

The complaint

Mr and Mrs G have complained about the advice and service they received from a predecessor company which is now an appointed representative of Quilter Financial Limited ('Quilter').

What happened

Mr and Mrs G complained in March 2020 about the advice they had received in 2011. They had been advised to sell some of their then current holdings. The subsequent funds reinvested into underperformed those previously held – a difference of around £24,000. Mr and Mrs G also said they hadn't received the financial reviews they should have done for which they have been paying a servicing fee.

Quilter treated Mr and Mrs G's complaints separately. It responded on 29 April 2020 to both complaints. In those responses it said;

- Mrs G's ISA was invested into a cautious managed fund which matched her agreed investment objectives. This was later switched to a balanced risk portfolio like Mr G's attitude to risk.
- For Mr G it said that as well as their main residence he also held a buy to let property, had a cash ISA, unit trusts, and stocks and shares PEP. He wanted advice on a lump sum of £10,680 which was currently invested in a unit trust. His attitude to risk was recorded as balanced.
- The sale proceeds of Mr G's unit trust were to be split between ISAs for Mr and Mrs G plus another transfer of £15,000 from an existing PEP – all invested into managed funds.
- Those funds were transferred to cash in early 2019 as the portfolio of funds invested into was taken over by another management company. This had protected Mr and Mrs G during the stock market downturn caused by the pandemic.
- Despite there being contact with Mr and Mrs G by the adviser it was accepted that formal reviews hadn't been carried out since 2017. It acknowledged this and offered £317.52 for Mrs G and £1,170.62 for Mr G.
- The investments made only represented a small part of Mr and Mrs G's overall portfolio and having held several buy to let properties between them, shares and other investments meant Mr and Mrs G were relatively experienced investors.
- £250 each was also offered for the trouble and upset Mr and Mrs G may have been caused.

In Mr and Mrs G's response to Quilter of 10 May 2020 they didn't agree with Quilter's offer. Amongst other points they reiterated the purpose for which they sought advice was to obtain a better performing investment with a similar risk to the ones they already held. And that they were both balanced investors hence Mrs G's investment being switched.

Remaining unhappy with the outcome, Mr and Mrs G brought their complaint to the Financial Ombudsman. Our investigator concluded the complaint should be partially upheld. He said;

- The recommendations given to Mr and Mrs G were suitable for their needs at the time. It wasn't a fair comparison between the previously held investments and the ones Mr and Mrs G were advised to invest into as they were exposed to different levels of risk.
- The funds were converted to cash in early 2019. The investigator couldn't see any evidence that Mr and Mrs G were told about this and therefore the service they received from Quilter fell short. But this protected Mr and Mrs G from the downturn in the markets caused by the pandemic.
- Quilter had offered to refund the servicing fees for 2018 and 2019 but the investigator couldn't see there had been any reviews between 2013 and 2016 and those should be refunded also.
- The offers of £250 for both Mr and Mrs G was fair and reasonable.

Quilter accepted the investigator's opinion.

Mr and Mrs G asked how much the refund of the servicing fees would amount to. They also made the following points;

- They maintained the redress should be significantly more rather than a reimbursement of fees.
- They had sought advice about alternative investments to the funds they held that would generate a better return for a similar risk. They had been advised they should transfer their investments to a fund recommended by the adviser which would better meet their objectives. In practice that investment badly underperformed so was contrary to their instructions.
- Annual reviews would have provided a focus for the lack of performance. They weren't notified of the transfer to cash into a non-interest-bearing account which was contrary to their investment objectives.

As the complaint couldn't be unresolved, it was passed to me for a decision. I issued my provisional decision explaining that I intended on partially upholding the complaint and detailed how the matter should be put right but I asked both parties to give me anything further they wanted to consider before I issued my final decision. Here's what I said;

"Mr and Mrs G's circumstances and the investments made

Quilter has given us a copy of the Financial Report that dated 28 November 2011 further to the meeting that was had with the adviser and Mr and Mrs G. The Report provided details of Mr and Mrs G's circumstances at the time.

Mr G had taken some time away from work to look after Mrs G who hadn't been well for a while. Mrs G was recorded as being employed – work which I assume she intended on returning to when she had sufficiently recovered. Mr and Mrs G had some investments, but this was the first time they were seeking advice. The adviser was to review their current investments to provide capital growth over the medium to long term.

For Mr G's existing investments, he held a stocks and shares PEP which was valued at £15,658 and its risk rating was deemed to be 'acquisitive' by the adviser. The

adviser thought this didn't reflect Mr G's circumstances and objectives and recommended it be transferred and reinvested more suited to his risk profile.

Mr G also held three collective investments totalling £17,837 and which were all risk rated as 'acquisitive'. It was recommended that Mr G encash part of the investment (two of the collectives) as again they didn't reflect his circumstances and objectives. For reinvestment, the proceeds were to be used to fund Mr and Mrs G's ISAs for 2011/12.

Mr G was recorded as having a 'balanced' attitude to risk and Mrs G was 'cautious'.

The investment recommendation reasons were outlined in detail and carried out in December 2011. Mr and Mrs G each invested £5,340 into their respective ISAs with proceeds from Mr G's taxable portfolio. Mr G transferred his non-taxable account portfolio which had been valued at around £15,000 and which was sold and reinvested. So, in total approximately £25,680 was invested into managed portfolios which offered various underlying funds. Mr G's 2011/12 ISA was invested into a balanced managed sector which had a risk rating of balanced and Mrs G's ISA into the cautious managed sector with a risk rating of cautious. Mr G's existing non-taxable portfolio was also invested with a balanced attitude to risk.

I note that after the investments were made, Mrs G switched out of the cautious fund and into the balanced fund to be in line with her husband's investments in April 2012.

Mr and Mrs G's attitude to risk

The Financial Report states that risk and risk versus reward had been discussed at some length and Mr and Mrs G had completed a risk profiling questionnaire which was designed to assess their knowledge, experience, attitude towards investment risk and capacity for loss. The outcome was that Mr G was deemed to have a balanced risk profile which was defined as;

"A balanced investor is looking for a balance of risk and reward, seeking higher returns than those available from a high street deposit account and willing to accept a certain amount of fluctuation in the value of their investment as a result. However, they would feel uncomfortable if their investments were to fall in value significantly in one year."

Mrs G's risk profile was deemed to be cautious;

"A cautious investor is looking for investment where the return should be slightly better than that available from a high street deposit account and accepts that the value of the investment fall as well as rise. They would feel uncomfortable, however, if their investments were to rise and fall in value very rapidly."

As mentioned above in subsequent correspondence in early 2012, despite Mrs G's initial cautious attitude to risk, this was to be changed to balanced and her investment was altered to reflect the balanced approach.

The advice

As evidenced by the Financial Report I'm satisfied that Mr and Mrs G's attitude to risk and investment objectives were discussed and I don't find the conclusions reached by the adviser to be unreasonable. However, Mr and Mrs G hadn't received any

advice before and which they were now seeking. So, I've considered whether what was recommended to them was right for their identified circumstances and financial objectives.

One of Mr and Mrs G's main arguments is that the investments they were advised to invest into underperformed those they previously held. So, I've considered the overall advice – whether it was reasonable for the adviser to have recommended the investments they did hold to be sold as well as whether the funds reinvested into were suitable for their needs.

It's not the role of the Financial Ombudsman to risk rate funds. But I have reviewed the reasons for the adviser to conclude that some of the investments held should be sold after discussion about and identification of Mr and Mrs G's respective attitudes to risk.

The adviser identified their previous investments as being 'acquisitive'. According to the definitions of the business, an 'acquisitive' investor is defined as being an;

“...Investor is willing to accept an unlimited level of risk on their investment in return for higher returns in the long run. They are willing to accept a good amount of short-term fluctuation in the value of their investments as a result. They would feel comfortable if their investments were to fall in value more than one quarter in one year and may well see this an ideal time to purchase investments because of their cheaper asset values.”

So, on the basis of the adviser's opinion, Mr and Mrs G's then current assets didn't match their attitude to risk as they were too high risk for them bearing in mind the business' definitions of Mr and Mrs G's balanced and cautious risk profiles I've quoted above. As a result, it doesn't seem unreasonable to have advised Mr and Mrs G to sell those investments and reinvest into funds more suitable for their identified risk profiles.

The two funds selected within the managed portfolio were balanced for Mr G and cautious for Mrs G – albeit changed to balanced shortly afterwards – which were in line with the attitudes to risk that had been identified for both. So again, I don't find this to be an unreasonable recommendation.

And I don't agree with Mr and Mrs G's argument about the funds invested into underperforming those previously held and they should receive financial compensation. Those funds were identified as exposing Mr and Mrs G to a risk they were not prepared to take – they were a higher risk. And because of those previously held investments being able to take a higher risk they could potentially provide higher returns. Which they did in this instance. But that doesn't lead me to conclude the advice was wrong. The advice was given to better reflect Mr and Mrs G's attitude to risk.

Just because the investments chosen didn't perform as well as other investments, doesn't necessarily mean the advice to invest into them wasn't right. I note its recorded in the Financial Report that;

“we discussed at some length your attitude to risk and in particular the relationship between risk and reward. The more risk you are prepared to accept, the greater the long term rewards will often be. It is important to maximise your return, but also ensure you are not exposed to a level of risk

that is unacceptable to you. It is therefore imperative that your attitude to risk and maximum capacity for loss is clearly identified at outset.”

I'm satisfied the Financial Report is a reflection of what was discussed during the meeting between the adviser and Mr and Mrs G. And Mr and Mrs G saw that report so I think it's reasonable for me to conclude that the relationship between risk and reward was discussed so I think Mr and Mrs G knew they were reducing their exposure to risk by following the advice but were losing the potential for an increased reward.

So overall, I don't think the advice to sell the investments that had been identified to be of a higher risk than Mr and Mrs G were willing to take and reinvest into funds that exposed them to a lower risk to be unreasonable.

Transfer into cash in 2019

In Quilter's letters to Mr and Mrs G it said that the adviser had confirmed with Mr and Mrs G in early 2019 that their funds were transferred to cash by the business that had taken over the management of Mr and Mrs G's funds. The adviser said he emailed Mr and Mrs G on 19 March 2019 to say he would be touch in the first six months of 2019 but was available if they needed to speak in the meantime, but no contact was made. The adviser did meet with Mr and Mrs G in March 2020 and at this point Mr and Mrs G made their complaint so was unable to carry out any further recommendations until the outcome of that was complete.

Mr and Mrs G told us that they didn't receive the adviser's email of 19 March 2019 so weren't aware their funds were in cash – and potentially which they would have challenged. From what I've seen Mr and Mrs G wouldn't have been given a choice about the switch into cash and I note they were made aware that this had happened in Quilter's responses to their complaint in April 2020.

That being said I haven't seen a copy of the confirmation email that the adviser sent to Mr and Mrs G in March 2019 and Quilter hasn't been able to provide a copy when I asked for one. Mr and Mrs G kindly checked all of their received emails from around that time but couldn't find anything so on balance, I think it more likely an email wasn't sent to Mr and Mrs G or at least it wasn't received by them.

The funds were switched to cash in September 2018 and January 2019 and I think it most likely they would have reinvested the cash at some point after that. Quilter has said that ultimately Mr and Mrs G were protected from the significant market downturn which I note started in around February 2020 and which continued to be volatile for at least a year. But while Mr and Mrs G may have been protected from the significant downturn that doesn't necessarily mean they are in either a better or worse position. I can't say for certain that Mr and Mrs G benefited by staying in cash.

So, while I can't know what Mr and Mrs G would have done with their cash, they have told us they would have reinvested it. I think it more likely they would have done and in line with their balanced attitude to investment risk. So, this needs to be put right, the method for which I outline below.

Annual reviews

I note from the Financial Report that there is a section entitled 'Regular Reviews' which highlighted the importance of a regular financial review and that the adviser would "review your investment performance on an annual basis and to contact you

annually to carry out a financial check-up.” These did not happen as they should have done.

Mr and Mrs G calculate that the monthly fee had averaged around £30 since they had transferred their investments. Quilter has already offered a refund £317.52 for Mrs G and £1,170.62 for Mr G for the missed financial reviews. And the investigator concluded that this should be extended to years 2013 to 2016 as well. Quilter accepted this.

I agree that Mr and Mrs G should be refunded the costs they incurred for fees when the service they were paying for wasn't provided. So, Quilter should make this calculation and pay the refund.

Quilter has offered Mr and Mrs G £250 each for the trouble and upset they have been caused. I have considered this and borne in mind our long-standing approach to awards for distress caused. Clearly Mr and Mrs G have been inconvenienced and I think an award of £250 each to be a fair reflection for the distress and inconvenience caused to them.

Overall, and taking all of the above into consideration, and in the individual circumstances of this complaint, I don't have anything to conclude that the advice given to Mr and Mrs G was unsuitable for them bearing in mind their personal and financial circumstances, attitude to risk and investment requirements. It follows that I don't uphold Mr and Mrs G's complaint about the advice they were given.

But Quilter should pay redress for the missed financial reviews as well as £250 to both Mr and Mrs G for the upset they have been caused. Quilter should also pay compensation for Mr and Mrs G not being informed of the switch of their funds to cash.”

To put the matter right I said that Mr and Mrs G should be put as close to the position they would probably now be in they had been made aware of the switches to cash in September 2018 and January 2019. I thought Mr and Mrs G would have invested differently if they had known about the switches to cash.

Mr and Mrs G told us they originally intended on waiting for the outcome of their complaint with the Financial Ombudsman before taking any action with the cash but had transferred the cash into cash ISAs in September 2022 in the hope of earning more interest.

I said Quilter should compare the performance of Mr and Mrs G's investments after they were switched to cash – so from September 2018 and January 2019 – with that of the FTSE UK Private Investors Income Total Return Index plus interest and pay Mr and Mrs G £250 each for the trouble and upset they had been caused and refund the annual review fees as I had already detailed.

In response to my provisional decision Mr and Mrs G said that while it wasn't the outcome they were hoping for, they accepted my provisional decision unless Quilter made any further representation. We didn't receive any reply from Quilter.

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.

As neither party to the complaint has given me anything further to consider, I see no reason to depart from my provisional decision. So, I confirm those findings and reiterate the compensation that Quilter should calculate.

Putting things right

To compensate Mr and Mrs G fairly, Quilter must:

- Compare the performance of Mr and Mrs G's investments after they were switched to cash – so from September 2018 and January 2019 – with that of the benchmark shown below and pay the difference between the *fair value* and the actual value of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Quilter should also pay interest as set out below.
- Pay Mr and Mrs G £250 each for trouble and upset they have been caused and refund the annual review fees as detailed above.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Cash	No longer exists	FTSE UK Private Investors Income Total Return Index	Dates funds switched to cash	Date cash 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.

Fair value

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

Any withdrawal, income or other distributions paid out of the investments 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 to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs G wanted Income with some growth and were 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 a mix of diversified indices

representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called Income Index, the mix and diversification provided within the Index is close enough to allow me to use it as a reasonable measure of comparison given Mr and Mrs G's circumstances and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

My final decision is that I partially uphold Mr and Mrs G's complaint and Quilter Financial Limited should calculate and pay compensation to them as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 31 January 2023.

Catherine Langley
Ombudsman