

The complaint

Mr and Mrs S complain about the advice they received from Quilter Financial Services Limited ('Quilter') to invest in a unit-trust based investment. They also say they did not receive adequate ongoing advice reviews to ensure continued suitability of the advice given. They say they have been financially disadvantaged as a result and are seeking compensation.

What happened

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

It appears that Mr S' relationship with Quilter goes back to 2015 in connection with his pension. But in February 2018, Mr and Mrs S both met with Quilter to discuss their savings and investments. Quilter completed a fact-find document to record their personal details, circumstances and objectives. The key details recorded here are as follows:

- Mr S was aged 66 and Mrs S was 63.
- They had no dependents, Mr S was in reasonable health and Mrs S was in good health.
- Mr was working on a self-employed basis and Mrs S was a homemaker.
- They jointly owned their home, Mr S had a cash ISA valued at around £34,000, Mrs S had an ISA valued at around £27,000, they had around £600,000 in joint savings, and they had no liabilities.
- Mr S had an existing pension valued at around £250,000, part of which was in drawdown, paying around £400 a month in income.
- Their joint income comprised Mr S' salary, his state pension and the drawdown pension giving them a disposable income of around £250 a month.
- Their objective was to look to invest a sum of £100,000 from their savings – the bulk of which had come from the sale of Mr S' business premises. They had repaid their mortgage and they had maximised their ISA contributions for this tax year leaving the residual balance in cash.

Quilter also carried out an assessment of Mr and Mrs S' attitude to risk, which were deemed to both be conservative as they'd not invested before and were nervous. But with over £500,000 left in cash, it was deemed they had capacity for some risk.

On 13 February 2018, Mr and Mrs S signed a client / service agreement. This confirmed the initial fee for the advice was 1% and an ongoing advice fee of 0.25% a year. There were three levels of ongoing service indicated on the agreement, but none of the boxes were ticked or marked in anyway.

On 15 February 2018, SJP issued Mr and Mrs S with a suitability report in which it recommended they invest £100,000 into an Open-Ended Investment Company (OEIC) joint collective investment account invested in a Multi-Manager conservative portfolio (equity exposure was around 20% and no more than 30%, with the remainder in fixed-interest securities.) The letter said Mr and Mrs S had both utilised their ISA allowance and an OEIC was regarded as the next most tax efficient form of investment. It said the OEIC had a mechanism to allow Mr and Mrs S to automatically move funds into an ISA in future tax

years to increase the tax efficiency of their investments. It said any profits on the OIEC were subject to capital gains tax, but that they each had an allowance of £11,300 to set against any gains made.

The letter also recommended that Mr and Mrs S' plan was reviewed regularly. It said that, because of their circumstances and the complexity of their arrangements, it was agreed the review would take place on a six-monthly basis. It said the review would involve, amongst other things, an assessment of performance, an update and appraisal of their situation, circumstances and objectives and attitude to risk to ensure continued suitability. It said a follow up review letter would be sent confirming the discussion and any recommended changes.

Mr and Mrs S accepted the recommendation and the investment duly went ahead.

Quilter has provided some evidence that annual reviews were carried out between 2019 and 2022. I'll discuss this in more detail below.

On or around January 2023, Mr and Mrs S transferred their business elsewhere moving with their adviser to another firm.

In October 2024, Mr and Mrs S complained to Quilter using the services of a professional complaint representative. In summary they said the advice they received was unsuitable, they should have been advised to maintain their existing ISAs rather than start a new plan, the charges were not adequately considered or explained, there is no evidence their IHT position was considered or advised upon, and while they received annual advice reviews, they were not conducted adequately to ensure continued suitability, and there was no real benefit as no fund switches were recommended.

Quilter did not uphold the complaint. In summary it said that it considered Mr and Mrs S' complaint about the advice they received in 2018 was out of time because it had been brought more than six years since the event complained of. And it said Mr and Mrs S had annual reviews since the advice reiterating the fact-find including suitability. It nevertheless went on to broadly explain that the advice was suitable and that it had not acted contrary to regulatory rules. It said annual reviews took place as agreed and would have given Mr and Mrs S the knowledge and opportunity to make a complaint at that time, so it would have expected any notice of dissatisfaction to have been made within the last three years. But it didn't receive anything until October 2024.

Dissatisfied with its response, Mr and Mrs S, via their representative, brought their complaint to us.

One of our investigators considered the complaint and they concluded the following:

- The complaint was about discrete multiple events – the only events that could be out of time were the initial advice in 2018 and possibly the first review which may have been due in August 2018.
- Quilter appeared to have misunderstood or misinterpreted the relevant rules set out in DISP 2.8.2. The initial advice, while more than six years since the event complained of, was not out of time because there was no intervening event that ought to have given Mr and Mrs S a reason to question the suitability of the advice – so no indication they had actual or constructive knowledge of cause for complaint more than three years before they complained.

- The first ongoing advice review due in August 2018 was out of time. The advice paperwork at the time of the sale said it was agreed reviews would take place every six months at a cost of 0.25% a year. And this would involve, amongst other things, an update and appraisal of Mr and Mrs S' circumstances, needs and objectives, and their attitude to risk. This didn't happen, the first contact was in December 2018 when Quilter sent Mr and Mrs S a letter amounting to an invitation to a review saying that it was assumed their plans remained suitable and the next comprehensive review was scheduled for February 2019. Mr and Mrs S ought to have understood at this point, this did not constitute the service agreed and paid for, which is more than three years before they complained.
- The investment advice in 2018 was suitable – Mr and Mrs S' conservative attitude to risk was reasonable, the sum invested while large was still a relatively low proportion of their cash assets, so they had capacity for some risk, it was reasonable for them to want to seek better returns for some of their money than cash-based deposits offered, and the recommended investment fund was suitable for their attitude to risk.
- In relation to Mr and Mrs S' concerns that Quilter had not considered IHT mitigation – the advice paperwork recorded that they'd decided not to review estate planning. And while Quilter could have done this, in any event there was nothing to indicate a loss arising out of any failure.
- The agreed service for ongoing advice appears to have six-monthly reviews – the client agreement did not indicate the level of service to be provided but the suitability letter was clear, albeit they acknowledged the charge of 0.25% might indicate this frequency was unlikely.
- The evidence showed that reviews were broadly carried out annually with updated fact-finds and review letters sent other than in 2022 where only the fact-find was completed. There was no evidence to support the six-monthly reviews having taken place in August 2019, August 2020, and August 2022, so they said the fees associated with these should be refunded.
- They acknowledged Mr and Mrs S' point that some of the values in the fact-finds hadn't been updated over time. But they didn't think this alone was reason to refund all the charges. They also didn't agree that the lack of fund switches was indicative of an inadequate review service given the managed fund they were invested in. Where the meetings did take place, Mr and Mrs S appear to have got the service they paid for.
- They accepted it appeared Quilter had not carried out the 'Bed and ISA' transactions referred to as one of the rationales for the advice. It seems this didn't happen until after Mr and Mrs S transferred away in 2023. But there was nothing to show they'd lost out by incurring a Capital Gains Tax (CGT) liability.
- There was nothing which warranted an award for distress and inconvenience.

Quilter disagreed with the investigator. It repeated its argument that the complaint about the initial advice in 2018 was out of time because it was more than six years ago and it had provided evidence of an ongoing relationship with the adviser and provided servicing up to 2022. Which means Mr and Mrs S could have complained at any time during this period. It said it didn't agree the suitability letter represented the ongoing service provided. It said the service level was left blank on the servicing fee confirmation. So, in the absence of this being

completed showing six-monthly reviews were required, and where the cost was 0.25%, it said an annual review was sufficient. It said it noted that in subsequent reviews, the letters referred to 'regular' reviews, which it believes can reasonably be defined as providing them annually.

Mr and Mrs S, via their representative said they accepted the investigator's conclusions about the suitability of the initial advice. But they disagreed with the ongoing review, CGT and distress and inconvenience conclusions. In relation the ongoing advice element – they referred to the Financial Conduct Authority (FCA) factsheet of 2014 about ongoing advice and said Quilter failed to disclose the cost of the service on an ongoing basis, and quoted various rules from the Conduct of Business Sourcebook (COBS) section of the FCA handbook to support their view that the ongoing advice service provided was inadequate. They also pointed to Quilter's failure to carry out the 'Bed and ISA' transactions as further evidence of this and question how, in light of this and the duplicated fact-find information, the reviews which did take place could be considered suitable.

About the CGT point – they said moving their funds to ISAs would have allowed more fund switches as it wouldn't have triggered a CGT liability. And they said the investigator had failed to consider they had lost out on tax efficient growth prior to and after the later 2022/23 'Bed and ISA' transactions were carried out.

The investigator wasn't persuaded to change their mind. To Quilter's continued argument that the initial advice complaint was time barred, they repeated that Quilter's interpretation of the rules was incorrect. They said Quilter was confusing opportunity with knowledge of cause. And it hadn't explained on what basis it believed Mr and Mrs S had acquired knowledge or ought reasonably to have gained understanding they had cause to complain. But they said the argument was largely academic now as Mr and Mrs S had accepted their conclusion about the suitability element of the complaint. And they said Mr and Mrs S had not raised an issue with their view that the first ongoing review was out of time. About the frequency of the agreed ongoing advice reviews – they repeated the suitability report was clear about things and that its reference to 'regular reviews' in the subsequent review letters could also reasonably mean six-monthly. And they asked Quilter to provide the documents referred to in the client agreement as being provided to Mr and Mrs S at the time.

Quilter did not respond further or provide the requested documents.

Responding to Mr and Mrs S, the investigator said they maintained their view that the reviews they'd identified had taken place, and just because some record keeping wasn't as good as it might have been, this wasn't a reason to recommend a refund of all the fees. They said Mr and Mrs S, or their representative, had misinterpreted the FCA factsheet – ongoing services cost disclosure had to be carried out upfront, not on an ongoing basis. They said there was enough evidence that advice had been given at the review meetings, and while the 'Bed and ISA' advice hadn't been provided, this too didn't warrant a refund of fees. And they maintained Mr and Mrs S had not lost out because they'd not incurred a CGT liability, and the OIEC investment's internal taxation position was the same regardless of whether it was held in an ISA or not. They repeated that there was nothing to show that Mr and Mrs S had suffered material distress or inconvenience as a result of the failings identified.

Because things couldn't be resolved informally, the complaint was passed to me for a decision.

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.

The applicable rules, regulations and requirements

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

In relation to the ongoing advice element of the 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.

COBS 9A.3.9 (from 3 January 2018 arising from MiFID II): For some products, investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually.

Having considered all of this and the evidence in this case, I've decided to uphold the

complaint, in part, for largely the same reasons given by the investigator. My reasons are set out below.

Firstly, I can see that Mr and Mrs S, via their representative have accepted the investigator's conclusions on the suitability of the initial investment advice element of their complaint. This means it isn't necessary for me to deal with this point, or therefore address Quilter's objection to us considering it, however wrongly argued, on the basis it was made out of time. Mr and Mrs S' acceptance of the investigator's findings means both matters fall away. So, I don't need to decide either of these points here.

Secondly, Mr and Mrs S have not challenged the investigator's view that the first ongoing advice review in August 2018 is out of time, despite doing so on a Mr S' separate but linked complaint, although I note the wider circumstances in that case are different. I think the investigator was clear about their findings as set out in their assessment in this case. So, if Mr and Mrs S, and or their representative disagreed with this point in this case, I think they would have done so at the same time as raising the other points they made. They've also had reasonable and ample opportunity to do so since. Because they haven't explicitly challenged this jurisdiction point, I think it is reasonable to assume they have accepted the investigator's findings on this point and that the first ongoing advice review is out of time. So, it is on this basis that I will proceed with my decision.

Ongoing advice reviews

Quilter says it met the frequency of the ongoing service agreement in this case. It says in the absence of a completed ongoing servicing fee confirmation form stating that six-monthly reviews were required, and where a 0.25% annual fee was agreed, providing annual reviews was sufficient. It also says that where the review letters referred to the ongoing 'regular review service', a reasonable definition of this is that they should be conducted annually.

As Quilter has pointed out, the client or fee agreement Mr and Mrs S signed on 13 February 2018, did not have a tick, cross or any marked indication as to the level of ongoing service chosen – it was left blank. There were three options provided on the form – 'High Touch' (Level 1), 'Standard Touch' (Level 2), and 'Lighter Touch' (Level 3). I don't know what the different offerings were here and what, if any cost differential there was. And in the main, this is because Quilter has not responded to our request for the supporting documentation, which appears to have accompanied this agreement, and which might have shed some light on this. What is clear from this fee agreement is that the annual agreed cost for the ongoing advice service was 0.25%. So, Quilter met its requirement to set out the cost of the service upfront.

While the service level was left blank in this document, the suitability letter which followed two days' later, so after the fee/client agreement was signed, was in my view clear about what had been agreed. As I set out in the section above, this said ongoing advice reviews would take place on a six-monthly basis. The cost of 0.25% was also repeated here.

So, while a 0.25% fee might not perhaps support a review frequency of twice a year (it is typically lower than most I have seen) this doesn't appear to have been a mistake because the frequency of the reviews and the cost were set out together in the same section of the suitability letter. And the fee quoted matches that recorded in the client agreement.

So, given the suitability letter was issued after the fee agreement was signed, and what it written here is in my view clear and unambiguous, I think it is reasonable to conclude that reviews on a six-monthly basis was the agreed and accepted frequency or service level by both parties. It is not uncommon, in my experience, for the later suitability letter to confirm

any outstanding points of discussion or the finer details following earlier advice meetings. And I don't think things were any different here.

So, I do not accept Quilter's argument that because the fee agreement review section was blank, providing annual reviews was sufficient. I think it is clear that six-monthly reviews was the level of ongoing service agreed, and the frequency Mr and Mrs S could therefore expect for the annual fee of 0.25%. And the reference to 'regular review service' in the issued review letters, which I will refer to more below, could equally mean six-monthly as per the suitability letter. And nowhere in the subsequent review letters was there any mention that the frequency of the reviews had been changed to annually by mutual consent.

So, what happened?

Based on the evidence provided, it appears that, broadly speaking, ongoing advice reviews took place annually. The first review was in March 2019 where a fact-find was completed and updated. This noted a change in the amount Mr S was drawing from his pension and an update to Mr and Mrs S' income and expenditure. Quilter also carried out a reassessment of their attitude to risk, which was now deemed to be between 'Conservative' and 'Balanced'. In the review letter Quilter sent to Mr and Mrs S on 27 March 2019 documenting the outcome of the review, this recorded that with a little more investment experience under their belts, Mr and Mrs S wanted to invest an element of their funds within a 'Balanced' risk profile. And as a result, Quilter moved around 50% of their investment into an investment portfolio, which invested up to 40% in equity-based funds. Given Mr and Mrs S had a reasonable capacity for loss based on their other sizeable assets, I think the revised assessment of their risk profiles was fair and reasonable, and the resulting investments were invested in line with the risk they indicated they were prepared to take. There were no other changes to Mr and Mrs S' circumstances or objectives noted at this time. The letter provided a statement of continued suitability.

The same format followed for the subsequent reviews. In March 2020, it was noted in the fact-find that Mr and Mrs S had bought an investment property. And in the review letter I can see the 'Balanced' risk fund was changed to a different provider, albeit reflecting the same 40% equity bias. No change in Mr and Mrs S' circumstances was again recorded here.

There were two meetings in 2021 – in May, by phone and in June. On both occasions a review letter was issued following broadly the same format noting continued suitability.

A review was carried out in May 2022, again with a fact-find update noting the meeting was held face-to-face. There is no evidence of a review letter being issued to Mr and Mrs S confirming the ongoing suitability for the review. That's not to say one wasn't issued, but Quilter hasn't provided one in its file. Despite this, I think there is enough here to show that a meeting took place and that a review was carried out. The various sections of the fact-find record '2022 review – You are pleased with everything as it is. No changes required' in my view indicating that Mr and Mrs S' circumstances and objectives had been considered and reviewed.

So, despite the lack of evidence of a review letter being issued, which would have likely confirmed the ongoing suitability as per the fact-find notes as there was no material changes noted, I can't say there was a failure to provide the agreed service here.

So, I'm satisfied the evidence shows that Quilter provided annual ongoing advice reviews to Mr and Mrs S.

But what's missing here are the reviews between these ones at the agreed six-monthly intervals. There were two review meetings conducted in 2021. And while they were close

together, taking a fair and reasonable approach, I think broadly speaking the agreed service was provided here. But there is no evidence that the reviews due on or around August 2019, August 2020 and August 2022, were either provided to Mr and Mrs S or that Quilter invited them to attend but they were perhaps declined, demonstrating Quilter's willingness and readiness to provide them.

So, I don't think there's enough evidence to show that Mr and Mrs S got the complete ongoing review service they paid for. In the circumstances I think it is fair that Mr and Mrs S get back some of what they paid for the missed reviews. But I'm satisfied that where the reviews did take place as I have identified above, no refund is due.

I can see Mr and Mrs S' representative has said that the fact-finds weren't fully or properly updated, pointing to certain account / asset balances remaining the same, and so says Quilter did not do enough to demonstrate it knew its client. And while I can see some of the asset balances weren't updated, I don't think this means Quilter wasn't in a position to fairly and reasonably conduct the reviews and conclude the advice remained suitable. I think Quilter recorded enough information in the fact-finds to show that it reasonably understood Mr and Mrs S' broad circumstances, needs and objectives to enable it to provide ongoing advice.

Mr and Mrs S' representative has also said there was an absence of fund switches, which is evidence of the inadequacy of the ongoing reviews. But I disagree. Not only did the recommendation of a managed type of fund take away most of the need for this, as I referred to above, there is evidence of changes made in March 2019 when Mr and Mrs S' risk assessment changed. And again, in March 2020 when the balanced fund provider was changed. With no fundamental changes to Mr and Mrs S' circumstances over time, it doesn't surprise me that there were no significant alterations made to their investment. And again, the absence of more frequent fund switches or changes is not, of itself, evidence that the reviews were inadequate.

Mr and Mrs S' representative has highlighted that the failure to provide the 'Bed and ISA' advice is further evidence of Quilter's failings. I accept the initial advice referred to moving funds to Mr and Mrs S' respective ISA's as a feature of the platform recommended and a rationale for the recommendation to invest in the GIA. And it would appear Quilter failed to carry this out and act during the ongoing reviews. There is a possibility Mr and Mrs S made use of their ISA allowance elsewhere and that this wasn't updated in the fact-finds – but I accept it's likely there was a failing here.

But crucially, there is no evidence that Mr and Mrs S have lost out as a result. And this is the key point here. They appear to have mitigated their position following them moving away from Quilter in early 2023 by moving funds to an ISA either side of the 2022/23 tax year end. And they have not provided evidence that they incurred an avoidable CGT liability, which in my view is the only loss that could have occurred here. Mr and Mrs S' representative says they have missed out on tax-efficient growth prior to and after the above dates by not moving funds to an ISA earlier. But that's not the case. As the investigator explained, the taxation of the fund itself is the same regardless of whether it is held in an ISA or not.

So, Mr and Mrs S have not lost out in terms of tax-efficient growth. As I've said, any loss in this case would be a liability to CGT, which I've not seen evidence they incurred.

So, while it appears Quilter failed to utilise Mr and Mrs S' ISA allowances as part of the ongoing advice, they have not lost out here. And I don't think this apparent failure warrants a refund of all of the ongoing advice fees paid, or more than I have awarded. I think that when the reviews did take place, Mr and Mrs S substantively received the service they paid for and that my award fairly compensates them in the circumstances where that service was not offered or provided.

Finally, like the investigator, I'm not persuaded Mr and Mrs S have suffered distress and inconvenience as a result of the things Quilter did wrong. So, I make no award here.

Putting things right

I think fair compensation in this case means Quilter should refund Mr and Mrs S the ongoing advice fees for the missed reviews due in August 2019, August 2020 and August 2022. The principal Quilter should follow here, which I think is fair in the circumstances, is that the fees paid in the six months prior to the due reviews should be the ones refunded.

Quilter should also add growth or a return on the fee amounts from the date the fees were paid to date of my final decision. Because the fees were taken from the investment, I think the amounts would otherwise have remained invested. I can see the investigator recommended that following the transfer of servicing from Quilter, the return should be based on a benchmark – the FTSE UK Private Investors Income Total Returns Index. Which in the circumstances, and given Mr and Mrs S' remained invested with some risk following the transfer of servicing rights, overall, I think this is fair.

So, to put things right Quilter should do the following:

- Refund the ongoing advice fees Mr and Mrs S paid for the missed reviews as identified above, plus a return on the fee amounts from the date the fees were paid to the date of my final decision.
- The lost return on the fees should be calculated by using the actual return generated by the investments they were taken from to the date of the transfer of servicing rights away from Quilter. And then from that date to the date of my final decision, the return should be based on the FTSE UK Private Investors Income Total Returns Index.
- Quilter should pay the compensation due directly to Mr and Mrs S.

If payment of compensation is not made within 28 days of Quilter receiving Mr and Mrs S' acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment. Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr and Mrs S how much has been taken off. Quilter should give Mr and Mrs S a tax deduction certificate in respect of interest if they ask for one, so they can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons above, I've decided to uphold this complaint, and I instruct Quilter Financial Services Limited to put things right in line with the approach above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 23 September 2025.

Paul Featherstone

Ombudsman