DRN-4235513

The complaint

Mr O complains that the investment recommended by Quilter Wealth Ltd (Quilter) did not match his attitude to risk and his pension has reduced in value as a result.

Mr O also complains that he believed that the adviser would have maintained a "watching brief" over his pension, which has not been the case.

What happened

In August 2015, Mr O met with his adviser to discuss planning for retirement. At that time, he had a Retirement Annuity Contract (RAC) which would pay him £1,726 at retirement and a personal pension, with a fund value of £16,756 with Prudential. A risk profiling questionnaire was completed, and Mr O was assessed as having a dynamic attitude to risk.

On 10 November 2015, a suitability report was issued to Mr O, outlining the recommendations for his pension arrangements. The adviser recommended that he retain his RAC, due to the guaranteed income available, and transfer his personal pension from Prudential to a personal pension with Royal London to be invested in the Governed Portfolio 1. The fund fact sheet produced at the time describes the fund objective as "*This portfolio aims to deliver above inflation growth in the value of the fund at retirement, whilst taking a level of risk consistent with a cautious risk attitude over a long time period."*

The suitability report confirmed Mr O's attitude to risk as being dynamic, and included an explanation of this level of risk. It included the recommendation for Mr O to transfer to the Royal London Portfolio in their Governed Portfolio 1 in order to benefit from lower charges, and stated that although the volatility of the fund was lower than would normally be acceptable for a dynamic risk investor, Mr O was "*happy to accept this lower volatility given that you are only 8 years from your proposed retirement date and would despite your attitude to risk not [want] to see too greater fluctuations in the value of these pension benefits".* The report included an overview of the asset allocation at that time and confirmed the fund was consistent with Mr O's attitude to risk profile.

In 2022, following a period of market uncertainty, Mr O attempted to contact his adviser. However, he says that he was unable to contact him. He subsequently engaged a different adviser, who recommended that he retain his pension with Royal London, but switch the fund to the Governed Portfolio 6.

In January 2023, Mr O complained to Quilter that his pension had been invested at the wrong risk level, and that he had understood that the adviser would have a "watching brief" over the investment which has not been the case.

Quilter did not uphold the complaint. They stated that the adviser had followed their processes and procedures, and believe that the advice to invest in the Governed Portfolio 1 was made in Mr O's best interests and suitable for his circumstances at that time. They have stated that although the Governed Portfolio 1 was stated in the fund factsheet as being suitable for cautious investors, the asset allocation at the time of the advice was more appropriate for a higher risk investor. They stated that in relation to Mr O's understanding that the adviser would maintain a watching brief, he had declined the offer of ongoing advice and not paid any ongoing charges, therefore there was no agreement or obligation for the adviser to review Mr O's plan.

Mr O was not happy with this outcome and referred the complaint to this service. Having reviewed the information available, the investigator did not disagree with the transfer of Mr O's pension to Royal London, but came to the view that the portfolio choice was not a suitable recommendation.

Quilter did not agree with this. They stated that although Royal London "badge" Portfolio 1 as suitable for a cautious investor, this is not the case. They stated that the asset allocation was in line with other moderate portfolios and pointed out that it contained approximately 60% in equities (and currently still includes approximately 55% equities). Therefore the complaint has been passed to me for a final decision.

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.

Although the event complained of happened more than six years before Mr O complained, I haven't seen anything that makes me think he complained more than three years after he was aware (or ought reasonably to have been aware) of having cause for complaint. I'm therefore satisfied Mr O did complain in time and that this is a complaint I can consider.

Having reviewed the information available, it appears that the parties to the complaint agree that the advice to transfer Mr O's pension from Prudential to Royal London was a suitable recommendation. The main question to be determined is whether the portfolio selected was appropriate. Mr O was recommended to invest in the Royal London Governed Portfolio 1, one of a suite of nine portfolios, each designed to be appropriate for investors at various risk profiles and with differing timescales to retirement. As stated above, the Governed Portfolio 1 was designed to be appropriate for cautious investors with a long timescale to retirement. Within their product literature, Royal London indicate short, medium and long term to be five, ten and fifteen years respectively.

An attitude to risk report was produced on 26 August 2015, resulting in Mr O being assessed as a dynamic investor. The risk profile report on file includes the responses Mr O had provided when completing the questionnaire. I note that there are a number of inconsistencies in his responses. There are responses which indicate Mr O was comfortable with a relatively high level of risk, for example;

- *I prefer the safety of keeping my money on deposit – disagree*
- *When it comes to investing I'd rather be safe than sorry – disagree*
- *People who know me would describe me as a cautious person – disagree*

However, in contrast to this, a number of the responses indicate that he was more comfortable with a more cautious approach;

- *I feel comfortable investing in the stockmarket – no strong opinion*
- *I am willing to take substantial financial risk to earn substantial returns – strongly disagree*
- *I'd rather take my chances with high risk/high return investments than to have to increase the amount I am saving – strongly disagree*
- *I am concerned by the uncertainty of stockmarket investment – agree*

There is no evidence of the adviser having discussed these inconsistencies with Mr O in order to ascertain the level of risk he was willing and able to take. I have therefore considered whether the assessment of dynamic was correct for Mr O.

Mr O had limited assets, and there is no evidence of him having any particular level of prior investment experience or knowledge, both factors which should be taken into account when assessing an investor's attitude to risk profile. However, although Mr O had limited other assets, I note that a high proportion of his income requirement in retirement was due to be met by his state pension and a Retirement Annuity Contract (RAC) which was being retained. It is reasonable to consider that he would be willing and able to take a level of risk with this pension in order to meet his objectives. I therefore believe that taking all these elements into account, a balanced level of risk would have been likely to be a more appropriate outcome for Mr O.

The suitability report provided at the time of the recommendation confirms that Mr O's attitude to risk for his retirement objective was dynamic, albeit that it acknowledged that Mr O was happy to accept a lower level of volatility given his relatively short term (eight years) until retirement. The report included a description of a dynamic investor, and stated that given his secure alternative sources of income in retirement, he was able to accept some degree of volatility in the value of the proposed transferred pension benefits. The recommendation was a Personal Pension with Royal London, invested in the Governed Portfolio 1. The report also states that the fund is consistent with Mr O's agreed attitude to risk profile. This is not the case.

I note that although the Governed Portfolio 1 was defined by Royal London as taking a level of risk consistent with a cautious risk attitude, at the time of the recommendation it was invested towards the high end of this remit with;

- 62.26% RLP Global Managed
- 1.0% RLP Short Duration Global High Yield
- 8.87% RLP Long (15yr) Corporate Bond
- 8.87% RLP Long (15yr) Index Linked
- 17.5% RLP Property and
- 1.5% RLP Long (15 yr) Gilts.

In their correspondence, Quilter have stated that they believe that the investment recommended was appropriate for Mr O at the time of the advice, because "*Royal London may badge Portfolio 1 as being for a cautious investor, but based on its asset allocation it is not, hence the reason it was deemed suitable by the Defaqto report*". This is supported by the asset allocation outlined above.

Quilter have made the point that although the portfolio purports to be suitable for a cautious investor, the asset allocation both at the time of the advice and to date, suggests it is more aligned to the level of risk accepted by a moderate investor. Having reviewed the asset allocation, I agree that the investments held within the portfolio appear to attract a higher level of risk than I would expect for a cautious investor. However, whilst this was the case at the time of the advice, it would not have been possible to forecast that the asset allocation would remain at this level during the term to Mr O's retirement. I think there was a likelihood of the fund's asset allocation changing over time to reflect its objective of taking a cautious attitude to risk meaning a likelihood that it wouldn't have been suitable for Mr O over anything but the short term.

The investigator recommended that Quilter carry out a calculation comparing the performance of Mr O's fund in the Governed Portfolio 1 against the Governed Portfolio 5, which she thought was a better match for Mr O. This is stated within the fund factsheet as taking *"a level of risk consistent with a moderately cautious, balanced or moderately adventurous risk attitude over a medium time period."* Taking all the above into account, I agree with the investigator that the Governed Portfolio 1 was not appropriate for Mr O at the time of the advice, and that the Governed Portfolio 5 would have been more aligned with Mr O's objectives and circumstances at the time. I therefore uphold this element of Mr O's complaint.

Mr O has also complained that he understood his adviser would maintain a "watching brief" over his investment, which has not been the case. On 12 October 2015, an engagement letter was issued and signed by Mr O, which outlined the charges, and explained the on-going service provided by the adviser. The letter states "you have advised me that you do not wish to accept our ongoing advice service". This was reiterated in the suitability report provided at the time of the advice.

Mr O has not stated that he has been paying for an ongoing advice service that he did not receive, therefore I agree that the adviser could not be expected to monitor the investments on an ongoing basis to ensure suitability. I do not uphold this element of Mr O's complaint.

Putting things right

Fair compensation

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

I take the view that Mr O would have invested differently. I've seen nothing to make me think the advice to switch to the new provider was unsuitable, but I think Mr O should have been recommended to invest in the Royal London Governed Portfolio 5. I'm satisfied Mr O would have accepted that recommendation. However, I cannot be certain that a value will be obtainable for what this policy would have been worth. I'm satisfied that what I've set out below is fair and reasonable given Mr O's circumstances and objectives when he invested.

What must Quilter do?

To compensate Mr O fairly, Quilter must:

- Compare the performance of Mr O's original investment into the Royal London Governed Portfolio 1 with the notional value if it had had been invested into the Royal London Governed Portfolio 5 fund. 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.

- If there is a loss, Quilter should pay into Mr O's pension 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 O'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 O won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr O's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr O is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr O would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- In addition, Quilter should pay Mr O £200 for the distress caused due to his fund being invested in a way that did not match his attitude to risk.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr O how much has been taken off. Quilter should give Mr O a tax deduction certificate in respect of interest if Mr O 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
Royal London Pension	Still exists	Royal London Governed Portfolio 5	Date of switch from Prudential to Royal London	Date that Mr O switched to Governed Portfolio 6	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

Notional value

This is the value of Mr O's investment had it been invested in the Royal London Governed Portfolio 5 until the end date. Quilter should calculate this value.

Any withdrawal from the Royal London pension 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. 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 notional value instead of deducting periodically.

If Quilter is unable to calculate a notional value, they will need to determine a fair value for Mr O's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. 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:

- Mr O wanted Capital growth and was willing to accept some investment risk.

- The Royal London Governed Portfolio 5 more closely meets Mr O’s attitude to risk and timescales for investment as outlined at the time he switched to Royal London from Prudential.

- If Royal London are unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 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 O's circumstances and risk attitude.

My final decision

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

Quilter Wealth Ltd should provide details of its calculation to Mr O in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr O to accept or reject my decision before 5 October 2023.

Joanne Molloy
Ombudsman