DRN-4664421

Financial Ombudsman Service

The complaint

Mr R has complained about the service he's received from Quilter Financial Services Ltd after he'd contacted it to help him buy a guaranteed fixed term annuity. Quilter assessed the prospect as being unsuitable for him, and because the annuity wasn't arranged, Mr R requested a refund of the £1,000 fee he'd paid it. Quilter declined, however, saying that the fee was for the work undertaken rather than any guarantee that it would transact the business.

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr R had three personal pension plans administered by two providers – the proceeds of which Mr R wished to use to buy a guaranteed fixed term annuity. Having sourced the desired annuity and provider himself, Mr R contacted Quilter on 2 August 2023 to arrange the transaction.

An in-person meeting took place on 7 August 2023 in which a fact find was completed, and which recorded the following about the nature of the meeting:

"Client approached me to discuss Annuities as he doesn't want to take any risk with his 'paid up' pensions that have not performed well over the last few years. As he is approaching the latter years he wants to remove market risk and would prefer to opt for a secure fixed income with guarantee."

The terms of business set out that the initial fee for the advice would be calculated according to the amount the advice was in respect of - on the first £100,000 this would be 3%. And so for Mr R the fee should have been £3,000, but during the meeting on 7 August 2023 a reduced fee of £2,000 was agreed.

On 9 August 2023, Quilter issued an authority to proceed (ATP) which stated the fee as £2,000 and the description of the advice/service being provided as *"Pension reviews / Annuity advice"*.

However during a call with Quilter on 16 August 2023 Mr R asked the ATP to be amended to accurately reflect the service he wanted. A new ATP was issued on 17 August 2023 - which Mr R signed on 21 August 2023 - with the description of the advice/service being provided now recorded as:

"Annuity advice and set up costs in relation to Annuity and requirements for guaranteed income from pensions. 20 year fixed term required."

On 21 August 2023 Mr R requested to pay £1,000 upfront, and the remaining £1,000 on completion - to which Quilter agreed and the payment was made.

An in-person meeting took place on 20 September 2023 in which Quilter advised a fixed-term annuity would not be suitable for Mr R - and so Quilter said it was unable to implement the transaction.

Following the meeting Mr R was informed by an online pension advisor (unconnected to Quilter) that he could proceed on an insistent client basis. And so Mr R contacted Quilter by text message and email about this. However the same day Quilter responded to say that it didn't offer execution only or insistent client services.

Mr R requested a refund of the £1,000 paid due to Quilter not implementing the purchase of a guaranteed fixed term annuity - something which Mr R said was agreed to during the meeting on 20 September 2023. Mr R subsequently raised a complaint with Quilter.

Having investigated the complaint, Quilter issued a final response on 9 November 2023 in which it concluded that it had made Mr R aware that it would be providing him with advice, and so it wouldn't be refunding the £1,000 he'd paid to it.

Mr R remained unhappy with the outcome reached, and so the complaint was referred to our service on 15 November 2023 for an independent review.

Having assessed the matter, our investigator didn't think that it should be upheld. She said the following in summary:

- She'd considered the available documentation to determine whether Mr R ought reasonably to have been aware of the advisory service being provided by Quilter.

- By signing and returning the ATP dated 17 August 2023 on 21 August 2023, Mr R had agreed to having received the documentation provided by Quilter – the guide to its service, guide to its protection services, terms of business and its ongoing services – and also gave Quilter authority to proceed under the agreed terms of business.

- The terms of business set out the following:

  "As your adviser I will be paid by you for the advice I give you both initially and ongoing.

  The sections below set out the different ways in which I can calculate the correct level of fee for the initial advice.

  We will act as the intermediary between the product provider(s) and you with a view to arranging the purchase of the Retail Investment Products as we have agreed.

  Unless otherwise explained the fees below will cover a full advice process: understanding your current situation, objectives, attitude to risk, research to identify suitable solutions, documenting our recommendations and implementing the agreed solutions."

- Although Mr R had said that he wanted to implement the fixed term annuity on an execution only basis, the documentation suggested that this wasn't what was being offered.

- An execution only transaction also wouldn't be consistent with the completion of the attitude to risk questionnaire or the fact finding process which established Mr R's circumstances and objectives. These were associated with the provision of advice.

- As Mr R stopped the process after he was advised that the fixed term annuity wouldn't be suitable for him, the investigator then considered whether Mr R ought to be entitled to a refund of the £1,000 he'd paid to Quilter.

- But according to the terms of business, the proportion of fees due to Quilter would be as follows:

  "If you ask us to stop work after agreeing to these fees you will be invoiced a proportion of the agreed fee depending on when you ask us to stop working:

  - *After agreeing the fees, but before we do any work = 0% of agreed fees*
  - *After we have started researching your current arrangements and/or solutions, but before designing a solution = 25% of agreed fees*
  - *After we have started designing a solution, but before we present our recommendation = 50% of agreed fees*
  - *After we have presented our recommendation, but before we start implementation = 75% of agreed fees*
  - *After starting the implementation process = 100% of agreed fees."*

- On this basis, the investigator considered that Mr R's scenario would fall within the "50% of fees", or possibly the "75% of fees", definition. In support of this, she said that quilter had begun researching Mr R's current circumstances by carrying out the fact finding, had established his attitude to risk, and also obtained information from the providers of his pension plans.

- Quilter had also started formulating solutions which were communicated to Mr R on 20 September 2023. The email of that date did say that the solutions presented weren't a full recommendation, but Quilter had said in its final response that a suitability report would have followed, had Mr R indicated acceptance of one of its solutions.

- However, as this couldn't be evidenced, the investigator thought that it would be appropriate for Mr R to pay 50% of the agreed fees - £1,000. As Mr R had already paid this to Quilter, it was appropriate for Quilter to not request further payment from him.

Mr R disagreed, however, saying the following in summary:

- The terms of business were never given to him.

- Before he decided to use Quilter's services, he'd received a quote from another business which said it would facilitate the annuity purchase for £1,600. But he decided to use Quilter as he felt more comfortable with it. However, that other business is the one which ultimately transacted the business for him.

- Although the amended ATP still referred to "advice", the adviser said not to worry about that and that this was something which just needed to be recorded.

- Nowhere in the terms of business did it say that Quilter wouldn't conduct business on an execution only basis. Nor did Mr R understand the recommendation that Quilter had made, so he suspected that there may be a problem between it and the annuity provider.

- He was under a lot of stress when trying to arrange the annuity before the rates changed in October 2023, and losing the £1,000 was significant.

Mr R then submitted further information relating to the timeline of events and text messages which had been exchanged between him and the adviser.

As agreement couldn't be reached on the outcome, however, it's been referred to me for review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, and whilst I'm sorry to disappoint Mr R, I've reached broadly the same conclusions as the investigator and for similar reasons.

I'd firstly note from the comments Mr R has submitted, including his version of the timeline of events, that there's a difference of opinion between him and Quilter as to some of those events.

As such, where such discrepancies are present, I need to reach conclusions on the available facts, notably documented contact between the parties, to decide what is more likely than not, on balance, to have been the case.

Mr R has said that he didn't receive the terms of business, in which the advice process and the fee structure was set out. But Mr R signed the initial ATP, and then the one which he requested be amended, both of which referred to him having been provided with several pieces of documentation on 8 August 2023, including the terms of business. Above Mr R's dated signature, the ATP said the following:

"I have received and reviewed the above literature provided. I give authority to proceed under the terms and conditions described."

The available evidence therefore supports the position that Mr R was provided with information relating to the advisory process in which he would be engaging. And as noted by the investigator, this would also be consistent with the fact finding around his circumstances and objectives.

I've then considered Mr R's further point that the terms of business didn't specify that Quilter wouldn't provide an execution only service. But other than confirming the advice areas and products which it covered, I don't think it needed to provide an exhaustive list of the services which it didn't provide. It simply needed to outline the service which it would provide – and this was clearly an advisory service. For example, the first line of the section entitled "Investment Fees" was as follows:

"As your adviser I will be paid by you for the advice I give you both initially and ongoing."

Taking this into account, I think Mr R ought reasonably to have been aware that he was receiving an advisory service and that the fees for this were also adequately disclosed to him.

And on the basis of the actual work which was undertaken, I agree with the investigator's view that the 50% reduction would be appropriate here. Quilter had undertaken the information gathering and had reached the point of presenting Mr R with solutions which it considered would be appropriate to his circumstances – but it hadn't yet issued the suitability report with formal recommendations.

I've noted what Mr R has said about Quilter providing him with the application form for the fixed term annuity with the provider he had in mind, but I can also see that this was done to speed up the process if the compliance department agreed that this was a suitable solution for Mr R. The text messages bear out that Mr R was becoming anxious about the time the process was taking and that the adviser sent the application to him so that the process could be expedited. As it turned out, this wasn't one of the solutions then presented to Mr R.

I've further noted that Mr R has concerns about the actual solutions proposed, but having reviewed these, I don't think that they would necessarily have been unsuitable, if indeed they had then translated into formal recommendations within a suitability report. Quilter clearly had concerns about the additional income and inheritance tax (IHT) which Mr R would be paying as a result of the fixed term annuity at a time when he didn't need the additional income itself.

And the potential solutions of either taking a lower term fixed annuity with the proceeds remaining within the pension wrapper, which would enable Mr R to capitalise on the current elevation in annuity rates, whilst not creating a further income tax or IHT liability, or consolidating the pension plans into an interest bearing account within flexi access drawdown, which would have similar effects, wouldn't seem unreasonable.

It was Quilter's responsibility, as part of its advisory process, to not just transact the course of action which Mr R deemed appropriate for him. It needed to recommend a suitable course of action in line with its regulatory requirements.

I think the main cause of this complaint is that Quilter wouldn't then transact the business on an execution only basis, but unfortunately this wasn't a service which it offered. It would of course have been open to Mr R to verify with Quilter as to whether it provided this kind of service before engaging it.

And I have noted Mr R's assertion that the adviser told him that the advice part of the ATP and terms of business was something which needed to be recorded, but that he shouldn't worry about that. The adviser's recollection is different, in that he informed Mr R that it would indeed be an advisory process. As I've said above, where there's such a discrepancy, I need to consider the documented evidence. And for the reasons also set out above, I think this supports the position that adequate disclosure of the service's advisory nature was made here.

And so, for the reasons given, on a fair and reasonable assessment of the facts of the case, I don't think I could fairly and reasonably require Quilter to refund Mr R the £1,000 he paid to it.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 June 2024.

Philip Miller
Ombudsman