

The complaint

The estate of the late Mr M1 complains that Quilter Financial Planning Solutions Ltd (Quilter) gave unsuitable advice in relation to the purchase of a fixed term annuity. He states that his father shouldn't have been advised to take out a fixed term annuity without any death benefits.

For the sake of clarity, I have referred to the client throughout as Mr M1, and his son (the person bringing the complaint and representative of the client's estate) as Mr M2.

What happened

In August 2015, Mr M1 was aged 65 and retired. He had a paid up Royal London personal pension arrangement valued at just over £120,000, and was seeking to take tax free cash and commence taking a guaranteed income in retirement.

He met with an adviser at Positive Solutions (now Quilter Financial Planning Solutions Ltd, which I will refer to from here on as Quilter) in order to arrange this. There is a meeting note on file following this meeting.

Mr M1 was already in receipt of his state pension and two defined benefit pensions, providing a total annual income of around £14,000. The expenditure breakdown on file demonstrates that this was sufficient to meet his essential expenditure but he required additional income to meet his non essential expenses.

The meeting note states that a number of options were discussed, however Mr M1 was not prepared to accept any risk that his pension funds or the income derived from them, would fall in value.

An "*at retirement*" questionnaire and risk profile questionnaire were completed, and Mr M1's objectives were recorded as being to take tax free cash and income, and if possible to leave some of his fund to his children in the event of his death. These objectives were reconfirmed in the suitability report. His attitude to risk was assessed as being balanced.

Quilter made a recommendation to Mr M1 for the Protected Retirement Plan from LV= as offering the "*best combination of annual income and guaranteed maturity value for you*".

The Protected Retirement Plan was a plan designed to provide Mr M1 with a fixed level of income for a specific term. If he survived until the maturity date of the plan (five years in Mr M1's case), a guaranteed maturity value would be paid if selected at outset. The recommendation discounted lifetime annuities as lacking the flexibility required, asset backed annuities as they lacked the guarantees of a Protected Retirement Plan, and standard drawdown products as they "*have flexibility but involve investment risk without guarantees*". The Protected Retirement Plan would offer Mr M1 the maximum tax free cash sum and an annual income of £4,690 for a five year term. Level and increasing annuities were considered. However increasing annuities were discounted as the report states that the client had confirmed that the initial income available would be insufficient for his needs, however it did not give an indication of the client's additional income need. There is no

illustration on file to indicate how much income would have been available with other options having been applied.

Following the recommendation Mr M1 completed the application form and the Protected Retirement Plan paid an income until Mr M1 died in October 2020, shortly before the fifth anniversary of the plan. The plan did not pay any death benefits. This was in line with the terms set up.

Mr M2 states that when he contacted the adviser at Quilter he was told it was “fortuitous that his father had opted for a Protected Retirement Plan as the pension value was guaranteed” which Mr M2 states is consistent with the way that Mr M1 had explained the policy to his three children. Mr M2 states that Mr M1 believed that his pension plan was secure and that the value would pass to his estate.

The adviser who made the recommendation and who spoke to Mr M2 was at the time of the advice in 2015 an appointed representative of Quilter, however from September 2020 has been registered as directly authorised which explains why Quilter do not have a record of calls made following Mr M1’s death in October 2020 between Mr M2 and the adviser.

Following this, Mr M2 complained to Quilter about the unsuitable advice provided to his father, Mr M1, specifically the fact that the plan didn’t have any death benefits. Quilter did not uphold the complaint, so Mr M2 referred the complaint to this service. Our investigator’s view was that Mr M1 was made aware of the lack of death benefits. Mr M2 did not agree with these findings and therefore the complaint has been referred to me for a decision.

Provisional Findings

I issued a provisional decision in January 2022 in which I made the following findings.

I have primarily considered the most significant issue of whether the recommendation made to Mr M1 was appropriate for his needs and circumstances at the time of the advice. Based on the evidence available, I do not agree that the recommendation of a short term annuity with the potential for the entire fund to be lost in the event of Mr M1’s death was an appropriate recommendation for reasons I will outline here.

As stated above, Mr M1 approached the Quilter adviser in the event of his retirement in order for a recommendation to be made that would meet his needs. There is nothing in the file to indicate that Mr M1 had any previous investment knowledge or experience, and as stated above, he appears to have been relatively cautious (leaning towards balanced). The expenditure analysis on file indicates that he lived relatively frugally.

Mr M1’s objectives as stated in the “at retirement” questionnaire included him wanting tax free cash and income, to have the certainty of knowing what he can spend but with the flexibility of not being locked in for his lifetime, and if possible to leave some of his funds to his children in the event of his death.

The suitability report at page 2 confirmed “you would like to use the funds in such a way that the fund value will be preserved as much as possible for the eventual benefit of your children.”

Page 3 of the suitability report explains the (at that time) new pensions regime, and outlines the flexibility of being able to draw funds directly from a personal pension rather than having to purchase an annuity – it states the it was “agreed that your priority is to achieve a

guaranteed income whilst preserving your pension fund and that as a result, drawing from your fund in this way is not suitable for you”.

On page 6, within the section entitled “Choosing the right product”, the suitability report states “you want a product which combines both stability and flexibility, both now and in the future.” The section references the fact that asset backed annuities have the potential for future growth, but lack the guarantees of the Protected Retirement Plan. This section also states that standard drawdown products had been discounted because they “involve investment risk without any guarantees.”

Taking into account the above objectives and priorities for Mr M1’s pension fund, it cannot be demonstrated that the version of the Protected Retirement Plan that was recommended (with no element of protection in the event of death) met these objectives.

Mr M1 is stated to be a balanced risk investor, as assessed following a risk profile questionnaire. However having reviewed the answers provided by Mr M1, these appear to suggest that he would have been likely to have been more comfortable with a more cautious approach. He has provided the following responses to indicate this;

- People who know me would describe me as a cautious person “Agree”*
- I generally look for the safest type of investment, even if that means lower returns “Agree”*
- When it comes to investing I’d rather be safe than sorry “Agree”*
- I am concerned by the uncertainty of stockmarket investment “Agree”*

This was supported by the statement in the meeting notes stating that Mr M1 was not prepared to take any risk that his pension funds or the income derived from them would fall in value.

Mr M1 was in good health at the time of the advice, with no indication his life expectancy would be limited. I have therefore considered whether Mr M1 would have considered the additional income and higher guaranteed maturity value available to him with no protection added to his policy to be worth the risk of losing the total value in the event of his death within five years. As stated above, there are no illustrations on file showing how much difference adding the protection would have made to the income available. It is therefore not possible to accept that Mr M1 was in a fully informed position at the time he proceeded with the recommendation. However, I don’t consider it likely that adding the death benefit would have reduced the income from the policy to a level Mr M1 would have considered unacceptable given his attitude to risk and overall objectives. It is noted that Mr M1’s essential expenditure was already covered by his income and the additional income available from this annuity was intended to provide for non essential spending. I therefore consider it to be unlikely that Mr M1 would have opted to take such a significant level of risk in order to achieve an uplift in his additional income.

There are no illustrations or comparisons on file suggesting that Mr M1 was made aware of the level of income that would have been available to him if he had included the death benefits within his Protected Retirement Plan. Quilter have been given the opportunity to provide these but have only provided illustrations for the plan recommended.

Taking into account the above, I do not believe that the recommendation made was suitable for Mr M1 when considering his objectives and low tolerance for risk and therefore uphold the complaint made by Mr M2 on behalf of Mr M1’s estate.

I have also taken into account the assertions previously made that the documentation provided did outline to Mr M1 that the Guaranteed Maturity Value was only payable if he survived five years, and he should reasonably have been aware of it.

Following the death benefits section, is a paragraph titled “Guarantee Periods and Payment Protection”. This references additional death benefits and states that the greater the level of protection included, the greater the cost to buy. It states that Mr M1 did not want to include any additional death benefits because he wanted the plan to provide as much income as possible. It states “you accept that if you die during the payment term, LV= will pay out nothing to your estate, regardless of how much of the fund remains”.

There is no doubt that the information provided did include statements outlining that the fund would be lost in the event of Mr M1’s death prior to the five year anniversary of the plan. However, I don’t think the information provided was comprehensive because Mr M1 wasn’t informed of the financial implications of taking death benefits – so he was never put in the position of being able to make an informed decision about the trade-offs he was making. If he had been I’m satisfied he would have considered taking lower income in return for death benefits as being an appropriate compromise and in keeping with his overall objectives.

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.

Both Mr M2 and Quilter have responded to my provisional decision. Mr M2 has accepted my decision, although Quilter have disagreed with my view and added a number of comments, which I address below.

Quilter have stated that due to Mr M1’s health at the time of the advice and the fact that there was no indication that his life expectancy would be limited, they do not believe his death would have been a significant risk at that time. I don’t think this is quite the right way to look at things here. Whilst there was nothing to indicate that Mr M1’s death during the first five years of the policy could reasonably have been foreseen, it does not remove that fact that the potential for total loss in the event that he did die remained a risk, and the repercussions of his death would have been significant in terms of what he would leave to his estate. This is not a risk that I believe was appropriate for Mr M1 to have been advised to take given his circumstances, objectives and attitude to risk.

Quilter have also stated that Mr M1 was in an informed position from the outset, and that due to his frugal lifestyle they disagree that he would have wanted to pay more to secure death benefits within the plan. I do not disagree with Quilter’s statement that the documentation provided did outline that the benefits under the policy would cease in the event of his death, however cannot find evidence to support the fact that he was in a fully informed position. There are no quotes or comparisons available to indicate that Mr M1 was made aware of the cost of including the death benefits. So whilst I accept Quilter’s point that Mr M1 may well have known adding death benefits would have come with a cost, I haven’t seen anything that makes me think he was given any sort of indication of what that cost would be. In other words, I’m not satisfied Mr M1 knew how much extra income he was getting by giving up death benefits and whether he would have been happy that the extra income was a risk worth taking. I would also add that disclosure does not absolve an adviser of their duty of care to make a recommendation that meets a customer’s objectives and attitude to risk. I am not persuaded that in this case Quilter fulfilled this duty.

In summary, having reviewed all the evidence again, I see no reason to differ from my provisional decision, and uphold the complaint against Quilter.

Putting things right

My aim is that the estate of Mr M1 should now be put into the position that it would have been in if the recommendation had been for Mr M1 to purchase the LV= Protected Retirement Plan with a five year term with death benefits included.

Quilter have two options available in order to do this.

The method likely to most closely replicate the position at the time of Mr M1's death, and the method that is most likely to be fair to both parties, is for Quilter to approach LV= to ascertain the following;

- The value that would have been payable in the event of Mr M1's death if he had opted to add the death benefit to his plan. This is value "A".
- The net income that would have been payable to Mr M1 from commencement of the plan and his death in October 2020 if the death benefit had been added. This is value "B".
- The actual amount of net income (and any death benefits if there were any) that was paid to Mr M1 between the commencement of the plan and his death in October 2020. This is value "C".
- Compensation ("D") = A+B-C

Where applicable, Quilter should assume Mr M1 was a basic rate tax payer. If D is positive, there has been a loss and Quilter should pay the amount to the estate of the late Mr M1. If it is not possible to complete the calculation, Quilter should pay to the estate of the late Mr M1 the Guaranteed Maturity Value as stated in the initial illustrations. This maturity value takes into account the fact that income payments to Mr M1 would have been expected to have been paid during the initial five years by the time he got to that date and therefore no further calculation is required. Interest at 8% from Mr M1's date of death to the date the compensation is paid should be added to either of the calculations above.

I've taken into account Quilter's comments about the fairness of paying the Guaranteed Maturity Value if the first method of compensation can't be calculated. However, I repeat the point I made in my provisional decision, and above, which is this is only an alternative should Quilter be unable to calculate the first method of compensation – which is my preferred method. It was included because of the possibility that Quilter won't be able to get the information needed to follow the first method. In the circumstances, I consider it fair and reasonable to provide a back-up to ensure compensation isn't delayed. I think the alternative method of compensation strikes the balance between being straightforward enough to calculate without being unduly unfair on either party. I also note that Quilter hasn't suggested an alternative should it be unable to calculate redress under the first method.

I've also considered Quilter's comments about applying 8% on the losses between the time of Mr M1's death and the date of settlement. Quilter doesn't think this is fair because the maturity sum wouldn't have been likely to have attracted 8% interest. But the 8% is in line with our usual approach which is to recognise, and compensate for, the fact that when someone has suffered losses they've effectively been deprived – until compensation is paid – of having money that they would otherwise have had use of.

In short, I see no reason to alter the redress I proposed in my provisional decision. It follows that I uphold the complaint and direct Quilter to pay compensation in line with the above.

My final decision

For the reasons given above, I uphold the complaint. My decision is that Quilter Financial Planning Solutions Ltd should pay the estate of Mr M1 the amount calculated as set out above.

Quilter Financial Planning Solutions Ltd should provide details of its calculation to Mr M2 in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 17 April 2023.

Joanne Molloy
Ombudsman