DRN-4203020

The complaint

Mr S was advised by Total Financial Services Limited to switch his Scottish Widows personal pension into an Old Mutual plan in 2016, and the following year to switch funds within the Old Mutual plan. He says that he was wrongly advised to make these switches and also to cease making contributions in 2018.

In 2016 Total was an appointed representative of Intrinsic Wealth Limited, which is now known as Quilter Wealth Limited. In 2017 it changed to become an appointed representative of Intrinsic Financial Planning Limited, which is now known as Quilter Financial Services Ltd. Quilter Financial Services Ltd has accepted responsibility for all the issues Mr S has complained about, and I'll be referring to it as Quilter throughout this decision.

What happened

Mr S's late wife was in poor health and in May 2016 they decided to seek advice on accessing the tax-free cash sum from his Scottish Widows retirement account, worth about £170,000. Mr S was aged 55 at that time, so he'd just become entitled to this sum.

A meeting took place in their home on 6 June 2016, when Quilter's adviser completed a fact find of Mr S's circumstances and objectives. He was earning £32,000pa and intended to retire at age 67. His Scottish Widows policy had resulted from a transfer from Prudential about three years earlier, on advice from the same adviser. He was about to increase his contributions to that plan up to £356 per month gross. It was invested in Scottish Widows' Pension Portfolio 4.

Mr S has recently clarified that he was still paying an ongoing advice charge of 1%pa on the Scottish Widows plan. He also had another Group Personal Pension (GPP) with Royal London which wasn't affected by this advice – he and his employer were also contributing to that plan.

Quilter recommended Mr S transfer to the Old Mutual plan and redirect his £356pm contributions to it. It issued a 22-page suitability report, plus appendices, on 18 July 2016. This noted that Mr S's risk profile was 'balanced' - point 3 on a six-point scale ranging from 'risk averse' to 'adventurous'. This was selected partly because Mr S would be unhappy if his pension lost more than 10% in any one year. An appendix to the report said that:

> *"In general, Balanced investors prefer not to take too much risk with their investments, but will do so to an extent. They tend to prefer lower risk assets, but realise riskier investments are likely to give better longer term returns. As a result, they realise that by taking a balanced level of risk the opportunity for increased returns is higher.*
> *Balanced investors typically have moderate levels of knowledge about financial matters and they may have some experience of investment in riskier assets.*
> *Balanced investors can take some time to make up their mind on financial matters and can suffer from regret when decisions turn out badly."*

The transfer took place in August 2016. After taking tax-free cash of about £43,000, the remainder was invested in the Vanguard Life Strategy 40% Equity fund. The advice was paid for by an initial fee of £3,099 and a replacement ongoing advice arrangement was set up, costing 1%pa.

Mrs S died in November 2016. Subsequently in December 2017 Quilter recommended that Mr S switch from the Vanguard fund into the Quilter Investors Cirilium Balanced Portfolio. It noted Mr S's attitude to risk at this time was unaltered but he'd changed jobs, earning the lower amount of £17,500pa. The reasons for switching were set out in another suitability report dated 14 December 2017.

Quilter has provided two versions of this report with the same date. It's not clear which was sent, so I've considered both. They say that Mr S wanted to try and achieve better fund performance, by investing in an 'active multi-managed fund' in 'wider asset classes'. It referred to these other asset classes as commodities, hedge funds and private equity. The adviser explained that they would reduce how much the portfolio fluctuated (either down or up), because their value did not move in sequence with the traditional assets of shares, gilts/bonds, property and cash. There were five Cirilium portfolios to choose from, and this one was aligned to Mr S's attitude to risk. It was said to be more actively managed as the fund managers picked the best funds to invest in within the portfolio.

In around April 2018 Mr S moved to a different Quilter adviser. He says that he decided to stop his contributions to the pension (which had reached £373pm with indexation) at the November 2018 annual review meeting, after that adviser assured him that the existing funds would be sufficient for him to enjoy a similar income in retirement to what he was earning. His salary by then was about £20,000.

There were no other changes to the pension, although the adviser and Mr S did meet in both November 2019 and November 2020. These meetings assessed that Mr S's attitude to risk was the higher level of "moderate" as a result of a questionnaire, which on both occasions was reclassified back to "balanced" after further discussion – as Mr S was noted to be worried about markets at that time.

Mr S subsequently complained to Quilter that the advice it gave wasn't in his best interests. He noted that in addition to the fees the fund lost another £3,000 in the months following the Cirilium transfer. Quilter's advice had also delayed access to his tax-free cash sum, which he and Mrs S then didn't have time to spend on quality time together before she died. He also took issue with the adviser's denial that he had assessed Mr S's pension would be sufficient if he stopped contributing. And Mr S noted that he hadn't received any contact or letter since November 2020 to arrange a financial review. He went on to cancel the ongoing advice charge in August 2022.

In its response to the complaint, Quilter said, in summary:

- It was satisfied the 2016 recommendation was suitable for his needs and circumstances and had placed Mr S in a fully informed position.
- The 2017 fund switch was also suitable given his attitude towards investment risk, and because he wanted to invest in a different asset class.
- His circumstances, objectives, and investment strategy were reviewed at the annual review meetings, and the plan remained suitable based on his attitude to risk and desire for active fund management.
- The complaint was prompted by poor performance, for which it isn't responsible.
- It had tried to contact Mr S to arrange a review in late-2021, by phone, letter and text without success. As a result, it was willing to refund the ongoing charge deducted from his plan from the date of the last review letter (18 November 2020) onwards – and pay £300 for the distress and inconvenience he suffered.

Mr S hasn't accepted this offer and referred his complaint to the Financial Ombudsman

Service. He has reiterated that he hadn't switched in 2016 out of concerns about Scottish Widows' performance. He had only wanted to access tax-free cash. He wanted to be shown where the adviser pointed out that he had the option of staying with Scottish Widows. He believed that the adviser was inappropriately influenced by links to Quilter.

I issued a **provisional decision** on this complaint on 26 May 2023. I'll repeat the key parts of my findings below.

Quilter's advising status

In his typed note of the June 2016 meeting, the adviser recorded that he'd *"explained the independent status of TFS Ltd and that we are able to offer advice and plans from the whole of the market".* That isn't consistent with the 'Keyfacts about our services and costs' document it gave to Mr S, which said that it offered 'restricted advice' on products from a panel of providers it had pre-selected – and disclosed that Old Mutual owned 100% of the share capital of Quilter (which was at that time known as Intrinsic). However the suitability report which he later sent to Mr S explains:

> *"…we only offer advice on limited types of products, or products from a limited number of companies. However, owing to your current needs and objectives to review your personal pension plan, taking into account that wanted to access a pension plan with lower costs than your current arrangement, I have had to research the wider market to make the appropriate recommendation as outlined in my report below."*

I can see from the evidence on file that the adviser did run a 'Defaqto' search of the whole market, although the criteria were locked down to such a high degree that only Old Mutual and AEGON were left showing. I can't see how this search would be of much use unless the adviser could see where Mr S's existing provider, Scottish Widows, sat in relation to these more favoured offerings. In December 2017, the same adviser stated that he was *"no longer an independent adviser* [but] *if this range of products and providers cannot meet your needs or objectives, I am able to source a solution from the wider market".*

The cost of transferring

Irrespective of Quilter's precise advising status, the core issues I need to address are the same. Although Mr S and Quilter do not agree on his precise reasons for needing tax-free cash, they do seem to agree that this prompted him to seek advice from Quilter. The adviser noted in 2016 that Mr S appreciated the cost involved to set up a new arrangement (i.e. the advice cost) - but *"believe it is worth paying for advice costs if overall the portfolio costs are reduced."* That is essentially what I have to consider: whether Quilter's advice provided sufficient value for money for Mr S when the total cost is taken into account. And I'm not currently minded to say that it did. I'll explain why.

The 2016 fact find suggests Mr S was seeking a 'more modern' platform-type pension which was potentially cheaper. And that he wanted to continue receiving advice face-to-face annually as he had been doing in the past. Of the options under discussion, including multi-manager funds and discretionary fund management, Mr S rejected 'single manager basic managed funds' in favour of 'blended investment funds'. This was how the Vanguard option with Old Mutual was chosen, in part also because it had consistently outperformed the benchmark for managed funds with 20-60% in shares over the past five years, by some 18%. A factsheet for this fund showed that its total overall charges were 0.24%pa.

I share the doubt expressed by Mr S as to the extent to which he was, in reality, driving these discussions. They seem to reflect what the adviser thought Mr S should do, but I accept Mr S's testimony that he had actually approached Quilter in the first place with a view to taking the tax-free cash from his pension. Quilter has provided no evidence to suggest otherwise. Given that Mr S wasn't noted to have particular investment knowledge, and his wife was seriously ill at the time, I find it unlikely that he would have already been thinking of specific requirements for the future investment of his pension.

The key features document for the Old Mutual pension explained that it allowed access to 1,250 funds from over 100 fund management groups, allowing Mr S and his adviser to 'build a bespoke portfolio'. Or alternatively, they could pick from 45 screened funds that had been fully researched by Old Mutual. However Quilter's file also has a brochure of the fund supermarket Mr S could access through his existing Scottish Widows retirement account for an additional 0.14%pa. If he wanted to do that, which I doubt is the case here, that would enable him to access around 1,250 funds in any event.

The Old Mutual illustration took into account the withdrawal of tax-free cash and additional contributions. It also allowed for an initial adviser fee of 2.4% of the net initial investment after tax-free cash was taken, and 1%pa thereafter. The total charge for the Vanguard fund was only 0.24%pa, but there was also an Old Mutual product charge of a similar amount.

As a result, I am having trouble reconciling how the overall impact of charges on the regular premiums could be as low as 0.3%pa, as shown on the illustration. Quilter's comments at the 2017 review note that the ongoing advice charge was being taken as a percentage of all the funds, not just the amount transferred from Scottish Widows. And that's also borne out in the transaction history Quilter has provided, which shows the right proportion of adviser and product charges being taken from the total fund value.

I therefore think what the illustration shows as the average impact of all the charges on the amount transferred across from Scottish Widows – of 2%pa up to retirement at age 67 – would be closer to the figure that applies for the entire policy. With 1%pa of this of course being the ongoing adviser fee. So the next question for me to consider is whether it was in Mr S's interests overall to move to an arrangement with total costs of this order.

In the 2016 suitability report the adviser explained that reviews should be carried out each year in a drawdown arrangement and referred to the need to assess whether the income being taken was sustainable, and so on. Some of this was not necessary as Mr S wasn't taking an income. I accept that other aspects, such as reviewing the performance and Mr S's attitude to risk, could add some value – but I think the adviser overplayed the benefit of paying 1%pa for the service he would provide in Mr S's particular case.

The adviser discussed the charges Scottish Widows levied, which came to 0.68%pa in total for the product and fund costs. When viewed alone, those costs would be more expensive than Old Mutual's, although not by very much. The Scottish Widows fund range (without paying the small extra cost of the fund supermarket I've mentioned above) was restricted to 30 funds managed by Scottish Widows, 75 managed externally, plus 34 Scottish Widows portfolios or multi-manager funds. Given that Mr S didn't have a lot of investment experience (as recorded by Quilter at the time), in my view that range of funds would have been more than adequate for his needs.

The adviser pointed out that the cost of ongoing advice would be in addition to these charges with Scottish Widows. And although it wasn't clear at the time of my provisional decision, Mr S has since clarified that he was already paying 1%pa at Scottish Widows. But it can be seen that even with ongoing advice costing the same under both plans, the Old Mutual proposition would end up being more expensive – at least on the amount being transferred across from Scottish Widows – due to the extra impact of the initial charge for Quilter's advice.

There's no policy-specific information from Scottish Widows included on Quilter's file at all. I'm unable to corroborate the claimed figures of 0.28%pa for the policy Mr S had, or 0.4%pa for the fund he was in. In fact, a brochure the adviser downloaded from Scottish Widows' website said that the charge for Portfolio 4 was only 0.1%pa.

I also think the adviser misled Mr S about the impact of his fees because he said in this letter, with my emphasis: *"The total reduction in yield* ***taking into account my initial fee*** *but excluding the cost of ongoing advice is 0.50%, as shown on the Old Mutual illustration, which is 0.18% lower than the 0.68% annual charge currently made under your Scottish Widows plan."* That was incorrect as the 0.50% doesn't include any adviser fees at all, although I do note that later on he correctly referred to the total effect of all the charges on Mr S's Scottish Widows transfer being 2%pa. I think the overall result is somewhat confusing as to whether Mr S would in fact be saving anything at all by transferring. And that's problematic because I think the benefit of him transferring is questionable in this case.

Mr S's attitude to risk

An assessment of the potential to overcome any higher charges with Old Mutual would need to include Mr S's attitude to risk – and hence what growth he might reasonably expect to achieve. Mr S's existing Scottish Widows fund choice (Portfolio 4) is benchmarked against the ABI 0-35% shares index, suggesting that it was below medium on the risk scale. That seems to be broadly consistent with how Quilter assessed Mr S's attitude to risk. I can't find a record of the questions it asked him in 2016, but the 2017 ones included:

> *People who know me would describe me as a cautious person – Agree*
> *I feel comfortable about investing in the stockmarket – Agree*
> *I generally look for safer investments, even if that means lower returns – Agree*
> *Usually it takes me a long time to make up my mind on investment decisions – Agree*
> *I associate the word "risk" with the idea of "opportunity" – Agree*
> *I tend to be anxious about the investment decisions I've made – Agree*
> *I'd rather take my chances with higher risk investments than increase the amount I'm saving – Disagree*
> *I'm concerned by the volatility of stockmarket investments – No Strong Opinion*

The adviser also noted Mr S would be unhappy about a 10% drop in value over a year – all of these answers were pointing towards a lower than medium risk. The Vanguard fund broadly satisfied that. It was a single fund which operated more like a portfolio, so it's difficult to see what advantage that offered over Scottish Widows Portfolio 4. It had performed well in the past, but that performance wasn't guaranteed to be repeated in future. And the adviser hadn't compared it to the performance of Portfolio 4 or assessed the likelihood of getting sufficient extra growth to overcome the higher costs.

Although the 2016 suitability letter referred to the benefits of having so many funds to choose from within Old Mutual 'in order to reduce risk', that wasn't the approach Mr S was taking. He was selecting a single portfolio and giving the fund manager the role of making those selections (from funds that were passively managed in the Vanguard range) and regularly rebalancing the portfolio. That's what was happening in Mr S's existing Scottish Widows portfolio.

The adviser also highlighted the future possibility of combining Mr S's other investments, such as ISAs, under one 'wrap account'. Mr S had a £6,000 ISA, but it was a cash ISA and it doesn't seem to me he expected to have significant amounts to invest onto such a platform. Nor has he done so or been advised to do so, despite having more of the tax-free cash left unspent than he'd planned.

The later fund switch

Although the adviser did recommend switching funds at the next annual review, arguably a benefit funded by the ongoing charge, I am even less persuaded of the likelihood that this would significantly benefit Mr S. He again said the benefit of the new portfolio (Cirilium) was that Mr S wouldn't need to pick separate funds to invest in within his plan, as the fund manager would take over all those decisions. But compared with both the Vanguard fund and Mr S's original Scottish Widows portfolio, the charges were again going up.

The charges for the Cirilium portfolio are also shown in a factsheet on the file as 1.34%pa with a 5% initial charge. I'm not sure to what extent these charges are correct, as it's not a factsheet produced by Old Mutual and post-dates the fund switch. But it does suggest the Cirilium fund – given its more actively managed nature – had the potential to be considerably more expensive than the Vanguard fund Mr S had previously been in, which charged 0.24%.

At Mr S's attitude to risk, it becomes more important to question whether more superior performance can be achieved to justify these additional costs – either with the 2016 or 2017 recommendation. Mr S would be paying charges to both the adviser and the fund manager, even though the adviser evidently had the confidence on both occasions to recommend those funds because they would be regularly managed and rebalanced. In other words, he would not need to take over what the fund manager was doing and select different funds.

That in my view calls into question the need for the additional ongoing advice service *plus* the new portfolio, which at Mr S's attitude to risk would always eat up a significant portion of the returns he was likely to achieve. The suitability report at this point doesn't adequately address why the Cirilium portfolio was worth Mr S paying more for. It's unclear from the cursory factsheet provided (from 2019) exactly what assets were held in the fund – there was a 38% shares component but also a 35% 'other' which was neither bonds nor cash. (I assume from the report that this was commodities, hedge funds and/or private equity). The 5% cash component was the net effect of a 33% long position and a 28% short position.

Quilter's report implied that the presence of these additional assets would even out the peaks and troughs in the markets – but that wasn't the same as meaning Mr S would obtain any better long-term prospects from their inclusion. In fact the opposite could well be true. As Mr S was investing for a term of over ten years until age 67, I'm not sure he needed to have his portfolio 'hedged' to this extent – or that someone of his limited investment experience was able to appreciate how (in Quilter's view) these alternative assets would achieve a better result for him over that long term. I think Quilter should have been more concerned about the costs being paid and whether he could achieve enough growth to justify them.

Did these recommendations benefit Mr S overall?

The (post-dated) factsheet for the Cirilium portfolio indicates that this underperformed its benchmark over the four-year period up to November 2017 (and has continued to underperform since). That is of concern given that Quilter had a potential conflict of interest in recommending a portfolio that was designed for its own organisation, to Mr S. I'm not persuaded that it managed this conflict adequately. It seems that the recommendation had more potential to benefit Quilter and partner organisations through charges, than Mr S.

I've reached a fairly similar view in respect of the 2016 recommendation too. Mr S already seems to have had a very competitive arrangement with Scottish Widows. He didn't have the attitude to risk to mean that, after all the additional charges he'd be paying, he'd be much better off at all from making the switch. The only thing that could be guaranteed was the charges. Sufficient investment performance to make up for them wasn't guaranteed. It's for all these reasons that I consider Mr S's complaint should be upheld, and he should be put into the position as if he'd never switched from his Scottish Widows plan.

I've also considered Mr S's point about stopping his ongoing contributions. I think the adviser has made a good point here that *"It makes no sense for me or any adviser to tell a client to stop paying into a pension that wants to & can comfortably afford to."* I say this particularly as Quilter would stand to benefit from the larger funds resulting from ongoing contributions.

The adviser did record on a fact find that Mr S was concerned about keeping more funds liquid to help his children, and I think it's likely those comments were made. But I also don't disbelieve Mr S that he had just reassessed his ability to contribute to the pension on such a reduced salary. That was entirely natural. I can't know whether or not the adviser offered a view on whether Mr S's pension pot was sufficient, but I don't think this would have made a difference ultimately to whether Mr S cut back his contributions. He had plenty of reasons for wanting to do so, and he still has the funds he didn't contribute to the pension.

Responses to the provisional decision

Mr S said that he had nothing more to add, except that in September 2016 his wife was diagnosed terminally ill, and the unnecessary delay to accessing his tax-free cash deprived them of the chance of something special. He accepts that the exact prognosis of his wife's condition could have been foreseen back in May 2016, but he did tell the adviser then that they were looking to do a south sea cruise - something they could not ordinarily have afforded to do. But unfortunately by the time they received the money they were unable to go ahead. He doesn't think that £300 compensation begins to cover the impact of this.

Quilter also responded to the provisional decision. In summary, it said:

- My decision should take account of the law, regulator's rules and industry good practice at the time of the events concerned, rather than being made with hindsight. I have been prejudiced by the unsupported claims made by Mr S.
- Even though I thought Mr S was focused on his wife's illness, the suitability report clearly shows that his future income requirements at age 67 were being discussed.
- The greater overall cost of the switch was mainly due to the upfront fee, and doesn't automatically mean advice was unsuitable. Mr S was advised that the Cirilium charges were higher. He's now focused on cost because his funds have performed poorly.
- There is absolutely no conflict of interest between the advice Mr S was given and the management of the recommended Cirilium fund. There was no incentive for the adviser to recommend Quilter above other providers on the approved panel.
- The evidence on file does support that Mr S was driving the discussions (about wanting a 'more modern' platform-type pension, and rejecting 'single manager basic managed funds' in favour of 'blended investment funds', and so on).
- Quilter (the platform), and Quilter Financial Planning Limited are separate legal entities, so Quilter Financial Planning Limited cannot be held responsible for any potential errors in the illustration. FCA guidance COBS 2.4.8 G says that a firm is entitled to rely on information provided to it as accurate.
- The adviser correctly states the total effect of all charges for the transfer was 2% in the suitability letter, which wasn't confusing and Mr S could have raised queries with the adviser if he found it so.
- I was *"somewhat reluctant to concede that reviewing the client's attitude to risk, and therefore ongoing suitability, is of much benefit to the client"*. The 1%pa charge for this was within acceptable parameters and fully disclosed to the client.

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.

I would like to assure Quilter that I have considered the regulator's rules and industry good practice as it applies to pension switching. In addition to the requirement under COBS

9.2.1R to *"take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client"*, which I've been considering throughout my decision, Quilter will be aware of the FSA's thematic review into pension switching in 2009. A key finding of that review was that some people had been switched to a pension that was more expensive than their existing one (or a stakeholder pension) without good reason. So, that's also what I've been considering here.

It's been the expected standard of good industry practice since that time for an adviser recommending a transfer to obtain, and evidence, full details of what the ceding policy charged; the performance of the funds it was invested in; and a projection of what it could be worth at retirement age if contributions continued. These details (including the projection) would then be compared with the newly proposed pension.

Perhaps because Mr S's adviser knew something about the plan with Scottish Widows he'd arranged previously, he added some details of charges into his report. But these have not been corroborated by evidence from Quilter, either at the time or now in response to my provisional decision. And as I set about above, when I looked these up I found significantly cheaper figures. Either way, if Quilter had put two projections side-by-side in its suitability report, the projected fund value from Scottish Widows would I am sure have looked higher than the Old Mutual one.

Quilter appears to accept this in its response to my provisional decision, and I think this should have been clear to it at the time simply from adding up the charges - notwithstanding that there may have been an error in the illustration. It says that the reason the charges are higher is due to the upfront fee. And paying this fee doesn't invalidate the advice. I disagree, and the outcome of the FSA's thematic review doesn't support what Quilter is saying.

The initial fee can't be divorced from all the other fees and charges. It meant that by retirement, Mr S would end up with less pension benefits *unless* the new Old Mutual fund outperformed his Scottish Widows fund. So, I would expect to see better justification of why the Scottish Widows fund was underperforming. There simply wasn't that justification – and given that this was a fund and platform the same adviser had decided *was* appropriate only a few years earlier, on balance it's unlikely its fortunes would have faded so quickly. I've been presented with no evidence to suggest otherwise.

As I've said, the Cirilium fund selected later on was, already, underperforming in relation to its benchmark. I'm not suggesting that Quilter shouldn't be able to recommend funds with which it has a connection (providing that is disclosed to the investor). But in this case, recommending an underperforming fund which also costs more, without adequately justifying why Mr S was not better staying in his existing fund, does become more of a problem when it seems more likely to me that Quilter's group of companies would benefit from that recommendation. I don't think it matters that the adviser was not, personally, incentivised to recommend the Cirilium fund.

I'm sorry to learn that Quilter feels I've ignored the evidence of what its adviser recorded at the time of the switch and subsequent fund recommendation. I've taken into account everything Quilter *and* Mr C has said. When Mr S said that his only objective was to take tax-free cash from his pension, I took into account that the fact find only has one goal noted: *"GOAL 1: HE WANTS TFC FROM PENSION"*. I was also mindful that he was a manager in a machinery company. He had no evident expertise in financial services, as in fact Quilter noted at the time.

So, when the evidence on Quilter's file suggested that Mr S was seeking a 'more modern' platform and had rejected 'single manager basic managed funds' in favour of 'blended investment funds', I found it unlikely that Mr S would have been talking about his pension in these terms. Not least because, as the fact find confirms, he was focused on accessing the tax-free cash to make the best of his time with his wife (and at the subsequent advice point her loss had led him to change to a lower-paid job). But even in happier times, Mr S doesn't strike me as the sort of investor who would benefit from making decisions on an online platform, or understand the concept of hedging employed in the Cirilium fund.

In conclusion, therefore, I haven't ignored Quilter's evidence. I've weighed it up against Mr S's recollections, and found those recollections more persuasive. Whilst Quilter's advice did, as a matter of course, highlight he would have a future income requirement in 12 years, I don't think that was the driver for the advice he sought from Quilter.

I accept that the adviser did say at one point in the suitability letter for the Old Mutual switch that the total charges would be about 2%pa – and that seems to be correct. That doesn't alter the fact that he'd previously implied that the Old Mutual plan was cheaper *"taking into account my initial fee"* – which was incorrect. So he was wrongly justifying the advice as suitable based on a saving in charges that didn't exist overall. Given this statement I don't think it's reasonable to expect Mr S to realise he wasn't saving money, after all.

Quilter's remaining point is about the cost of the annual review service. Contrary to what it's suggested, I did accept in my provisional decision that reviewing the performance and attitude to risk annually could add some value for Mr S. We now of course know that he'd already been paying 1%pa to the same adviser for ongoing reviews previously. What I'm saying is that I'm not convinced of the benefit of delegating more responsibility for selecting funds to the fund manager (at added cost), with no corresponding reduction in the adviser's fee for what it seems might involve less work. The end result was that Mr S paid more overall, with no corresponding guarantee that the performance would be better to match.

When the FCA has reviewed the market for ongoing advice services it has commented that these are often clustered at a small number of price points, typically 0.5%pa and 1%pa – irrespective of the amount of work involved. Given that I'm satisfied that Mr S was of lower than medium attitude to risk, a 1% ongoing advice charge alone would have a significant proportional impact on the returns he might expect to receive. If Quilter was proposing a more dynamic ongoing portfolio solution, I think there was an opportunity for it to review how much it would then need to charge him for ongoing advice in addition. If it had done that in a way which prevented the new recommendation exceeding the cost of his existing plan, including the cost of advice, the outcome of this complaint might have been different.

I recognise that it's not this service's role to dictate what Quilter's fees should have been, but I'm just noting this for completeness. Ultimately, on taking into account the total cost Mr S *was* actually paying for its recommendations I remain of the view that he wasn't given suitable advice. He didn't stand to benefit enough overall from the recommendation unless superior fund performance materialised, that couldn't be guaranteed.

Mr S made some comments about the delay in receiving his tax-free cash. When I acknowledged his comments I told him the issue here is that, once Quilter does embark upon an exercise of comparing his existing pension with potentially another one, it ends up taking some time. Even to establish that taking benefits directly from Scottish Widows was the best thing to do, is likely to have still involved the same degree of research.

I've reflected on what I've said. It's occurred to me that the adviser could have arranged the payment of tax-free cash from Scottish Widows *before* considering whether a long-term switch of the remaining funds was in Mr S's interests. I don't think the pension switch was necessary to facilitate the one goal of accessing tax-free cash noted on the fact-find. Had Quilter later investigated whether to switch the remaining funds – which it was entitled to investigate and make recommendations on – I think from what I've seen that remaining in the Scottish Widows plan should have been found to accommodate his needs. But the difference would be that Mr and Mrs S would have been able to make use of the tax-free cash earlier.

I've considered carefully whether Quilter's offer of £300 for the distress and inconvenience caused is enough to reflect the feeling Mr S understandably has, that he didn't make the best use of his remaining time with his wife. He's told us, "*I'm not bitter nor angry about this but the realisation of what we may have been able to do deeply saddened me. However, this will not overshadow the precious memories of our last few months together."*

I appreciate Mr S's comments. But I've also had to take into account that at the time he first went to Quilter with his plans to take tax-free cash, he couldn't know he would get the much worse news of his wife's prognosis – which he says he received in September 2016. By that point the transfer had already happened. This was undoubtedly very unfortunate timing but on balance, I don't think it would be fair or reasonable to hold Quilter responsible for all the consequences of this. In view of the poor advice it provided, which he feels led to an underperformance of his pension plan through higher charges, I remain satisfied that it should pay Mr S £300 for the distress and inconvenience caused.

Putting things right

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

I think Mr S would have remained with Scottish Widows, 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 Mr S's circumstances and objectives when he invested.

What must Quilter do?

To compensate Mr S fairly, Quilter must:

- If possible, compare the performance of Mr S's investment with the notional value if it had remained with Scottish Widows after having paid out the same tax-free cash sum and received the same ongoing contributions. I suspect it may not be possible for Scottish Widows to produce this value – and if that is the case I set out alternative directions below.
- 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 also add any interest set out below to the compensation payable.
- If there is a loss, Quilter should pay into Mr S's Old Mutual plan to increase its value by the 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 compensation into Mr S's pension plan, it should pay that amount direct to him. But had it been possible to pay into the 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 S won't be able to reclaim any of the reduction after compensation is

paid.

- The *notional* allowance should be calculated using Mr S's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume he's likely to be a basic rate taxpayer, so the reduction would equal 20%. However, as Mr S would have been able to take a tax free lump sum in respect of his ongoing contributions, this reduction should only be applied to 75% of that part of the compensation, resulting in an overall reduction of 15% on the part in respect of Mr S's ongoing contributions.
- If either Quilter or Mr S dispute that the tax assumption is reasonable, they must let us know as soon as possible so that the assumption can be clarified and Mr S receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.
- The amount of £300 Quilter has already offered Mr S for distress and inconvenience must also be paid.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr S how much has been taken off. Quilter should give Mr S a tax deduction certificate in respect of interest if Mr S 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
Old Mutual pension plan	Still exists and liquid	Notional value from Scottish Widows (or if this is not available, see alternative below)	Date of investment	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.

Notional Value

This is the value of Mr S's investment had it remained with Scottish Widows until the end date, after paying the same tax-free cash and receiving the same contributions. Quilter should ask whether Scottish Widows can calculate this value, explaining that it is on the Financial Ombudsman Service's instruction.

Any additional sum paid into the Scottish Widows retirement account should be added to the *notional value* calculation from the point in time when it was actually paid to the Old Mutual pension. So, Quilter would need to give Scottish Widows a history of these contributions.

The withdrawal of tax-free cash 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. I'm not agreeing for Quilter to deduct the initial or ongoing advice fees, as I don't think its advice was suitable for Mr S – and he will now need to find alternative advice at his own expense. So this will have the effect of refunding fees to him as part of the compensation (if there is a loss), as the notional value will be higher without them.

If Scottish Widows is unable to calculate a notional value, Quilter will need to determine a fair value for Mr S'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 chosen this method of compensation because:

- Mr S wanted capital growth with a small risk to his capital.
- If Scottish Widows 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 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 S'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 S into that position. It does not mean that Mr S 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 S could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold Mr S's complaint and require Quilter Financial Services Ltd to calculate and pay compensation to him as set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 July 2023.

Gideon Moore
Ombudsman