was aligned to Mrs L's risk profile. He said this was that of a conservative investor with limited investment experience and a low capacity for loss. Mrs L completed all of the relevant paperwork for the recommended switch.

On 17 November 2020, Mrs L complained to Quilter through her CMC. She felt that she'd received negligent advice. She said that, at the time of advice, she had no previous investment experience. And a low capacity for loss and attitude to risk. She said she'd suffered a loss as a result of the advice. She wanted to be put back into the position she would've been in but for the unsuitable advice.

Quilter issued their final response to the complaint on 18 December 2020. They didn't uphold the complaint. They made the following points:

- They had no record of Mrs L querying any of the details included in the Suitability Report dated 24 April 2015, which they said gave full details of the rationale behind the switch recommendation. They felt it was reasonable to assume that she was happy with the contents at the time.

- They felt that an investor didn't need to be a "sophisticated" investor to be considered suitable for a SIPP. They said this was because a SIPP could be used as a straightforward PP, but with additional investment options if required.

- They felt that they'd undertaken an adequate assessment of Mrs L's expertise, experience, knowledge and financial situation.

- They didn't agree that their recommendations were unsuitable for Mrs L's attitude to risk. Or that they'd failed to consider her capacity for loss.

- They didn't agree that they'd failed to assess Mrs L's investment objectives or consider her other assets.

- They didn't agree they'd failed to advise on the overall costs of the recommendation.

- They felt they'd complied with the Conduct of Business Sourcebook (COBS) rules.

Unhappy, Mrs L brought her complaint to this service.

Our investigator felt that the complaint should be upheld. He felt that the SIPP with provider B was more expensive than the PP with provider A. And noted that the cost of switching would effectively reduce the investment returns. He also noted that the investment fund the adviser had recommended with provider B had been available with provider A.

Our investigator didn't consider that sufficient clear advantages had been identified for the recommended switch to be considered appropriate. He recommended that Mrs L should be put back into the position she most likely would've been in if she'd not been given the unsuitable advice. He also felt that Quilter should pay Mrs L £300 compensation for the distress and inconvenience they'd caused.

Quilter strongly disagreed with our investigator. They made the following points:

- They acknowledged that Mrs L's SIPP with provider B was more expensive than her PP with provider A. But felt that no one could definitively say whether a With Profits Fund would outperform an alternative fund over the longer term.

- They said that provider A had paid a terminal bonus of £2,619.35, which wasn't guaranteed, as part of the transfer value. They felt that this meant the switch had effectively “crystallised” the bonus, which she may not have been entitled to at a later date.

- Quilter felt that Mrs L’s attitude to investment risk could’ve change over time. And if it had, she would’ve been able to take advantage of the wider fund choice with provider B.

- They said the adviser, who hadn’t been the servicing adviser for Mrs L since June 2018, felt that if Mrs L had responded to any of his requests for annual reviews, a fund switch would’ve been made away from original recommended fund. They said that he had highlighted a suitable alternative fund for Mrs L’s consideration. And asked her to contact him to determine if this would be suitable.

- They felt the adviser had provided Mrs L with suitable and appropriate initial advice and ample opportunities for ongoing servicing.

As agreement couldn’t be reached, the complaint has come to me for a 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’m going to uphold it. I consider that the advice was unsuitable. I’ll explain the reasons for my decision.

In 2009 the Financial Services Authority (now the FCA) published a report and checklist for pension switching that is still applicable. That checklist identified four main areas where consumers had lost out:

- They had been switched to a pension that was more expensive than their existing one without good reason.

- They had lost benefits in the pension switch without good reason. This could include guarantees or the right to take benefits at an earlier than normal retirement age.

- They had switched into a pension that didn’t match their recorded attitude to risk and personal circumstances.

- They had switched into a pension where there was a need for ongoing investment reviews but this was not explained, offered or put in place.

From what I’ve seen, Mrs L was encouraged to switch to a pension that was more expensive than her existing one. I’ve considered below whether there was good reason for that. I’ve also considered whether the recommended SIPP investment matched Mrs L’s recorded attitude to risk and personal circumstances.

I’ve seen no evidence that Mrs L lost benefits from the pension switch. I say this because there were no guarantees that she lost by switching. However, Quilter have argued that as the terminal bonus with provider A crystallised as part of the transfer value, Mrs L received a bonus that she may not have been entitled to at a later date. They said this offset the increased charges that she incurred through the switch.

I’ve carefully considered this point. And although I agree that the terminal bonus with provider A wasn’t guaranteed, I don’t agree that a terminal bonus wouldn’t have been paid at the maturity date, or any other transfer date. Therefore I'm not persuaded that it would be fair or reasonable to use the terminal bonus to offset the increased charges of the switch. As I don't consider that any benefits were lost – or gained – as a result of the transfer, I've not considered this point any further in my decision.

I've also not considered the final bullet point above in any detail. This is because I consider that ongoing investment reviews were discussed to a suitable degree in the Suitability Report. I say this because the report recorded that Mrs L had agreed to a biennial review of her SIPP.

Quilter gave the following reasons for their recommendation to switch to the SIPP with provider B:

- Mrs L wanted to move away from With Profits investment.

- Provider A only offered 79 funds, whereas provider B offered a wider variety of fund choices.

- Provider A didn't offer her any fund choices that aligned with her attitude to risk.

- The charging structure was identical to those in the PP with provider A, although the advice charges would reduce growth in the SIPP by 2.5% each year.

From what I've seen, Mrs L was correctly identified as a cautious or conservative investor. This meant she didn't want to take on much investment risk.

I understand that at the time of the advice, Mrs L was unhappy with how her With Profits fund with provider A had been performing. As our investigator said, such an investment was consistent with her conservative attitude to risk. The fund had been receiving an annual bonus over the years. Since 2009, part of Mrs L's fund had received an annual bonus of 3.75% and part received 5%. While the bonuses weren't guaranteed, they couldn't be taken away once they'd been added.

The fund Mrs L's adviser recommended she moved to within the new SIPP could also reasonably be classified as a conservative fund. Therefore it's extremely hard to see how Mrs L could hope to achieve the significantly improved fund growth she wanted – especially after the initial charge had reduced the fund growth by 2.5% each year – if she simply switched to another conservative fund.

Mrs L's adviser noted that there were 79 funds available in provider A, but that more were available with provider B. And that the fund he recommended with provider B was a regulated fund, which was suitable for a retail investor.

I've seen no evidence that Mrs L needed access to more funds at the time of the advice. But Quilter also said that Mrs L's attitude to investment risk could've changed over time. And that if it had, she would've been able to take advantage of the wider fund choice with provider B.

I've carefully considered this point. But I don't agree that there was any need for Mrs L to transfer at the time of the advice simply because there might be a time in the future when she needed more investment choice. In that case, I'm satisfied that she could've switched at the point that her need for more funds arose.

The Suitability Report stated that provider A didn't:

"… *offer you any fund choices that align with your attitude to risk, therefore not allowing you* *to select a fund that matches your requirements…"*

From what I've seen, provider A clearly could offer fund choices that aligned with Mrs L's attitude to risk. For one thing, she was already invested in a fund which I'm satisfied matched her investment risk profile. And for another, provider A's Pension Fund list showed that the named fund the adviser recommended with provider B, was in fact available through provider A. So Mrs L's adviser could've made the same investment recommendation without the need for an expensive switch.

I've seen no evidence that Quilter considered the option of remaining with provider A, but moving to a different fund. And they certainly didn't provide Mrs L with the cost comparison between that option and a transfer to provider B.

There were various options that Quilter needed to consider in deciding what was most suitable for Mrs L. These included:

- leaving her PP where it was, invested in the same or different funds.

- moving to a stakeholder pension or other PP that may've offered lower charges.

- moving to a SIPP.

Quilter's Suitability Report doesn't appear to give any consideration to Mrs L remaining where she was. The report stated that her current arrangement couldn't meet her investment requirements. But I've seen no evidence that the report considered other potential investments in the existing arrangement.

The Suitability Report stated that the charging structure in the recommended plan was "*identical*" to the PP held with provider A. But the report went on to explain that this was before the agreed charges for the recommendation had been deducted. These charges were an arrangement fee of £1,500 and an annual 1% charge for ongoing reviews, which were said to reduce the fund growth by a net 2.5% each year up to Mrs L's retirement. I consider that this clearly showed that the recommended SIPP was considerably more expensive than the PP with provider A. Therefore I'm of the view that the report wasn't accurate on this point.

After our investigator issued his view, Quilter acknowledged that Mrs L's SIPP with provider B was more expensive than her PP with provider A. But said that it wasn't possible to state with certainty whether a With Profits Fund would outperform an alternative fund over the longer term.

It's impossible to disagree with Quilter on this point. But I consider that it was more likely than not, given the impact of Quilter's charges on the net investment returns from their recommended fund, that it wouldn't have provided Mrs L with sufficient improved performance to make the switch worthwhile.

The end of the Suitability Report contained a paragraph on stakeholder pensions. It said:

Stakeholder pensions are low cost personal pensions which must meet minimum standards laid down by the Government about charges, flexibility and the regular information you must be given. Stakeholder pensions have charges capped at 1.5% of the value of your pension fund each year for the first 10 years and 1% thereafter. If you choose to transfer into or out of a stakeholder pension, or you stop paying your contributions for a time, the provider will not charge you for doing so.

But the report didn't consider the option of moving to a stakeholder pension. Instead, it stated the following:

I have recommended an Individual Personal Pension Plan rather than a Stakeholder Pension Plan because the new platform offers the investment flexibility and potential, by virtue of the internal and external investment fund options explained earlier, that is important to you and based on which I have recommended [fund name].

Fund switches are also available under [provider B's SIPP] providing yet more flexibility so that as your fund grows, and as your outlook and so attitudes change, your portfolio can reflect your wants, needs and objectives by virtue of genuine investment diversification using a range of external fund managers.

The report used the reasons above to explain why the adviser had felt that the stakeholder route wasn't an appropriate option to meet Mrs L's objectives. But I don't agree that these were convincing reasons. I say this because Mrs L had no immediate need for investment flexibility. So I'm not persuaded that there was any need for Mrs L to move into a SIPP for the reasons the adviser gave here.

Although the report stated that stakeholder pensions were low cost, there was no comparison to help Mrs L understand how much more expensive the recommended SIPP was than a stakeholder pension. Overall, I'm not persuaded that the Suitability Report gave Mrs L enough information about the option of moving to a stakeholder plan. Instead, it focussed on the SIPP the adviser recommended.

And there's no evidence in the report that research had been conducted on stakeholder alternatives. Instead, the report favours the SIPP option on the basis that Mrs L would then have further investment flexibility. And the opportunity to invest in the recommended fund. From what I've noted earlier, she could've invested in that fund with provider A.

I acknowledge that Quilter have said that the SIPP gave Mrs L access to a wider range of funds than her existing pension. I agree that it did. But I also consider that the adviser had a responsibility to give Mrs L suitable advice. I don't agree that he should've recommended the switch to the SIPP simply because Mrs L may have wanted access to more funds at some point in the future, if her attitude to risk changed.

I say this because the adviser only actually recommended that Mrs L invested in a single fund. This fund could've been accessed through provider A, so there was clearly no need for the switch in respect of that investment. And the advice was given long before Mrs L's retirement age. I'm of the view that Mrs L had no need of the additional fund choices at the time of the advice. If she'd decided she wanted to a wider range of investment options at a later date, she could've arranged a switch at that point, when it would've been more likely she'd have known what she needed.

As there was no obvious benefit to Mrs L of the switch, I'm not persuaded that it was worth the £1,500 initial charge. This amounted to almost 10% of the fund value. In order for the advice to be suitable, Quilter needed to justify their recommendation against other possible options.

Quilter said that if Mrs L had responded to any of their adviser's requests for annual reviews, he could've advised her to switch away from the fund he'd initially recommended in the SIPP with provider B. They provided this service with details of the fund factsheets the adviser had sent Mrs L in 2017. And noted that their adviser had ensured Mrs L was receiving regular newsletters from him. Quilter said that he'd highlighted a suitable alternative fund for Mrs L's consideration. And had given her ample opportunity to contact him to review her pension.

They felt their adviser had provided Mrs L with suitable and appropriate initial advice and ample opportunities for ongoing servicing.

I've thought carefully about Quilter's points. While I acknowledge that their adviser took reasonable steps to keep in touch with Mrs L, I'm still of the view that the initial advice was unsuitable. I say this because I don't consider that the reasons given for switching were sound. From what I've seen, there was no reasonable potential to be better off under the new arrangement, given the initial charge and the higher ongoing charges, and the fact that Mrs L was a conservative investor. As such, Mrs L would need to have a greater potential for gain - without taking more investment risk - than a consumer with a high attitude to risk.

Quilter should've provided Mrs L with enough information for her to be able to understand and decide whether to accept their recommendation. But, from what I've seen, they didn't provide her with a proper comparison of her existing arrangement and their recommendation. They recommended that the switch was suitable on the basis that Mrs L would have access to more funds, but I've seen no evidence that she needed those. Overall, I'm not persuaded that the recommendation to transfer to a SIPP was in Mrs L's best interests. I'm of the view that the advice to transfer Mrs L's existing PP to a SIPP with provider B was unsuitable. And I uphold the complaint.

I also consider that the unsuitable advice, and the impact it has had on Mrs L's retirement planning, has caused her distress. Therefore I consider that Quilter should also pay Mrs L £300 compensation for the distress the unsuitable advice caused. here

Putting things right

Fair compensation

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

I take the view that Mrs L would have remained with her previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs L's circumstances and objectives when she invested.

What must Quilter do?

To compensate Mrs L fairly, Quilter must:

- Compare the performance of Mrs L's investment 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.

- Quilter should pay into Mrs L's pension plan to increase its value by the total amount of the compensation and any interest. 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 total amount into Mrs L's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount 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 Mrs L won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mrs L's actual or expected marginal rate of tax at her selected retirement age.

- It's reasonable to assume that Mrs L is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs L 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 to Mrs L £300 for the distress and inconvenience caused.

- As I understand that Mrs L paid the initial fees and ongoing charges through a deduction from her investment, the comparison above will automatically refund any fees if there is a loss. However, if Mrs L paid any adviser fees directly, these should be repaid together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *notional value* can be offset against any such fees with interest.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
PP with provider A	No longer in force	Notional value from previous provider	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

Notional Value

This is the value of Mrs L's investment had it remained with the previous provider until the end date. Quilter should request that the previous provider calculate this value.

If the previous provider is unable to calculate a notional value, Quilter will need to determine a fair value for Mrs L'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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs L wanted Capital growth with a small risk to her 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 her 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 Mrs L's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs L into that position. It does not mean that Mrs L would have invested 50% of her 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 Mrs L could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Quilter Financial Services Ltd should pay the amount calculated as set out above.

Quilter Financial Services Ltd should provide details of its calculation to Mrs L in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 31 October 2022.

Jo Occleshaw
Ombudsman