DRN-5291367

The complaint

Mr S is represented. His complaint relates to the following firms –

- Aqua Financial Services Ltd ('Aqua') – the firm who recommended a pension switch to him in 2019; in the main, he says the pension switch was unsuitable, and he seeks redress (including a full refund of associated fees) for this.
- Compass Financial (UK) Limited ('Compass') – Aqua's parent company.
- Quilter Wealth Ltd ('Quilter') – Aqua was an Appointed Representative ('AR') of Quilter between September 2018 and August 2022; Compass has been an AR of Quilter since 2014.

As Aqua's principal in 2019 and Compass' principal, Quilter is the respondent to the complaint. It disputes the complaint and says the pension switch recommendation was suitable.

What happened

On 8 January 2025 I issued a Provisional Decision ('PD') upholding the complaint. Both parties were invited to comment on the PD. Mr S and his representative accepted it, and presented enquiries about reversing the pension switch as part of redress for the complaint and about his pension's value. Quilter does not appear to have commented on the PD.

The PD summarised the complaint, and its background, as follows –

"*In 2019, and on Aqua's recommendation, Mr S' four Prudential Personal Pensions (PPPs) were switched into an Old Mutual Wealth ('OMW') Collective Retirement Account ('CRA') – the CRA was invested in the Quilter Investors Cirilium Balanced Passive Portfolio ('QICPP').*

He previously had a longstanding relationship, over decades, with Aqua's predecessor – a firm called Aqua IFA. Aqua IFA's principal(s) retired and its business was acquired by Aqua in September 2018. Aqua sent him an introduction letter on 1 October 2018. He has submitted evidence of a review of his PPPs conducted with Aqua IFA in August 2018, a month before the acquisition.

Aqua's introduction letter referred to contacting all its clients within the following three to four months and that during such contact with Mr S there would be opportunity to discuss his specific investments and requirements, and to ensure they were 'correctly placed'.

A meeting between the parties happened on 13 February 2019. Mr S says he did not initiate this meeting, that Aqua did, and that he considered it to be no more than an informal introduction meeting. Aqua says it was a review meeting. Mr S disputes this, and argues that he neither asked for nor needed a review at the time, because he had concluded a review with Aqua IFA (in August 2018) a few months earlier.

Two subsequent meetings took place, on 9 April 2019 and 25 June 2019. On 25 June, Aqua presented a financial report for Mr S, in which it recommended the switch from the PPPs to the OMW CRA (and the underlying QICPP investment). Mr S confirms that he received the *report and that Aqua took him through it, but he stresses that they went through it in a very rushed manner and that he was not given time to properly read and consider its contents before he gave his agreement. He also refers to placing faith in Aqua based on a belief that it would be acting in his best interests.*

The report's contents included the following –

*"**Charges For Advice***

We discussed and agreed the charge payable for this advice which is 1% of the overall amount invested. Based on a total transfer amount of £379,454.00 this equates to a total charge of £3,794.54. Please refer to the Terms of Business I provided you with.

This initial charge is for the advice to date and does not include the cost of any future servicing.

This charge will be paid through the product provider via a deduction from your investment.

Although you may access part of your pension when you retirement [sic] in the next 2 years or so, as you do not anticipate requiring access to all of your pension fund and it is likely to remain investment [sic] via flexi-access drawdown. In calculating our initial fee, I have based this on your life expectancy rather than when you will retire. However, please note there will be no further initial charge for crystallisation of the funds in the future as this will be covered by the aforementioned initial charge.

Review Service

We strongly recommend that your retirement plans are reviewed on a regular basis. Taking into account your circumstances and the complexity of your arrangements we have agreed that you would like your plan and the underlying investments, to be reviewed in line with your needs and objectives on an annual basis. If you should require a review more urgently, perhaps because of a change in your circumstances, please let me know and I will arrange this for you."

"The costs of the Regular Review Service will be met by way of a deduction from your fund. For the services described above, an annual charge of 0.75% will be deducted each year. You should note that the rate is charged as a percentage of your funds' value and as such the actual amounts payable will vary as the value of your fund fluctuates. For example, on a fund of £379,454.00 the charge would be £2,845.90 per annum."

"Your Retirement Objective – Income at Retirement

We discussed your retirement planning e.g. when you plan to retire, your objectives in retirement and what provision you may need when you stop work. There are a number of ways that we can attempt to increase your retirement provision.

1. *You save more.*
2. *You retire later.*
3. *You pay less tax and/or gain more tax reliefs.*
4. *You pay less in charges.*
5. *You get a greater return for the risk you are willing to take."*

"Your Current Arrangements

Your current estimated annual income at retirement is £40,438.44 in today's terms. This *amount has been estimated from the value of all of your existing arrangements including personal policies, employer's provision, and any investments you plan to take income from and any anticipated state pension amounts as follows:*

Provider	***Plan Type***	***Fund Value***
State Pension		*£8,767.20 pa (benefit value)*
[Business] Income		*£10,000.00 pa*
Prudential …	*Personal Pension*	*£70,311.85*
Prudential …	*Personal Pension*	*£7,229.95*
Prudential …	*Personal Pension*	*£260,279.93*
Prudential …	*Personal pension*	*£41,723.44*

You currently have sufficient provision in place to meet your income requirements in retirement. However, I recommend that we review this on a regular basis to ensure this is maintained.

You are currently making regular contributions to your plan of £283.00 gross per month. You have agreed to continue to make these contributions to your plan." [my emphasis]

"Your Retirement Planning Attitude to Risk

We discussed your circumstances in relation to the principles of risk and reward in respect of your retirement planning both near and in the long term. Your answers indicated you are a Dynamic risk investor but following our discussion, we agreed to reduce this risk profile to Balanced as you do not wish to take a higher level of risk at this stage in your life."

"We discussed the timeframe for your investment and agreed this is going to be at least 10 years."

"Your prior knowledge and experience of investments which is also a consideration in making my recommendation. You told me you have been investing in the stock market for over 10 years. You have been investing in pensions."

"I have recommended you transfer your existing pension plan to Old Mutual Wealth Collective Retirement Account for the following reasons:

Product Provider	*Old Mutual Wealth*
Product Name	*Collective Retirement Account*
Transfer Value	*£379,545.00*
Member Contributions:	*£283.00 gross per month*
Retirement Age	*66*

- *The fund performance and range of investment opportunities available under your existing pensions are restrictive*
- *You want to be able to switch the funds within the investments with minimal charges and paperwork.*
- *You wish to benefit from the lower platform charges offered by Old Mutual Wealth via Intrinsic.*

My research of charging structures and desirable features included stakeholder pensions but the limited investment options under stakeholder meant that the personal pension recommended is more suitable.

I have compared the charging structure of the proposed new plan with your ceding plan and the charges in my recommended plan are slightly lower than those that applied to your old plan. In effect this would mean that the new fund performance could actually be ***lower by 0.88%*** *each year in the new plan, and still achieve the same result as your old plan. In reality of course I believe the fund growth prospects will be as good, if not better, in your new plan."*

"This calculation does not take into consideration advice charges which you have agreed will be deducted from your fund. By taking the charges from your pension fund, this will reduce any growth. *<u>The total charges including those of the provider, the fund and my advice charges, will reduce the fund growth by a net 2.1% per annum on your plan to your proposed retirement date based on the current amount invested</u>. <u>This figure is high due to the retirement age of 66, however in reality the fund is likely to remain invested for a longer period of time as you are likely to access the fund through flexi-access drawdown</u>." [my emphasis]*

In total, the pension switch solution, at the time of the recommendation, had the following costs – 1% one-off Initial Advice Fee ('IAF'); 0.75% per year Ongoing Advice Fee ('OAF'); 0.21% per year platform charge; and 0.60% per year fund charge.

The Annual Management Charge ('AMC') for the PPPs was 1.59% (as confirmed in Prudential's letter to Aqua dated 15 March 2019).

<u>The Complaint</u>

The pension switch happened in July 2019. Four months later, in November, Mr S submitted his complaint to his Aqua adviser. Since then and, it appears, because of the complaint, no ongoing service has been provided to him, but the OAF has continued to be deducted from his CRA.

His complaint alleges the following – Aqua's breach of promises it made at the time of the acquisition; misrepresentation or non-disclosure of its status as a tied adviser; its mishandling of the move of his account from Aqua to Compass after the pension switch; unsuitability of the recommended pension switch solution given that he did not need or want it, the annual OAF was around the same amount of his annual contributions, he was two years away from his planned retirement at age 65 (when he planned to take tax-free cash and buy an annuity), his PPPs had performed well, their underlying investments (Prudential's PruFund Growth Funds) were superior to the QICPP, and the recommendation is more expensive than the arrangement he previously had.

In addition, Mr S and his representative have made detailed allegations about inaccurate and conflicting information (about him) in the documentation used by Aqua for its recommendation, and on which Quilter relies in disputing his complaint. They say key documents which Aqua says were made available to, and agreed by, him at the time of advice were either not made available to him or, if and where they were, his signature was obtained on documents which Aqua subsequently completed. He considers it wrong to give weight to contents added to documents after his signature and to documents he did not receive.

Quilter maintains that the key documents from the time of advice are legitimate and reliable."

The PD's findings were mainly as follows –

"I consider that suitability of the pension switch advice and the fees paid are the main issues in Mr S' complaint. The other matters he and his representative have referred to appear to be in support of these core issues and in aid of their overall assertion that Aqua and its adviser manipulated matters and events in 2019 to serve their interests by generating fees from an unsuitable pension switch. In this respect they have also mentioned hearsay about Aqua allegedly engaging in churning its clients' accounts.

I acknowledge Mr S' and his representative's strength of feeling for their claim that Aqua, overall, mistreated him. I also do not wish to be dismissive of their belief that Aqua/Compass/Quilter and the 2019 adviser, should be subjected to regulatory accountability for what they consider to be serious wrongdoings on their part. However, the following preliminary points should be noted –

- *The task before me is to determine the issues in Mr S' complaint fairly and independently, on the balance of available evidence and with the application of Aqua's/Compass'/Quilter's regulatory, legal and contractual obligations towards him mainly during the 2019 events.*

- *Churning is specifically defined, in guidance within the Conduct of Business Sourcebook ('COBS') section of the regulator's Handbook, as follows – "A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the client." and "A firm should have regard to the client's agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a client within or between packaged products."*

- *This guidance is in COBS 9.3.2 G, and it is part of the Handbook's provisions for assessing suitability. In as far as the guidance relates to suitability of the pension switch in Mr S' case, I have already acknowledged that suitability is a key issue I will be determining – and I have summarized my provisional conclusion on this above. If he and his representative allege churning in the wider sense – with regards to frequency of a series of transactions – I do not consider that the facts of his case lend themselves to such an allegation. The pension switch (inclusive of the OICPP investment and the associated ongoing advice service) was the only transaction conducted in 2019 by Aqua and is the only transaction relevant to the complaint, so there is no series of transactions to consider. I have no evidence about other clients' accounts, and I am not considering other clients' complaints, so I do not comment on the hearsay.*

- *In terms of regulatory accountability, we are not the industry regulator. It is beyond my remit to address matters of regulatory breach in isolation. If such matters are relevant to determining issues in a complaint, they can be treated as such. In the present case, I will set out below the regulatory rules, guidance and expectations that defined what Aqua was required to do during its advice to Mr S in 2019. As I will explain, this is sufficient for the task of addressing his complaint. If he and his representative say there are specific alleged regulatory breaches that Aqua/Compass/Quilter and/or the 2019 adviser should be held accountable for, as a separate matter, they can consider approaching the regulator for that purpose.*

- *Overall and on balance, I share the investigator's view on the reliability of documents from the time of advice. Mr S' signatures are on documents confirming he received, understood and agreed the terms of Aqua's service, the recommendation and the costs associated with the recommendation. He also concedes that the adviser took him through the recommendation, albeit, he says, in a rushed fashion. In other* *words, he had the constructive knowledge the investigator referred to, and it is reasonable to find that he ought reasonably to have read and understood all that he agreed in 2019.*

- *Having said the above, I also consider that the proximity between the pension switch and, only four months later, his complaint gives support to his assertion that he did not properly understand the terms, recommendation and costs he had agreed to. It appears that he took time to do so after the switch, concluded he should not have given his agreement, and complained. Some of his complaint submissions illustrate this. In any case, what Mr S agreed to is not automatically pivotal in terms of merit in his complaint. Irrespective of his agreement, Aqua was the expert in the relationship and, as I explain below, it had the regulatory obligation to ensure its advice was suitable for him and in his best interest, so more – beyond what Mr S agreed – needs to be addressed.*

- *I have taken into consideration the inaccuracies and conflicting information in the documentation that Mr S and his representative have addressed. If relevant to determining merit in the complaint, and to my provisional findings, I will deal with them.*

<u>*Suitability of the Recommended Pension Switch Solution*</u>

I will begin with a summary of the obligations Aqua was required to discharge during its advice to Mr S in 2019.

The regulator's Principles for Businesses, at Principle 2, requires a firm to conduct its business with due skill, care and diligence. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. COBS 2.1.1R 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. COBS 9 and 9A (for non-MiFID and MiFID related advice) sets out a firm's obligation to assess the suitability of its advice to clients.

In broad terms, there are a number of key elements for a firm to address when assessing suitability (or otherwise) of a recommendation – the individual's profile at the time of the recommendation (mainly, his/her objective(s), personal circumstances, attitude to risk ('ATR'), capacity for loss and investment knowledge/experience); whether (or not), on balance, the recommendation was suitable for that profile; and whether (or not), on balance, the individual was properly informed about the nature of the recommendation, its costs and its risks. Depending on circumstances, a shortcoming in any of these areas could make a recommendation unsuitable.

The regulator's checklist (published in 2009) for pension switching, highlighted four key issues firms should focus on when advising on such switches. One of the issues listed was charges, and firms were/are expected to address the question – has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?

In 2012 further guidance from the regulator, on the same matter, included the following –

"Replacement business

2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to *consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.*

2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.

2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation."

Mindful of all the above, I consider that Aqua's recommendation to Mr S in 2019 was unsuitable and was not in his best interest.

There is no evidence that he asked for or needed a review of his pension arrangement in February 2019. As he has stated, a review was conducted, by Aqua IFA, on that arrangement in August 2018.

This does not mean Aqua was wrong to conduct the review. Its introduction letter to him clearly stated its intention to, essentially, conduct a form of Know-Your-Client exercise for all the clients it inherited in the acquisition within three to four months of the letter. The February 2019 review happened in the fourth month after the letter. For a firm undertaking new clients in an acquisition, it was not unreasonable for it to conduct such an exercise soon after the takeover. It was also not unreasonable for a review of Mr S' pension arrangement to be a part of the exercise.

However, the exercise and review had to take Mr S as he was, including and especially the fact that his PPPs had been recently reviewed. Aqua should have featured the August 2018 review in its approach, using it as part of its starting point to consider his current position at the time, and to consider whether (or not) there had been any changes in circumstances since it happened (of if Mr S held any concerns about it) which gave reason for reconsideration of his arrangement. There is a lack of evidence that Aqua took this approach.

There appear to have been no changes in circumstances and there is no evidence that he conveyed any concerns about the August 2018 review or about the PPPs. Indeed, the financial report's section on his 'objectives' suggests that he presented none to Aqua. As I quoted above, the section refers to a discussion of his retirement plans, then it proceeds to give a somewhat generic list on how Aqua could consider increasing his pension fund. That was not necessarily unreasonable if, in his best interest, Aqua sought to look into how it could help Mr S improve his pension fund. However, the point to note here is that reconsideration of his pension arrangement was initiated and led by Aqua, not by Mr S or any specific need or objective he held. This also meant, and means, that his implicit satisfaction with the existing PPPs was the default position. Unless Aqua had something better to propose to him that position should have been left intact.

In terms of objectives, Mr S did not really have any in the Aqua review process. With regards to his personal circumstances, the report (as quoted above) is clear that his existing provisions covered his retirement income needs, so there was no deficiency in this respect.

He says his planned retirement age was 65, the report recorded this as age 66, in either case he was around two to three years away from retirement. He says he planned to take tax free cash and buy an annuity, but the report refers to a planned flexible drawdown arrangement in which parts of the pension fund remained invested over time (whilst parts would be withdrawn as income). This difference has some relevance to the impact of costs, as I address below, but the following facts remain – he was very close to retirement, he was satisfied with the PPPs he had in place, and those PPPs adequately covered his retirement income needs.

There is dispute over his ATR, the report says he was assessed as having a dynamic ATR but chose to lower that into a balanced ATR for the pension switch. He refers to a 2009 fact-find document showing history of him having been a low-risk taker and he says Aqua did not accurately assess his ATR. However, this document was 10 years old at the time of the 2019 advice, and information on the PruFund Growth Funds that his PPPs were invested in suggests that Prudential gave them broadly balanced risk profiles.

There is also dispute over the level of his investment knowledge and experience. I do not intend to deal with this at present because, as I provisionally conclude below, I find that the pension switch itself was unsuitable and should not have happened. If that had been the case, no investment in the QICPP would have taken place.

Mr S' investment knowledge/experience is mainly relevant to suitability of the QICPP investment, and less so to the pension switch. It follows that it is not necessary to address investment knowledge/experience if, as I do, I find that there should not have been a pension switch (which means the QICPP investment would never have happened). Quilter might argue that it remains necessary to deal with the prospects of the QICPP's performance, in terms of potentially adding growth and value to Mr S' pension fund, thereby making the pension switch suitable. I will do this. It sits mainly in the context of costs, which I address next.

The report led with the message that the CRA product was cheaper for Mr S than his PPPs arrangement, but, to its credit and as I quoted (and emphasised) above, it followed with clarification that the entire recommended solution (including the costs of advice (initial and ongoing), of the CRA and of the QICPP) would be more expensive for him than his existing arrangement, thereby leading to an annual reduction in growth of 2.1% net – which essentially meant a requirement for annual outperformance at the same rate.

The report says this effect was high because he was close to his retirement age, but it considered that the effect would be tempered by the pension fund continuing to be invested thereafter in a drawdown arrangement. I am not convinced about the likelihood of Mr S using a drawdown arrangement at the time. He says he planned to buy an annuity, the report he agreed says otherwise, but then the OMW application refers to an annuity purchase based illustration. The truth in this aspect seems unclear to me.

In any case, the position was that the recommendation would lead to a 2.1% net annual adverse impact on growth in his pension fund if he retired at 66 and bought an annuity; and if he used a drawdown arrangement at that point it is true that the pension fund would thereafter remain invested (at least partly invested) and that the rate of the adverse impact would reduce over time. However, in either event, the fact is that the recommendation was putting Mr S in a position where he needed outperformance in the pension fund to address the increased costs and adverse impact on growth, whereas he previously had no such need. He did not have to be in such a position, but the recommendation placed him there. This, without good reason, was not in his best interest, and I have not seen evidence of such good reason.

As I noted above, Quilter might say the prospects, in the QICPP, to achieve outperformance (to cover the 2.1% annual adverse effect, and maybe go beyond that) stood as good reason, thereby making the recommendation worthwhile for him, but there is no evidence in the 2019 assessments and advice showing a meaningful strategy to achieve this.

The warning to firms in the regulator's 2009 guidance, in terms of costs, was essentially against a pension switch that cost more to the client without good reason, and in its 2012 guidance it said –

"We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment." [my emphasis]

I have not seen evidence from the 2019 advice that meets the regulatory expectation emphasised in the above quote.

Mr S says the PPPs' PruFund Growth Funds had better past performance, at the time, than the QICPP. The financial report said the QICPP had "… returned 5.43% over the last year, 28.74% over the last 3 years and 43.10% over the last 5 years cumulatively". Publicly available information on its five years performance between January 2014 and December 2018 – which I consider to be to reasonable period to use, being five full years before the 2019 advice – sates something different. Said information says it had a cumulative performance of 26.5% during this period. For the same period, information from Prudential confirms that the PruFund Growth Funds had cumulative performance of 36.43%. This comparison supports Mr S' assertion.

I appreciate that past performance is not conclusively indicative of an investment's prospects, and I do not say that the above comparison means the QICPP was inferior to the PruFund Growth Funds. The point I am making is that, based on the above evidence, at the time of its advice Aqua does not appear to have had a basis to say the QICPP had performed better than the PruFund Growth Funds. Furthermore, there remains the somewhat separate issue about the absence of any meaningful plan or strategy from Aqua clearly demonstrating why it expected improved performance (to cater for the required outperformance) was more likely in its recommendation, or evidence to show how such outperformance prospects were likely to be achieved. Aside from past performance, this was the forward-looking aspect.

Overall, Aqua recommended a more expensive pension arrangement to Mr S; one that did not arise from or address a specific objective he had; he had no issues with the pre-existing PPPs; Aqua acknowledged in its report that the recommendation was more expensive but it did not provide a good reason why the additional expense should be undertaken; and it did not provide a demonstrable strategy to address the outperformance required in the CRA/QICPP to deal with the increased costs.

On balance, and for these reasons (including those treated above) Aqua's recommendation to Mr S was unsuitable. But for its unsuitable recommendation, he would have retained the PPPs that he already had. As I found above, he had no issues with them, he did not seek to change them, and he did not even have a discernible objective for the review initiated by Aqua (because, again, he was satisfied with the PPPs and did not want to change them)."

I also shared, in the PD, a draft of the compensation and redress provisions I intended to use in the final decision, should the PD's findings be retained. In this respect, I extended the following invitation to Mr S –

"*… it is not clear if Mr S seeks to return his pension from the OMW CRA to the PPPs, or if that is at all possible. If he does, I invite him to confirm so and to convey any information he can obtain from Prudential as to whether (or not) it is possible. In any event, the draft provisions below will cover the possibility that he might want to do this and that it might be possible. If he confirms that he does not, I will not need to address it in the final decision*."

In response, he (and his representative) have said –

"*As noted in the provisional decision report,* [Mr S] *was happy with his previous pension arrangement with Prudential and would like his pension to be reinstated with Prudential if this is possible. We kindly request confirmation of whether this option is feasible and the steps required to facilitate such a transfer, alongside the proposed timeline.*

Additionally, we would appreciate it if you could request a valuation of the total pension value as of the date of the final decision from Prudential, based on the assumption that the funds had remained invested in Prudential funds and that regular contributions had continued as before. This information will be critical in assessing the full impact of the switch and ensuring the proposed remediation is fair and accurate."

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 have also reviewed information on the complaint. Having done so, I do not find cause to depart from the findings and conclusions in the PD. I retain those findings and conclusions and incorporate them into this decision.

With regards to Mr S' enquiry about returning his pension to Prudential, the redress orders below allow him to declare this wish to Quilter and, so long as it is possible to return the pension to Prudential, Quilter is ordered to make and manage all the necessary arrangements, at no cost to Mr S, to accomplish that.

In terms of determining what the PPPs would now be worth, but for the unsuitable pension switch, the orders below direct Quilter to use the notional value of the PPPs as the primary benchmark for calculating redress and to engage with Prudential to obtain this valuation. However, if the valuation cannot be obtained redress must still be fairly calculated, so I have provided for a suitable alternative benchmark, which I explain below.

Putting things right

fair compensation

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 not been unsuitably advised to switch from his PPPs to the OMW CRA.

As I have found, but for the unsuitable advice he would have retained the PPPs. For this reason, I have used the PPPs' notional value as the primary redress calculation benchmark. However, I cannot be certain that a notional value for this purpose will be obtainable from Prudential. I have also made provision below for an alternative redress calculation benchmark (based on Prudential's broadly balanced rating for the PruFund

Growth Funds within the PPPs) if there are problems in obtaining or using the PPPs' notional value.

Overall, I am satisfied that what I set out below, including provision for the alternative benchmark, is fair and reasonable redress.

The start date for the calculation of redress is the date on which the pension switch happened. I believe the unsuitable OMW CRA (and the QICPP within it) continues to exist, so the natural end date for the calculation is the date of settlement.

My finding that the entire recommendation was unsuitable, because the fundamental pension switch was unsuitable, essentially means that Mr S' pursuit of a separate claim for the refund of fees falls away. As stated in the financial report, both the IAF and OAF have been deducted from his pension fund. Redress will be calculated on the entire switched pension fund and its total value (before any fee deductions) at the start date, so the calculation will reflect its full value, as though no fees were deducted. Therefore, the calculation will inevitably cover the deducted fees and any lost growth related to those deductions.

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 up to £750 can be considered where a firm's wrongdoing has caused a complainant considerable distress, upset and worry, and where it has caused significant disruption.

In the present case, I consider that there has been an impact upon Mr S in terms of finding himself in an unsuitable pension arrangement that was/is not in his best interest, that resulted in the loss a previous arrangement that he was happy with and that resulted from a sequence of events (initiated and driven mainly, or wholly, by Aqua) that essentially led him – as opposed to him leading the events. His realisation of all this is evident in the contents of the complaint he submitted four months after the pension switch, as is the considerable distress, upset and worry the matter had caused him (which is also evident in the other submissions he has made). On this basis, I award him £750 in compensation for trouble and distress.

what must Quilter do?

To compensate Mr S 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 Mr S.

- Pay the compensation into Mr 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 Mr S' pension plan, it should pay that amount direct to him. 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 Mr S would not be able to reclaim any of the reduction after compensation is paid.

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

- Pay Mr S £750 for the trouble and distress caused to him.

- Provide the details of the calculation to Mr S in a clear and simple format.

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

The Investment	Status	Benchmark	From ("start date")	To ("end date")	Additional Interest
The OMW CRA	Still exists	Notional value of the PPPs; or alternative fair value benchmark stated below.	Date of Pension Switch	Date of Settlement	Not Applicable

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 performance of the PPPs between the start and end dates. Quilter should request that Prudential calculate this value. If there are costs involved in doing so Quilter must undertake those costs.

Any additional sums/contributions paid into the investment should be added to the notional value calculation from the points in time when they were actually paid in.

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 Prudential is unable to provide a notional value for the calculation, Quilter will need to determine a fair value calculation instead, using this alternative benchmark (and applying the same adjustments stated above) – the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index).

The OMW CRA only exists because of the unsuitable advice given to Mr S. He has confirmed that he wishes to terminate the OMW CRA (including the QICPP within it) and to return his pension fund to the PPPs he previously had. If such a return is possible, I consider it fair and reasonable that he should be fully assisted by Quilter to achieve a switch/transfer of the OMW CRA's total value back into the PPPs without any costs or detriments to him. Any and all costs associated with this must be undertaken and paid for by Quilter.

Upon Mr S' instruction to Quilter to conduct such a return switch (and to close the OMW CRA) – which should not be unduly delayed – and if it is possible to achieve that without detriment to him, I order Quilter to facilitate, arrange and manage this for him up to its conclusion at no cost to him, and to pay any and all costs associated with the entire transaction.

If it is not possible to return Mr S' pension to the PPPs, but he elects to close the OMW CRA (including the QICPP within it) and move his pension elsewhere, the above orders apply to this too.

why is the alternative benchmark suitable?

- If Prudential is unable to provide a notional value, then I consider that the benchmark 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 is a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that the PruFund Growth Funds in the PPPs, as rated by Prudential, had a broadly balanced/medium risk profile, which can be matched by the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) benchmark. Therefore, I consider this a reasonable benchmark that should broadly reflect the sort of return Mr S could have obtained from the PPPs between the start and end dates but for the unsuitable pension 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 be asked to 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 Mr S' case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2022 but before 1 April 2023, so the applicable compensation limit would be £375,000.

decision and award

I uphold the complaint on the grounds stated above. Fair compensation should be calculated as I have also stated above. My decision is that Quilter must pay Mr S the amount produced by that calculation, up to the relevant maximum.

recommendation

If the amount produced by the calculation of fair compensation is more than the relevant maximum, I recommend that Quilter pays Mr S the balance. This recommendation is not part of my determination or award. Quilter does not have to do what I recommend.

My final decision

For the reasons given above, I uphold Mr S' complaint, and I order Quilter Wealth Ltd to calculate and pay him compensation and redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 February 2025.

Roy Kuku
Ombudsman