

## The complaint

Mr M has complained, with the help of a claims management company (CMC), about the suitability of the advice he was given in 2011 by QUILTER FINANCIAL SERVICES LIMITED (“Quilter”) to switch his personal pensions to a Scottish Widows Retirement Account (“RA”). He has also complained that he didn’t receive all the ongoing advice services and reviews that he has paid for and that he was also incorrectly charged for some reviews.

## What happened

Mr M met with an adviser in 2010 to discuss retirement planning and a formal meeting took place in April 2011 where again the focus of the meeting was confirmed to be retirement planning.

It was recorded in the confidential financial review that was carried out in this meeting that Mr M wasn’t able to save additional money towards his retirement planning. But he wanted to ensure his existing provisions were working hard and wanted to assess whether his existing retirement provisions met with his stated objective.

At the time of the advice Mr M’s circumstances were recorded as follows:

- He was aged 54 years, was single and had no financial dependents.
- He was self-employed earning around £500 per month.
- His income covered his outgoings but left him with no disposable income.
- He held around £3,000 in available cash for emergencies.
- His chosen retirement age was 65.
- He held five pension plans with three different providers which were all paid up plans. The total value of his transfer was just over £40,000,

At the same time an attitude to risk (“ATR”) questionnaire was completed with Mr M which indicated that his ATR was “Dynamic”.

Mr M was advised to switch from his existing provider into the RA and invest in the SW Governed Investment Solution Portfolio 1 & 2, incorporating a life styling strategy. It was noted in the documentation from the time of the sale that Mr M wanted an annual review service and it was agreed that there would be no charges for this service for the first eleven years of the plan.

The suitability report that was presented to Mr M provided information about what he and the adviser had discussed at the meeting and gave details about what he was being recommended and why.

The report also detailed a comparison of the charges for each of Mr M’s existing plans against the RA being recommended. It was found that the charges for the recommended plan were higher than three out of the five plans he already held. So it was explained that because of this the RA needed to achieve an additional growth of 0.3% per annum to provide the same fund value at retirement as the ceding schemes.

However, it was also detailed that the charges for the RA were slightly lower for one of the other plans Mr M already held so the new recommended plan could underperform by 1.68% per annum and still achieve the same fund value at retirement as the ceding plan.

In terms of the remaining plan that Mr M held the adviser wasn't able to obtain the projections from that specific provider but it was explained that the plan had an annual management charge of 1.5% compared to the RA which was 1.4% so the new plan was cheaper.

Within this report, the adviser also looked at how the risk of Mr M's existing plans compared to Mr M's ATR that Quilter had recently assessed. It was found that none of the funds were in line with Mr M's dynamic ATR and while he could have switched funds with the providers the choices for a dynamic investor were limited.

The report also set out the service charges that were applicable if Mr M accepted the advice – an initial charge of 8% on the transfer value applied and a regular annual review service was also agreed at no additional cost for the next eleven years.

Mr M accepted the advice and the RA was set up.

In 2013 Mr M took his Pension Commencement Lump Sum and income drawdown was commenced in 2021 when he formally retired.

In August 2024 via his CMC Mr M complained to Quilter about the advice and annual reviews and charges saying that:

- He didn't receive all the annual reviews that he had paid for.
- He was charged for a review within the eleven-year period where it was agreed no charges would be applied.
- The advice to switch was unsuitable.
- His existing retirement income and expenditure requirements were not properly explored.
- Mr M had very limited experience and Quilter didn't accurately establish his investment risk profile or his capacity for loss.
- Mr M's existing pensions were moderately cautious, but Quilter rated him as Dynamic.
- He had a low level of retirement savings which didn't justify the need for ongoing advice.
- The higher charges of the advised plan were not given appropriate consideration.
- The advice led to Mr M being charged an MVR.

When Quilter investigated the complaint, it confirmed that no reviews had been missed, and it provided the annual review reports for the years 2018 through to 2024. These confirmed that annual meetings were conducted correctly, and Mr M's details were updated at each review and his risk profile was also reviewed. His investment gains were also consolidated, and his risk was reduced where necessary via fund switches. It did however accept that Mr M had been incorrectly charged between April 2021 and May 2022 for review, so it offered to refund the fee. It also calculated the notional returns that the fee would have generated based on the FTSE UK Private Investor Income Index Series and offered the payment net of 20% tax.

In terms of the complaint about the suitability of the advice Quilter objected to this service considering the merits of this complaint under the Dispute Resolution ("DISP") Rules, set out in the Financial Conduct Authority's ("FCA") Handbook set out in detail below. As the advice

was initially given in 2011 it said the complaint had been brought more than the six years from the event date requirement of the rule. It also felt that Mr M was aware or ought reasonably to have become aware that he had cause to complain about the advice more than three years before he actually raised it because he spoke to his adviser every year after the switch took place and so had several opportunities to raise any concerns he had about the advice.

Mr M remained unhappy so he referred the complaint to this Service where it was assessed by one of our investigators. In looking at the issue of the time bar objection first, she was satisfied that the complaint had been brought within the required timescale set out in our Rules. For the merits of the complaint, she was of the view that the advice given to Mr M in 2011 was suitable for him. She was also satisfied that all the reviews that should have taken place did take place and that they were conducted in an appropriate manner. In relation to the charge for the review in 2021 she agreed that this was an error and Quilter shouldn't have deducted this charge. So she agreed with the offer Quilter had put forward to refund the charge to Mr M. She also explained that, as Quilter had offered, while calculating the notional gain those fees would have achieved using the FTSE UK Private Investor Income Index Series may not precisely reflect the position Mr M would be in, had the fees not been taken, it is likely to be a reasonable approximation.

The CMC on behalf of Mr M didn't agree with the assessment and remained of the view that the advice Mr M received in 2011 was unsuitable for him.

The investigator responded to the CMC's additional points but wasn't persuaded to change her initial outcome.

So as no agreement could be made the complaint has been 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.

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 CMC in this complaint has made many detailed comments in response to the investigator's assessment. I've considered everything the CMC has said. However, our rules don't require me to address or respond to each and every point raised. We're an alternative to the court not a substitute for it. As such my role is to decide how a complaint should be resolved with minimal formality. And I aim to present my conclusions in as clear and as concise a manner as I can. In doing so I focus on the key issues and the reasons that are crucial to my decision making. So, if there's something I haven't mentioned, it isn't because I've ignored it. It's because I'm satisfied I don't need to comment on it to be able to reach what I think is a fair and reasonable outcome in the circumstances of this complaint

### *Timing of bringing the complaint*

As Quilter has initially objected to this Service considering the merits of the complaint because it believes it has been brought outside of the required timescale, this is the issue that I must first determine.

The Financial Ombudsman Service isn't free to consider every complaint that's brought to us. We are governed by rules set by the FCA's Handbook, the DISP Rules as mentioned above. They set out the complaints that we can (and can't) consider and I have to strictly apply these rules.

The specific DISP rule relevant for this complaint is DISP 2.8.2 R which sets out the following:

*"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*.....*

*(2) More than:*

*(a) Six years after the event complained of; or (if later)*

*(b) Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and had written acknowledgement or some other record of the complaint being received;*

*Unless:*

*(3) in the view of the ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; .....*

The rules don't say that Mr M needs to know exactly what's gone wrong to bring a complaint – only that he needs to have a reasonable awareness *something might* have gone wrong.

If a complaint is brought outside of the time limits set out in the rules, we'd only be able to consider it if Quilter has consented – which it hasn't – or if the complaint was brought late due to exceptional circumstances. The FCA gives an example of exceptional circumstances as being incapacitated.

The complaint is about the suitability of the advice given to Mr M in 2011, so it is clear that the event being complained of (i.e. the advice) took place more than six years before he raised his complaint in 2024.

Therefore, I must next consider whether Mr M knew or reasonably ought to have known that he had a cause to complain about the suitability of the advice he received more than three years before he raised the complaint.

As I've detailed earlier in this decision Quilter feel Mr M would have been in a position to raise his complaint more than three years ago because he had met with his adviser each year (which has been agreed by all parties) and so had ample opportunity to raise his complaint. However, I disagree.

The evidence I have shows me that Mr M did speak to his adviser each year from the inception of the plan. However, no documents recording what was discussed at the meetings that took place between 2012 and 2018 have been provided so I don't know what was discussed or if Mr M had any concerns about his plan and the advice.

However, the review summaries that I have seen from 2018 onwards don't record Mr M having any concerns about the plan. So it's reasonable to say that if he didn't have concerns about the plan from 2018 onwards it's unlikely he had concerns about the plan in the earlier years.

I also can't see that it was recorded anywhere how much growth Mr M was expecting or indeed if that was something that was ever discussed. This is something I would expect could trigger the awareness of a cause to complain because if Mr M was promised a certain level of growth and this wasn't achieved it's reasonable to say that he had a reason to complain at that point in time. However, there is no information about this so I must assume that Mr M wasn't ever given a specific level of growth to expect.

So in light of this I don't see how Mr M had any reason to question the suitability of the advice that was given to him in 2011 any time before he actually did, as I have no information that indicates anything went wrong with the plan. Therefore, I don't think anything could have triggered his awareness until he met with his CMC when it was explained to him that he could have a cause for complaint.

#### *Suitability of the advice to switch to Quilter given to Mr M in 2011*

It's first important to point out that my role is not to decide what the *best* or most perfect advice would have been for Mr M, or any consumer. My role is to look at the advice and the recommendations given and decide whether, from the information in front of me, what was recommended was in line with the consumer's needs and objectives at the time taking account of his personal and financial circumstances.

So where the CMC has said that there were many other options available to Mr M at the time of the advice rather than switching his pension, whilst that may be true, I can only look at the advice Mr M accepted and assess the suitability of that – I cannot state or decide what else Mr M should or could have done.

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

Furthermore, given the complaint concerns a switch of a pension I must also have in mind the relevant guidance provided by the FCA and its predecessor, the Financial Services Authority ("FCA") and of particular relevance for this complaint is the report the FSA published in 2008 on the quality of advice on pension switching. This report identified four main areas where they considered advice to be unsuitable:

- The switch involved extra product costs without good reason.
- The fund(s) recommended were not suitable for the customer's attitude to risk and personal circumstances.
- The adviser failed to explain the need for or put in place ongoing reviews when these are necessary.
- The switch involved loss of benefits from the ceding scheme without good reason.

As well as this, in deciding whether the advice was suitable I have considered what obligations Quilter had when providing that advice and in conducting its suitability exercise. In doing this I expect to see that a business has obtained necessary information regarding the consumers' knowledge and experience in investing, their financial situation and any investment objectives – essentially enough information to understand the most important

facts of the consumer so that the recommendation meets the consumer's investment objectives. These considerations also include their attitude to risk, the purpose of investing and how long they want to invest for; whether the consumer can financially withstand the investment risk; any potential future changes to their circumstances (financial and personal); the extent of their regular income, assets, cash holdings, investments, property liabilities and regular financial commitments.

The advice Mr M received from Quilter was to switch his pensions held with different firms to a different provider. There is nothing in the information to suggest that these pensions were no longer suitable for him so clearly the advice warrants a closer look.

As detailed above the costs of some of his existing plans were lower than the recommended plan and for the others the costs of the existing plans were higher. This obviously affected the performance required by the RA. However, given over performance was needed as well as there being room for underperformance it doesn't seem that the costs of the existing plans compared to the recommended RA decisively point to the recommendation being unsuitable. The likelihood of the plan over performing to meet the required levels to outperform the plans that had lower charges doesn't seem unreasonable to me as the level of outperformance needed wasn't unreasonably high, so I think it was achievable. Therefore, when the costs of the recommendation compared to the existing plans are looked at as a whole in line with the other benefits Mr M received by switching to the RA I am satisfied that from a cost perspective the advice was not unsuitable.

Mr M was categorised as a dynamic risked investor which meant as per Quilter's risk definitions, that the investment would have higher than average volatility and potential losses and that there were no guarantees of return of capital.

The assessment of his risk was carried out with Mr M by way of answering a number of questions. I am satisfied that Mr M engaged in this process and would have answered those questions honestly. So he had a part to play in his risk assessment. Furthermore, having looked at all the point-of-sale documentation that was provided to Mr M I am satisfied that he was given full information about the risk assessment and his categorisation as well as information about what this could mean for him and his investment.

In addition, Mr M had approached Quilter because he was concerned about his retirement benefits and wanted them to do as much for him at retirement as they possibly could. So in other words, he wanted the lump sums he had built up to grow as much as possible. So it goes without saying that for this to happen there had to be some risk involved in wherever Mr M was to invest. Without risk the potential for good growth is minimal.

As well as this, while Mr M may have been an inexperienced "active" investor he already held five pension plans that were invested so I think it's reasonable to say that he had some knowledge of investing. In any event, the level of experience of someone doesn't always go hand in hand with the levels of risk it is right for them to take. This is based more on their financial position and what their objectives for investing are. In Mr M's case he was eleven years away from retirement and wanted his monies to grow as much as possible. Also, he was investing lumps sums that had already been earmarked for his retirement so he wasn't being left short on a monthly basis or doing anything that would affect his normal daily standard of living. Nor was he using funds which could or should have been used elsewhere for other things.

Also, the existing plans were fully paid up and were in funds that were a lower risk than Mr M had been assessed by Quilter (which as I have explained doesn't seem wholly unreasonable). So if he had kept them where they were they had little opportunity to grow in

value. Mr M wanted his retirement funds to grow so it seems there was more of a chance this could happen if he moved them elsewhere.

So overall, looking at the investment funds as a whole they don't seem unreasonable in light of what Mr M's aims and objectives were for his retirement funds.

I am also satisfied the adviser provided detailed and comprehensive analysis of Mr M's position, the options that were available to him and why he made this specific recommendation. Alternatives were also discussed and it's clear that a full analysis of the applicable charges and how they would affect the future performance of the new plan took place.

It also can't be ignored that Mr M appears to have wanted regular reviews and advice which doesn't seem to have been offered by his existing providers, so the switch met his objective as well. So, while the CMC has said Mr M's low level of retirement savings didn't warrant the extra charges for the ongoing advice it seems to me that this was what he wanted so he must have been willing to pay it.

In terms of the point the CMC has raised about the Mr M being charged an MVR on one of the plans due to the switch, while this did happen the documentation from the sale shows this was clearly considered and communicated to Mr M. So, I am satisfied that he knew about the MVR being applied and must have decided it was worth paying in order to switch his plan to somewhere where his objectives would be met.

Overall therefore, I am satisfied that the advice Mr M received was largely suitable for him.

#### *Charges for the annual reviews*

At the time of accepting the advice it was agreed that a regular review service for the next eleven years would take place at no additional cost beyond the 8% initial charge. However, it's worth pointing out that, as outlined in the suitability report, the cost of advice was paid from the recommended product rather than a charge to Mr M. So the payment was agreed as a commission payment between the product provider and the adviser rather than the consumer and the adviser. The product was set up in 2011 which was before the FCA issued its Retail Distribution Review (RDR), in 2012.

RDR took effect from 30 December 2012 banning financial advice firms from receiving commission in respect of a personal recommendation made after that date. This is explained in the FCA's Conduct of Business Sourcebook, ("COBS") 6.1A.4AA, which states:

*A firm may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a retail investment product which was made by the retail client following a personal recommendation made, or a transaction executed, on or before 30 December 2012. This is the case even if the firm makes a personal recommendation to the same retail client after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre-31 December 2012 personal recommendation or transaction, rather than the new personal recommendation.*

*Of course, this is dependent upon the terms of the contract contemplating the continued receipt of such payments.*

It's also stated at COBS 6.1A.4AAG that:

*A firm may continue to accept a commission, remuneration or benefit of any kind after 30*

*December 2012 if there is a clear link between the payment and an investment in a retail investment product which was made by the retail client following a personal recommendation made, or a transaction executed, on or before 30 December 2012.*

So as there is no requirement for a financial advice firm to provide ongoing advice when receiving commission so I can't uphold that element of the complaint on that basis.

Nevertheless, there is no dispute that Mr M received the reviews that he should have - what is in dispute is whether they have been delivered in the agreed manner given an additional fee for the service was taken in April 2021 which was inside the agreed eleven-year period for no additional costs.

As already mentioned earlier in this decision, Quilter has offered to refund the fee that was incorrectly charged during the specific no fee period and has also offered to pay the notional gain those fees would have achieved using the FTSE UK Private Investor Income Index Series. Whilst using this index is different to the normal approach of this Service in these types of complaint, I am satisfied that in this complaint it is largely reflective of the position the investment would have been in had the fees not been incorrectly deducted, so in my view this offer and the proposed methodology is fair and reasonable. Furthermore, Mr M's CMC has confirmed it is willing to accept the calculation methodology Quilter has proposed as it is agreed by all parties that this is the most pragmatic way of resolving this part of the complaint.

### **My final decision**

For the reasons above I don't uphold this complaint.

As explained QUILTER FINANCIAL SERVICES LIMITED has already made an offer to refund the charge that was incorrectly deducted and calculate the notional loss those fees would have achieved using the FTSE UK Private Investor Income Index Series.

So my decision is that QUILTER FINANCIAL SERVICES LIMITED should pay the redress Mr M is due using the method proposed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 October 2025.

Ayshea Khan  
**Ombudsman**