DRN-5234927

Financial Ombudsman Service

The complaint

The estate of Mr A has complained that Quilter Financial Services Ltd (Quilter) made several investment switches to the portfolio in 2012, which weren't suitable to the late Mr A's circumstances at the time.

What happened

The late Mr A invested approximately £250,000 into one fund, within an investment bond, in October 2009. This was done on an advised basis, through an advisor who was an appointed representative of Quilter.

In June 2012, the investment switched from the one fund held from inception, into five new funds. Due to the time that has passed, Quilter haven't been able to provide any evidence of how these switches were carried out and have maintained they must have been done on an execution-only basis.

In the following years there was some administration of the bond carried out. Including withdrawals and placing the investment into trust. Mr A sadly passed away in 2022 before his estate raised a complaint in September 2023. They stated that whilst happy with the initial advice given in 2009, they felt the switches in 2012 exposed the portfolio to too much risk.

Quilter replied to maintain that they hadn't advised on the 2012 switches and that the complaint had been brought out of time. The complaint came to our Service for an independent review. I previously concluded that the complaint had been brought in time as it hadn't been three years since the late Mr A or the estate had realised that the switches shouldn't have gone ahead.

Our investigator looked into it and he said he felt the switches had gone ahead based on the advice of Quilter and so they took responsibility for the suitability of them. He didn't feel the switches were suitable for the late Mr A's circumstances at the time. Quilter maintained they weren't done on an advised basis.

As no agreement was reached, the case has been passed to me to decide if it has been brought in time.

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.

Having done so, I agree with the outcome reached by the investigator that this is a complaint that should be upheld. Let me explain why.

Are Quilter responsible for the suitability of the switches in 2012?

Quilter haven't been able to provide any evidence as to how in 2012 the portfolio was switched from one fund (with a cautious risk rating) into five funds which appear higher risk. They have maintained this must have been done on an execution only basis. However, based on a balance of probabilities, using the evidence provided to me, I think it was most likely that the late Mr A was advised to make these switches.

I say this because, advice was given initially in 2009 and the portfolio had an advisor who the late Mr A would contact. There was trail commission paid and a recorded face to face meeting with the advisor in 2010. Further the advisor was recorded as having telephone calls with Mr A at least once and sometimes two or three times a year.

Mr A's circumstances in 2012 also suggest he would not have suddenly elected to make five switches without discourse with his advisor. He was 85 years old, showed reliance on his advisor for investment decisions in the years prior and had no access to a computer or the internet to help research such investment options.

I appreciate that the advisor has maintained he didn't advise Mr A to make these switches in 2012. However, I am not persuaded that was the case. Further, I would have expected the advisor to have made contact following the switches, to say they were being made contrary to what was recommended in 2009 and what I presume had been discussed and considered as still suitable for Mr A in the following regular meetings. There is no record of such contact.

I am satisfied that on a balance of probabilities the 2012 switches were made on the advice of the advisor and so Quilter are responsible for the suitability of them.

<u>Were the 2012 switches suitable for the late Mr A at the time?</u>

Having reviewed the five funds switched into in June 2012, I don't believe they were suitable for the late Mr A's circumstances at the time.

Whilst there is no point-of-sale documentation to rely on, Mr A was recorded as a cautious investor in 2009. I haven't seen any evidence to suggest this had changed. Mr A was 85 years old at the time and with no opportunity to recover any losses that these switches bought about. These switches placed his portfolio at significantly more risk. All five funds invested into had higher, and in some cases much higher, equity exposure. I have no evidence of any change in objectives that would have made these switches necessary.

In summary, I believe (on a balance of probabilities) that the 2012 switches were made on an advised basis. As such, Quilter are responsible for their suitability and I don't believe they were suitable for Mr A at the time. This is largely due to the significant increase in risk it posed for funds of over £200,000 and for a customer who was 85 years old at the time and had only three years prior, been recorded by Quilter as having a cautious attitude to risk. Quilter should put things right for the estate as set out below.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put the estate of Mr A as close to the position it would probably now be in if Mr A had not been given unsuitable advice.

I take the view that Mr A would have invested differently. It is not possible to say precisely what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr A's circumstances and objectives when he invested.

What should you do?

To compensate the estate of Mr A fairly you should:

- Compare the performance of Mr A's investment switches in 2012 with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.

- You should also add any interest set out below to the compensation payable.

- Provide the details of the calculation to the estate of Mr A in a clear, simple format.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Bond	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date funds were switched from the higher risk funds	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

Fair value

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

To arrive at the fair value when using the fixed rate bonds as the benchmark, you should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr A wanted Income with some growth with a small risk to his capital.

- 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 (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

• I consider that Mr A'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 the estate of Mr A into that position. It does not mean that Mr A would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr A could have obtained from investments suited to his objective and risk attitude.

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints. Alternatively, just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

My final decision

My final decision, for the reasons stated above, is that I uphold this complaint and require Quilter Financial Services Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr A to accept or reject my decision before 28 January 2025.

Yoni Smith
Ombudsman