DRN-5272461

The complaint

Mrs B says an Appointed Representative ('AR') of Quilter Financial Services Ltd ('Quilter') gave her unsuitable investment advice (a fund switch) for her pension in 2021. Quilter disputes the complaint. It says the advice was suitable, mainly because her previous pension investment mismatched her risk profile.

What happened

Mrs B's pension was previously invested in the abrdn MYFolio Index IV fund (the 'MYFolio fund'). The AR recommended a switch to the Quilter Investors Cirilium Balanced Portfolio ('QICBP').

She says she engaged the AR only in relation to investing her Stocks and Shares Individual Savings Account ('ISA') and that she had no plan or desire to switch funds in her pension, but she was convinced by the AR that it was in her best interest to do so. The fund switch happened in October 2021, with both parties having held meetings in the same month. Quilter confirms another meeting in November 2021. Then the AR retired in December 2021 (which is when he ceased to be authorised and ceased to be Quilter's AR).

Quilter also says it had and has no association with the firm that acquired the AR's business, and that the acquiring firm has been in receipt of ongoing fees from Mrs B's pension fund since December 2021, so it has been responsible for advising on her pension since then.

In her November 2023 complaint to Quilter she expressed dissatisfaction about the fund switch advice and about a loss in her pension's value of around £14,000 since the switch. She has also expressed the feeling of being misled by the AR in the fund switch advice, noting that he concealed his retirement until after the advice and its implementation, despite the promise within his advice to review the fund switch in the following year.

The AR's advice was given to Mrs B and her husband. With regards to his advice to her, his 2 November 2021 suitability report mainly said –

- He had reviewed the investments in her pension and ISA, and this was the scope of his advice.
- She and her husband were already paying an Ongoing Advice Fee ('OAF') of 0.8% per year for his service, so no additional fee was applied to his review and advice, but the OAF "… *will be deducted directly from* [their] *investments by* [their] *product provider and paid to* [him]".
- She did not have a specific goal for her investments other than for them to have the potential for capital growth in real terms, to keep pace with inflation and to be within her risk profile.
- Her investment horizon was five years or more, and she had a balanced risk profile [level 3 on a scale of 1 to 6].
- The MYFolio fund was too high risk for her, it mismatched her balanced risk profile and it was a passive fund. She would be better off with a fund that matched her risk profile and that was actively managed (including the diversity of asset classes and regular rebalancing within such funds). Both qualities would be achieved by switching

to the QICBP, hence its recommendation.
- The annual fund charge for the MYFolio fund was 0.35% whereas the annual fund charge for the QICBP was 1.15%, so there would be an annual increase in charges of 0.8%.
- "*Changing your investment approach has resulted in an increase in the cost of managing your funds*."
- "*You understand that whilst you will be paying higher fund charges moving forward, the fund manager will have access to a greater number of asset classes and investment techniques. This will provide them with the ability to potentially generate a better return for your risk profile, although this cannot be guaranteed*."
- After implementation, the fund switch will be kept under regular review, the next review being in June 2022.

Quilter essentially stands by the suitability report. It endorses the grounds on which the report said the fund switch was suitable and it considers that the AR was 'duty bound' to recommend the switch because the MYFolio fund mismatched Mrs B's balanced risk profile. It accepts that the switch increased costs for Mrs B. It says – "… *the charges … increased following the advice … However, this represents the difference between paying only investment charges, as was the case initially … and then also paying for the services and ongoing advice of a financial adviser*".

One of our investigators looked into the matter and concluded that the fund switch was unsuitable for Mrs B. He set out how redress should be approached and said there should also be an award of £150 to Mrs B for the trouble and inconvenience the matter had caused her.

He agreed that it was wrong for the AR not to disclose his impending retirement at the point of advice, but he considered that the main issue to address is suitability (or otherwise) of the advice.

The investigator mainly found that there was no particular driver behind the fund switch; that the AR's justification for it was to move from a passive to an active investment approach; that the recommendation imposed higher costs on Mrs B which did not serve as good value, especially as she then needed the new fund to outperform the old just to achieve the same result; no illustrations were presented in this regard; and comparison of the fund factsheets suggests that the MYFolio fund had a lower risk profile than the QICBP.

Quilter disagreed with this outcome and asked for an Ombudsman's decision.

In addition to its core position, it mainly argued that the investigator was mistaken about the exact amount of increased costs Mrs B faced; that it was an increase of 0.8% per year, not of 2% per year, because contrary to the investigator's finding there was no OAF for the pension; that he was also mistaken in his comparison of the funds' profiles (and that he was using the wrong fund factsheet); that the MYFolio fund was clearly different from the QICBP because the former's 75% exposure to equities (including overseas equities) was unsuitable for her balanced profile and was significantly higher than the latter's equities exposure of around 45%; and that the investigator was wrong to suggest the AR presented an assumption that the QICBP was likely to outperform the MYFolio fund, because no such assumption or assurance was stated.

On the OAF issue, Mrs B shared evidence with us for her position that there was no previous OAF associated with her pension, and evidence that her pension provider (Fidelity) has confirmed that an OAF was charged to the pension in 2021.

The matter was referred to an Ombudsman.

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 have reached the same conclusion expressed by the investigator, for broadly the same reasons.

I begin to with an observation about the comparison of costs between the two funds and about relevance of the OAF to that comparison. Available evidence suggests that Quilter is wrong in what it has presented on this and that the additional costs to Mrs B in the fund switch recommendation was more than it has referred to.

There is an email from Mrs B to the AR dated 12 October 2021, in which she says – "*The plan charges we are paying with Fidelity are currently: Adviser ongoing charges 0.53% (<u>which we have currently opted out of</u>) … The plan charges for Quilter are: Adviser ongoing charges 0.80% …*" [my emphasis]. This was an enquiry email in which she sought additional explanation about the charges (and performance information that she also referred to).

The AR's reply of 13 October 2021 did not dispute her statement that she had opted out of the 0.53% OAF she referred to. He did not confirm it either, instead he said he would get all the relevant information together and discuss further with her. However, I consider that there remains some weight in Mrs B's reference being made to him without him correcting it as being factually wrong (either at the time or thereafter). She has argued that there was no OAF previously associated with her pension, and this email exchange is evidence that she conveyed the same thing to the AR at the time of advice.

A recent email from Fidelity to Mrs B included the following information about the deduction of OAF from her pension – "… *the adviser fee was as follows: March 2023 to Feb 2024 (£343.82 advisor fee) and from March 2021- February 2022 (£370.69 advisor fee)*".

The year March 2021 to February 2022 included the period in which the AR advised the fund switch. It is not clear from Fidelity's statement that OAFs were deducted after the October 2021 switch. However, as I quoted above, the AR did say in his suitability report to Mrs B and her husband that the 0.8% OAF "… *will be deducted directly from* [their] *investments by* [their] *product provider and paid to* [him]". Furthermore, Quilter appears to have said something similar in its complaint submissions. As I mentioned above, it said – "… *the charges … increased following the advice … However, this represents <u>the difference between paying only investment charges, as was the case initially … and then also paying for the services and ongoing advice of a financial adviser</u>*" [my emphasis].

Overall, on balance and for the above reasons, there is enough ground to conclude that an OAF was probably associated with the AR's pension fund switch advice. Therefore, it is reasonable to conclude that an OAF was probably an additional cost associated with the pension fund switch. This would also mean that the 0.8% per year increase in fund charges resulting from the switch was compounded by additional costs within the 0.8% per year OAF associated with its recommendation.

Another observation relates to the risk profile comparison between the two funds. Fund fact sheets and Key Investor Information Documents ('KIIDs') have been shared with us for both funds. The KIID for the MYFolio fund confirms a risk rating of 4 out of 7, and the KIID for the QICBP confirms a risk rating of 5 out of 7 (including the description that the fund presented a "moderately high risk of losing money" along with a "moderately high" chance of gains). In other words, the latter fund was rated as bearing a higher risk than the former.

It is also true that the QICBP limited itself to 20-60% equities exposure (with an active investment approach), whereas the MYFolio fund's equities exposure range was 60-80% (with a majority passive investment approach).

Overall and on balance, evidence supports Mrs B's claim that the QICBP was actually rated as a higher risk fund than the MYFolio fund. Comparing the details of both funds might also invite the alternative argument that they were perhaps broadly similar in terms of the investment risks within them (with allowances for their different investment approaches), but I do not consider that the balance of evidence supports Quilter's claim that the MYFolio fund had higher risks than the QICBP.

The regulator's Principles for Businesses, at Principle 6, required the AR to pay due regard to Mrs B's interests and treat her fairly. The same responsibility was echoed in the regulator's Conduct of Business ('COBS') rules at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to designated investment business carried on for a retail client. Mrs B was such a client. The AR owed her an advisory service in which, overall, his advice had to be in her best interests.

Furthermore, remaining with the AR's duty to uphold her best interests, the regulator's 2016 guidance on 'assessing suitability' confirmed an expectation upon firms to objectively consider their clients' needs and objectives. In Mrs B's case the suitability report shows that she did not present her pension to the AR with any predetermined review objectives (other than the general growth objective she had, an objective commonly held by pension holders). This lends some support to her claim that she did not present her pension to him at all, and that she did not seek the pension fund switch. The idea that the MYFolio fund was unsuitable was initiated by the AR, so this seems to have created a review objective (that is, to rebalance an allegedly unsuitable pension portfolio) where none previously existed. In any case, the AR still had to address this matter *objectively* and in Mrs B's best interests.

Overall and for the reasons that follow, I do not consider that he did either:

- As I addressed above, the MYFolio was risk rated 4 out of 7, so it was rated in the middle of the range. This describes a medium risk fund, and I do not consider that it depicts the mismatch with Mrs B's balanced risk profile that the AR and Quilter claim to have been the case. Given that the alleged risk profile mismatch was the AR's core reason for recommending the fund switch, I find that the reason he used for the fund switch was broadly unfounded.
- The conclusion that follows is that, in the circumstances of the AR's advice to Mrs B, the fund switch was unwarranted.
- As I also addressed above, the fund switch recommendation increased annual costs for Mrs B by 0.8% in additional fund charges and by additional expense within the OAF.
- The collective conclusion that follows from the above is that the fund switch was unwarranted, the rationale for it was unfounded and it increased costs for Mrs B unnecessarily. Even if the OAF is discounted, the same conclusion about costs applies, because the 0.8% per year fund charge increase eclipsed the 0.35% per year fund charge she was previously paying for the MYFolio fund. The increased fund cost was significant enough in itself, without being compounded by the OAF.
- As Quilter concedes, the AR presented nothing meaningful on the QICBP's prospects to outperform the MYFolio fund, despite such outperformance being necessary just to put Mrs B back into the position she previously held with the

MYFolio fund. Therefore, she was advised to increase her costs and essentially (or at least potentially) deplete capital in her pension fund due to the increased costs, but she was given no basis on which to project any sort of likelihood that the increased costs will be worthwhile and/or that the venture will, overall, provide a net benefit to her pension. The fund switch recommendation put her in this position despite the AR acknowledging that her general objective for the pension was capital 'growth'. For this reason, the recommendation actually worked against her goal for the pension.

- None of the above was in Mrs B's best interest, and they all combine to show that the fund switch recommendation was unsuitable for her.

Overall, Mrs B should not have been advised into the pension fund switch. Had there been no such advice, she would probably have retained the MYFolio fund holding. Evidence supports her claim that she presented neither the pension nor its investment to the AR's review, so had he not initiated the pension fund switch it would not have happened.

For all the above reasons, I uphold Mrs B's complaint.

Putting things right

fair compensation

My aim is that Mrs B should be put as closely as possible into the position she would probably now be in if she had not been unsuitably advised into the pension fund switch. As I have found, but for the AR's unsuitable advice she would probably have retained the MYFolio fund holding.

To achieve this, I have used the notional value of the MYFolio fund as the natural redress benchmark. In the event that this value cannot be obtained, I have also referred to an alternative redress benchmark below.

I am satisfied that what I have set out below, including provision for the alternative benchmark (based on Mrs B's balanced risk profile at the time of advice), if the notional value cannot be obtained, is fair and reasonable redress for her.

The start date for the calculation of redress is the date of the pension fund switch, and I agree with the investigator's use of the 28 February 2022 end date.

I acknowledge that the AR retired and ceased to be Quilter's AR in December 2021. However, as the investigator said, the acquiring firm (that I mentioned above) would have needed reasonable time to review Mrs B's account and to implement any outcome of the review. In the circumstances, I consider it fair and reasonable to allow around two months, up to 28 February 2022, for this purpose. Therefore, I find that the effects of the AR's unsuitable advice ran up to this date, so Quilter's calculation of redress must do the same. Mrs B has shared evidence showing that it took longer for the acquiring firm to review her pension, but that is a matter between her and the firm, so I am not persuaded to extend the end date beyond 28 February 2022.

In addition, any calculated loss up to the end date will be relevant to Mrs B's pension thereafter. Had there not been an unsuitable fund switch, such lost value, as of the end date, is value that would have existed in her MYFolio fund holding on that date, and that would thereafter have had the same performance as the rest of the holding. If that performance (after the end date) has been positive the lost value would have experienced growth. Therefore, and irrespective of how her actual QICBP holding performed or was reviewed, replaced and/or managed after the end date, any such lost value is distinct and it would not have been part of the QICBP holding, so if it has missed out on subsequent growth Mrs B is entitled to compensation for any such lost performance/growth, from the end date to the date of settlement.

I also share the investigator's view about the £150 award to Mrs B for the trouble and inconvenience caused to her by the AR's unsuitable advice.

Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience. Under this guidance, awards between £100 and £300 can be considered where a firm's wrongdoing has caused a complainant some distress, inconvenience and/or disappointment. I consider this range applicable to the personal impact of the unsuitable fund switch upon Mrs B. Being led into switching funds unnecessarily and then realising the switch was unsuitable would have caused her some disappointment. For these reasons I award her £150 compensation.

what must Quilter do?

To compensate Mrs B fairly, Quilter must:

- Compare the performance of the investment in the table below with the notional/fair value benchmark in the table below. If the actual value is greater than the notional/fair value, no compensation is payable. If the notional/fair value is greater than the actual value, there is a loss, and the difference is the compensation payable to Mrs B. Also calculate the additional payment set out in the table below, as additional compensation payable to Mrs B.

- Pay the total compensation into Mrs B's pension plan to increase its value by the total 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 total amount into the pension plan, it should pay that amount direct to Mrs B. Had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount 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 is not a payment of tax to HMRC, so Mrs B would not be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using her actual or expected marginal rate of tax at his selected retirement age. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculation to Mrs B in a clear and simple format.

- Pay Mrs B £150 for trouble and inconvenience.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest it should tell Mrs B how much has been taken off. It should give her a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment	Status	Benchmark	From ("start date")	To ("end date")	Additional payment
The Fidelity Pension Investment/ Fund	Still exists	Notional value for the MYFolio fund; or alternative benchmark stated below.	Date of the fund switch	28 February 2022	Calculate if and how any total financial loss as of the end date would have performed/grown from the end date to the date of settlement using the same benchmark.

actual value

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

notional [fair] value

This is the value of the investment, based on the notional performance/value of the MYFolio fund. Quilter should request that the fund provider assist in calculating this value, if there are costs involved in doing so Quilter must undertake those costs.

Any withdrawal from the investment 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 will accept if Quilter totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the MYFolio fund provider is unable to assist in calculating the notional value and/or if that value cannot be accurately obtained, Quilter will need to determine a fair value for the investment instead, using this alternative benchmark (and applying the same adjustments stated above) – the FTSE UK Private Investors Income Total Return Index.

why is this remedy suitable?

- If the MYFolio fund provider is unable to assist in calculating the 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's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mrs B's balanced risk profile can be reflected in this benchmark, in the sense that she was prepared to take some risk to achieve growth in her pension fund. It does not mean that she would have invested in some kind of index tracker investment. Rather, if the notional value cannot be obtained, I consider this a reasonable benchmark that should broadly reflect the sort of return she could have had from the MYFolio fund holding, but for the unsuitable pension fund switch.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £350,000, £355,000, £375,000, £415,000 or £430,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm, and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mrs B's case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2023 but before 1 April 2024, so the applicable compensation limit would be £415,000.

My final decision

For the reasons given above, I uphold Mrs B's complaint, and I order Quilter Financial Services Ltd to calculate and pay her redress and compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 4 April 2025.

Roy Kuku
Ombudsman