

The complaint

Mr C, represented by a claims management company (CMC), complains about the suitability of investment advice provided by an appointed representative of Quilter Financial Limited.

For clarity, it's been agreed that additional concerns also raised, regarding the ongoing advice service provided to Mr C, are no longer under consideration.

What happened

The background to the complaint will be well known to both parties, so I'll only give some key details here.

Mr C met with the adviser in March 2016, and a fact find was completed to record his circumstances and objectives. He was in his late 50s, divorced with no dependents, self-employed with no debts and living with his parents. He held £10,000 of direct shareholdings and just under £50,000 on deposit and in a cash ISA, the majority of which had come from a compensation payment received in respect of a failed investment made via his pension. It was established that he had a medium attitude to risk (ATR) and while he had no specific objective for his money it was likely to be used to support his retirement. He intended to continue working to age 75.

Quilter recommended Mr C invest just under £37,000 in a stock and shares ISA by taking advantage of that year's and the next year's allowances coupled with £6,500 transferred from his cash ISA. Mr C accepted the advice, although he chose to retain his cash ISA and increase his emergency fund by reducing the amount invested to just over £30,000.

In November 2018 Mr C made a withdrawal of £25,000 from the ISA, confirming that he'd sought advice from his adviser prior to making the request and that the funds were to be used to buy a property.

In October 2024 Mr C's CMC complained to Quilter about the suitability of the advice on a variety of grounds – Mr C's limited investment experience, his ATR being incorrect, the timeframe, a lack of assessment of his existing provision, his vulnerability and capacity for loss.

Quilter didn't consider any elements of Mr C's complaint as it felt it had been made too late. However, upon referral to this service an investigator concluded it had been made in time, so went on to consider the suitability of the advice. In doing so she said, in brief –

- At the time of the advice Mr C had no debts and his income covered his expenditure. He had an emergency fund of more than three months outgoings, which was likely to increase as he had around £1,000 monthly disposable income. He confirmed he had no planned changes to his income, and his expected retirement date was beyond the planned ten-year investment term. So, he was able to commit the excess capital he held on deposit to an asset-backed investment.
- Although his plans changed two years later when he withdrew funds to buy a property that wasn't planned at the time of the advice. He had confirmed he expected

no changes to his income and no plans for capital expenditure. So, this wasn't something Quilter ought to have foreseen.

- The invested money did come from a compensation payment. But aside from that Mr C also held shares that he monitored himself and had held other shares in the past, exposing him to losses. The answers he gave regarding his ATR aligned with that experience and confirmed he was aware his capital would be exposed to risk. The definition of medium risk indicated the likely range of gains and losses as between a 26% gain and a 16% loss in a year. So, the level of risk was clearly explained and having suffered larger losses in the past, Mr C was in an informed position to understand what he was agreeing to.
- The asset allocation of the recommended portfolio aligned with the description for a medium risk investor.
- In respect of capacity for loss, based on Mr C's circumstances his lifestyle wouldn't have been impacted by investing at a medium level of risk as he had savings and surplus income to withstand fluctuations to his capital.
- At the time of the advice the base rate was 0.5% so inflation was also an issue Mr C faced given he intended to invest over the long term. So, taking some risk with his capital to hedge against that was reasonable.
- The invested money had previously been committed to a pension plan. Mr C could have contributed some of it to a pension, however given the funds were a compensation payment they ought to have been paid net of a notional deduction for income tax. So, there was an opportunity for him to be better off because of tax relief. And he wanted access to his capital before he retired so was likely to incur tax on any withdrawals he might go on to make. So, there weren't benefits that strongly outweighed those of the ISA. An ISA allowed Mr C to invest in a tax efficient manner utilising tax allowances that would otherwise be wasted.
- Overall, the advice to invest was in line with Mr C's experience, knowledge, attitude to risk and met his objectives so was suitable.

Mr C's CMC didn't accept the investigator's view. It said, in brief –

- The fact find was inaccurate as it inflated Mr C's self-employed income and lacked detail in respect of his income and expenditure.
- Mr C had said he withdrew £7,000 in 2018 for debt consolidation. This also called into question the fact find information and amounts noted for his emergency fund and disposable income. Further, his depleted pension had not been noted in the fact find either.
- His categorisation as having a medium ATR was questionable given his previous experience of significant loss with his pension. He couldn't withstand further losses that might come from investing at that level of risk.
- Contributing to his pension should've been the default recommendation given the previous loss, his age and his circumstances.
- The advice had not been in Mr C's best interests and Quilter had failed to carry out an adequate assessment that fully considered his capacity for loss.

The investigator wasn't persuaded to change her view. She said that in respect of the accuracy of the fact find information she'd not seen evidence to show that the income and expenditure and debt information relied upon had been incorrect. They appeared consistent with Mr C's circumstances at the time, and she stressed that he'd retained a cash reserve and had no planned capital expenditure that couldn't be met from his income and savings.

The investigator said the money remained invested for several years until Mr C changed his plans, which wasn't foreseeable. So, the recommended investment appeared affordable, and Mr C had the capacity to take the risk it presented. Although he had the option of investing in a pension that didn't mean the option doing something else was necessarily unsuitable.

The investigator therefore remained of the view that investing in an ISA rather than a pension was reasonable as Mr C had 17 years until his intended retirement date and wanted retain access to his capital earlier, so an ISA met that need.

Mr C's CMC still didn't accept the investigator's opinion, so the complaint was referred to me to review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've come to the same conclusions as the investigator and for broadly the same reasons.

I can see that the fact find information was clearly subject to some approximations. Mr C's annual income was recorded as £30,000, although notes around this suggest the possibility that it had been/could be less – around £23,000 – which was consistent with his self-employed status. Also, his expenditure was rounded to £1000, although again notes on the fact find suggested it could be different – maybe only £800. None of this seems particularly incongruous given what else was recorded about Mr C's general circumstances at the time – him being divorced with no dependents or debts and living (paying rent) with his parents.

His pension wasn't recorded as an asset in the 'core' fact find (although it was in the supplementary fact find document) but I don't think this was an error that would've impacted the advice. The pension was only valued at around £5,000 as a consequence of the previous issue, for which Mr C had been compensated, albeit at that point only around £40,000 against a much larger loss.

But the pension situation was dealt with elsewhere in the fact find notes, which recorded that Mr C would "*prefer to retain access to the monies and would prefer an ISA or investment*". And this was confirmed back to Mr C in the suitability letter issued to him detailing the recommendation, saying that he had "*no desire to invest (the money) into a pension, as you wish to look at investing the monies in another tax efficient manner.*"

Plainly it was important for the adviser to guide Mr C appropriately and ensure he was advising in his best interests. Committing the money to a pension may well have been a reasonable alternative. But in all the circumstances. I think the route chosen by Mr C was a suitable one. I can understand why he might have wanted to avoid a pension given his previous experience and I think flexibility and accessibility would have been important to him, as was documented. Indeed, he did change his plans a few years later and had the flexibility to do so precisely because he'd invested in the way he did.

I appreciate this change came very soon after the ISA was started but while it might have been to a degree predictable at the time of the advice that he might want to change his living arrangements, there was nothing definitive recorded to suggest Mr C was planning to make this change or any other significant change. So, on balance, I think it was reasonable for the adviser to go ahead with the recommendation.

In respect of the risk level and capacity for loss, I don't think Mr C's previous unfortunate experience would necessarily have led him to be a cautious investor. I agree he was probably more cautious than he had been previously, but he was nevertheless someone with investment experience who continued to maintain a portfolio of shareholdings that he managed himself. I think it was the case that, having experienced the losses on his pension and the cost of his divorce, he was in a position where needed to make what money he did have work for him, albeit without going over the top, but in a balanced manner that I'm satisfied he would've understood.

In summary therefore, I'm satisfied the recommendation made to Mr C in 2016 was suitable for his circumstances and objectives.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 January 2026.

James Harris
Ombudsman