DRN-5552036

The complaint

Mr M complains that Quilter Financial Services Limited ('Quilter') gave unsuitable advice to switch his existing pension plans to a flexi-drawdown arrangement and that it also failed to properly carry out an effective annual review service, which he was paying extra for. He says he's been financially disadvantaged as a result and seeks compensation.

What happened

The following is a summary only of the key events and background leading up to the complaint.

Mr M first met with Quilter in February 2020 to discuss accessing a tax-free lump sum from his pension. Quilter completed a fact-find at this time to record Mr M's circumstances and objectives. The key details recorded were as follows:

- Mr M was 65, married, retired and in good health. He had no dependants.
- He was due to receive his state pension of around £8,700 at 66, which was in a few months' time.
- He had two existing paid up defined contribution pensions, which had transfer values of around £62,000 and £122,000.
- He had around £8,000 in savings and he owned his home (unencumbered.)
- His income was £925 a month with expenditure of £700.
- His objective was to release tax-free cash but not take an income, and it was agreed he had a conservative risk approach to investing.

The risk assessment Quilter carried out around the same time – 12 questions about Mr M's existing knowledge, experience, and attitude toward investing – suggested Mr M was a 'Risk Averse' investor. This was broadly described as someone who typically had limited knowledge of financial matters, they wanted to keep their money in the bank in cash deposits and can take a long time to make up their mind on financial matters. But the chosen risk profile was 'Conservative'. It was recorded that following a further discussion, Mr M wanted to take an element of risk with his funds, albeit small. A conservative investor was broadly described as someone who prefers knowing their capital is safe rather than seeking high returns and would rather keep their money in lower risk assets.

Mr M chose not to progress matters at this time. I understand Mr M kept in contact with the firm and around a year later, things were picked up again. Quilter revisited and updated the fact-find. Notable additions were, Mr M was in receipt of a small annuity of £163 a month, the income he and his wife received from being guardians would cease in a few months' time, so their joint income would drop. But their income still exceeded their expenditure.

In a suitability report dated 9 February 2021, Quilter recommended that Mr M transfer his pensions to a new flexi-access drawdown arrangement to allow him to take a 25% tax-free cash lump sum to make some home improvements, go on two long-haul holidays and top up his emergency fund. It recommended Mr M invest the balance into a conservative portfolio (broadly invested in 20% equities (0-30% range), 60% in bonds with the remainder in cash and alternatives, for example property-based funds.)

The report also noted the following:

- Mr M's existing plans could not facilitate access to his tax-free cash with no income at the same time.

- There were consequences to Mr M using his cash lump sum from his pension (the growth potential of his fund was reduced) rather than using other assets or borrowing the money.

- Mr M had chosen a 'Conservative' risk profile because he felt it was better suited to his objective as he'd hoped his fund would at least keep up with and hopefully beat inflation.

- Mr M was not giving up any valuable guarantees by transferring his pension such as a guaranteed annuity rate, although he would be foregoing regular bonuses of the with-profits funds.

- A conventual annuity had been discounted because Mr M didn't need an income from his pension funds. And although a fixed term annuity had been discussed, this too was discounted to enable the residual balance to remain invested for the potential of further growth.

Mr M also signed up to Quilter's ongoing advice service, which offered an annual suitability review. The cost for this was disclosed as 0.5% each year based on the value of his pension fund.

Mr M accepted the recommendation and the transfer duly went ahead.

Quilter carried out annual reviews in February 2022 and February 2023. On both occasions Mr M was sent a suitability report, which said that, because there had been no material changes that could affect the suitability of his plan, the advice to him and his plan continued to be suitable for his needs.

In June 2023, Mr M had a telephone meeting with Quilter following which it recommended he switch his pension funds into cash. It was recorded that Mr M now wanted to adopt a risk averse approach to his monies. Quilter has said it issued a suitability report to Mr M to this effect, but it has not provided this to us. I understand that around this time, Mr M also chose to take a taxable withdrawal from his pension of around £40,000 to help a family member buy a property.

In October 2024, using the services of a professional complaint representative, Mr M complained to Quilter. In summary Mr M said:

- The advice he received was unsuitable because he'd been a risk averse investor.

- He had limited knowledge and experience.

- There was no evidence his capacity for loss had been assessed.

- The charges hadn't been adequately explained.

- Not all annual reviews were carried out, and where they did, Quilter failed to meet continued suitability 'know you client' obligations.

- There was no explanation in the February 2023 review document of the taxable withdrawal he made a month later.

Mr M said that he'd been disadvantaged by Quilter's poor advice and were in not for that advice, he would have taken a lifetime annuity.

Quilter didn't uphold the complaint. In summary it said:

- The advice was suitable.

- Mr M's attitude to risk was discussed and it was agreed he was prepared to take some risk.

- Charges were adequately disclosed.

- Annual reviews were carried out as agreed to confirm the ongoing suitability of the advice, fact-finds were completed and updated as appropriate to check and review Mr M's circumstances and objectives satisfying the 'know your client' obligations.

- There was no indication in the February 2023 review that Mr M needed a cash sum – this was a change in circumstances after the review had taken place.

- There was no evidence to support the assertion that Mr M would otherwise have taken out a lifetime annuity.

Dissatisfied with its response, Mr M referred his complaint to us. One of our investigators looked at things and they didn't uphold the complaint. In summary they said:

- The recommendation met Mr M's objective of wanting a cash lump sum without having to take an income.

- The evidence indicated the alternative of taking an annuity was discussed with Mr M at the time including why it was discounted. The flexi access drawdown plan didn't preclude Mr M from taking an annuity a later date.

- Taking a conservative approach to investing wasn't unreasonable in Mr M's circumstances and given his objectives – there was a risk to him adopting a risk averse approach because inflation might erode the value of his funds.

- The evidence showed that Quilter carried out annual reviews, and the lump sum withdrawal Mr M made in 2023 appeared to have come about due to a change in objective and was unforeseen at the time of the annual review.

Mr M, through his representative disagreed. In summary they said:

- It was unreasonable for Quilter to have identified Mr M's attitude to risk and then recommend he take risk beyond his appetite. Mr M's attitude was completely risk averse.

- Mr M understood that when he switched his pension it was placed in 'a safe nonperforming account.' When he discovered it was subject to market fluctuations, he asked his funds to be changed to no risk on several occasions.

- The rules say Quilter must ensure a client understands risk when assessing suitability – it cannot rely on disclosure. This doesn't make unsuitable advice suitable.

- Quilter knew Mr M didn't want to take any risk – the only plausible explanation as to why it didn't recommend an annuity was because the adviser wouldn't have been able to receive ongoing advice fees.

- Regardless of Mr M's need, an annuity was suitable. This wasn't properly explored and Quilter didn't obtain quotes to put Mr M in a fully informed position.

- The recommendation incurred extra ongoing costs without good reason, it wasn't suitable, and Mr M wasn't in a fully informed position.

The investigator wasn't persuaded to change their opinion, So, because things couldn't be resolved informally, the matter was passed to me to decide.

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've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

<u>The applicable rules, regulations and requirements</u>

As a regulated firm, Quilter had many rules and principles that they needed to adhere to when providing advice to Mr M. And these can be found in the Financial Conduct Authority (FCA) handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN) as they were at the time of the advice.

In relation to the ongoing advice element of this complaint, the following are most relevant and provide useful context for my assessment of Quilter's actions here.

COBS 6.1A.22: A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

  (a) the firm has disclosed that service along with the adviser charge; and
  (b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or

(2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.

In 2014, the FCA produced guidance in the form of a factsheet (For investment advisers - Setting out what we require from advisers on how they charge their clients). The factsheet said:

'Ongoing adviser charges

Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.'

While the factsheet wasn't published until late 2014, it didn't mark a change to the rules firms like Quilter were already expected to follow. In my view, it re-enforced or reminded firms of the standards already in place when providing on-going advice services.

Having considered all of this and the evidence in this case, I've decided to not uphold this complaint for largely the same reasons given by the investigator. My reasons are set out below.

Suitability of advice

What lies at the heart of this complaint and the key issue for me to address is that of Mr M's attitude to risk and whether, as Mr M's representative has argued, Quilter recommended a course of action that went beyond his appetite for risk.

Quilter carried out an assessment of Mr M's attitude to risk by asking him a series of questions about his knowledge, experience and understanding of investments and investment risk. The questions were clear and of the type I would typically expect to see in a questionnaire or tool like the one Quilter used. It's not disputed that the answers Mr M gave resulted in him being categorised as risk averse. I set out above how Quilter described such an investor.

Mr M's representative appears to be arguing that this ought to have been the end of the matter and Quilter should have taken as read that Mr M was therefore risk averse. But I disagree. I think it is reasonable that an assessment of this nature is a starting point and a tool to prompt further discussion and something to be explored in more detail, which the evidence supports happened in Mr M's case. I can see the suitability report Quilter issued to Mr M in February 2021 contained a section about his attitude to risk and said:

'We discussed your circumstances in relation to the principles of risk and reward in respect of your pension planning both near and in the long term. The output of the Attitude to Risk Questionnaire showed your risk profile to be Risk Adverse. Upon further discussion you decided a Conservative risk profile better suited your objective as you were hoping that your fund would at least keep pace, but hopefully exceed inflation.

As a result, the fund I have selected is likely to have a higher volatility and be likely to achieve higher returns than one would have selected, based on your calculated risk profile.

We discussed this and you understood and accepted that this would be the case.'

The adviser's role was to advise. And I think the evidence indicates that's what happened here by discussing and highlighting to Mr M the impact of inflation for example on his pension monies. As I said above, I think having a further discussion and exploring Mr M's attitude and appetite for risk using the assessment questionnaire as a tool or prompt to aid that, was fair and reasonable in the circumstances.

Importantly Quilter also considered and discussed Mr M's capacity for loss alongside his attitude to risk. The suitability report refers to Mr M's acceptance of seeing falls in his investment over a 12-month period which wouldn't affect his lifestyle, but that he would be concerned with consistent falls over the medium term. And I think the evidence supports that Mr M did have some capacity for loss. The fact-find Quilter completed recorded that Mr M's income needs were met from both his and his wife's state pensions, so he wasn't at this stage reliant on his existing pension plans to provide an income. That might change, but there was nothing in his circumstances to indicate that was likely.

So, I think Mr M could afford to adopt some risk with his pension monies. And a 'conservative' approach as described was, in my view, reasonable in the circumstances. I think it was in line with the investment approach (with profits-based) of his existing plans. So, given this and from what's recorded in the paperwork from the time, I think Mr M was prepared to and likely understood the level of risk he was taking. I'm not persuaded Mr M reasonably believed his pension was in a 'a safe nonperforming account' at the time as his representative has said.

I've thought about the fact that in June 2023, Mr M's attitude to risk changed to risk averse, which was the suggested profile from the original risk assessment in 2021, and how this could support the view that this was Mr M's true risk appetite all along, and so the advice was unsuitable. But the change was more than two years later. And importantly in my view, it followed a change in circumstances and Mr M accessing a sizeable taxable sum from his pension. I've not been provided with the paperwork from this time, which speaks to the change in approach (this is despite our request for it.) But risk appetite's change over time and it's right that this was re-considered when Mr M contacted Quilter in June 2023. But I'm not persuaded the change in Mr M's risk appetite at this time is evidence of a failing on Quilter's part in 2021. I'd add that I've not seen any evidence to support Mr M's representative's point that Mr M repeatedly asked for his funds to be changed to no risk.

So, based on my findings above, I think Quilter's recommendation to Mr M to transfer his existing plans to a new drawdown arrangement was suitable in the circumstances. Mr M wanted access to his tax-free cash without taking an income, which was something his existing plan provider didn't offer. The suitability report shows that alternatives were considered and discounted – for example a conventional annuity was considered and discounted because Mr M didn't need an income, and it was documented he wanted the ability to take ad-hoc sums. A fixed term annuity was also considered. But this too was discounted because Mr M was prepared to invest his remaining pension monies for the potential of growth. I think this was a fair and reasonable conclusion to reach.

Also, Mr M was not giving up important guarantees by transferring, such as a guaranteed annuity or other types of guarantees. Mr M was foregoing annual bonuses, but this was clearly disclosed in the suitability report and in my view isn't a reason to conclude the advice was unsuitable. Importantly, transferring to this type of arrangement didn't preclude Mr M from taking an annuity later on if he decided to do so, or it was in his best interests to do so.

Turning to the investment recommendation – I think this was suitable in the circumstances. Quilter recommended Mr M invest his pension monies in a passive conservative portfolio. And based on my understanding of this fund and its asset make up, particularly the relatively low equity exposure (0-30%) with the majority invested in bonds and cash, I think this was in line with a conservative approach as described and illustrated in the risk profile document.

So, taking all of the above into account, I think Quilter's recommendation was suitable. It met Mr M's objectives and, in my view, was in line with the level of risk he was reasonably prepared and agreed to take at the time.

I'd add here that I'm satisfied the costs were adequately disclosed. The suitability report referred to an attached illustration – I've no reason to doubt it wasn't included here and that it contained the requisite cost information. And I can see the cost of the advice – the 1% initial fee and the 0.5% ongoing advice fee – were both clearly referred to at the beginning of the suitability report.

Overall, I don't think Quilter did anything wrong here.

Ongoing advice

Mr M signed up to Quilter's ongoing advice service – an annual review of the suitability of the advice and recommendation made based on Mr M's up to date circumstances and objectives, which cost 0.5% of the value of his fund per year.

The first annual review was due February 2022. And the evidence shows this was carried out. Quilter updated its fact-find and attitude to risk assessment to review Mr M's circumstances. It produced a 'milestone report' showing Mr M's current pension fund value, gave an economic / performance update, and it produced a suitability letter setting out why its advice remained suitable. An annual review also took place in February 2023. Quilter followed the same approach and produced the same documentation.

So, I'm satisfied Quilter provided Mr M with the agreed service in return for the 0.5% fee.

I can that Mr M's representative has said Quilter's February 2023 review made no mention of the taxable withdrawal he made around a month later. But the withdrawal was after the review. I've not seen enough to show this was known or foreseeable at the time, such that Quilter ought to have referred to and considered it as part of the review. I don't think Quilter acted unfairly or unreasonably here.

My final decision

For the reasons above, I've decided to not uphold this complaint, so I make no award in Mr M's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 August 2025.
Paul Featherstone
Ombudsman