

The complaint

Mr S complains that an appointed representative of Quilter Financial Planning Solutions Limited gave him unsuitable advice to switch his personal pension to an Old Mutual Wealth Collective Retirement account.

What happened

Mr S was advised to transfer his Scottish Equitable Flexible Personal Pension to a new plan with Old Mutual Wealth in 2016. In 2024, he raised a complaint through a representative that the advice had been unsuitable and that he had been moved from a diversified pension with lower charges to a more expensive plan and that he hadn't been looking for excessive investment risk.

Quilter rejected the complaint and said it had been raised too late as the advice had happened more than six years ago and Mr S ought to have reasonably been aware more than three years ago that he had cause for complaint. They said he complained too late for our service to consider the complaint in accordance with the regulator's rules set out in DISP 2.8.2R. An ombudsman at this service issued a decision that the complaint had been raised in time.

One of our investigators then considered the advice Mr S was given by Quilter and found that it had been unsuitable. He considered the adviser had assessed Mr S's attitude to risk and capacity for loss but switching to a more expensive plan was not justified in the circumstances.

Quilter disagreed and so the complaint has been passed to me for an ombudsman's 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 have considered the time limits issue independently and agree with my ombudsman colleague that the complaint has been raised in time. No further arguments were raised about this after the decision, so I won't comment on this any further here.

I also agree with the investigator that the advice was unsuitable. I considered the suitability rules set out in COBS 9 as well as the Principles for Businesses. Quilter had to act in Mr S's best interest and as far back as 2009 the regulator specifically set out the expectation that a pension recommendation which resulted in higher costs needed a good reason for it. And I can't see that this was the case here.

Mr S was 49, single with no dependants and self-employed at the time of the advice. He owned his own home without a mortgage and had no other debts. He had a surplus income at the end of each month and was contributing to his personal pension. He had emergency savings, but no other pensions or investments. Mr S had not yet decided when he would

retire. For the purposes of the advice it was agreed a retirement age of 68 would be assumed.

Mr S completed an attitude to risk questionnaire which assessed him as adventurous, but Mr S and the adviser agreed a dynamic risk profile (which was slightly lower risk) more accurately reflected Mr S's attitude to risk with regards to his pension. From the answers he gave it seems Mr S was prepared to take some risk with his pension rather than increase his contributions. I can see his existing pension was invested in a similar risk profile and he had seen fluctuations in his pension before which he felt comfortable with. Mr S wasn't really able to withstand significant losses to his pension. His only pension provisions in retirement other than this pension was his state pension. This meant he was left with an income shortfall of around £9,000 per year, assuming he required around £20,000 per year in retirement. So these pension provisions were important. The adviser did recommend higher contributions for this reason, but Mr S decided to stick with his existing contributions. A fact find from the time of the advice was not provided but later fact finds show that Mr S only had minimal surplus income so I think it's likely he couldn't afford to contribute much more.

A consideration might have been to lower Mr S's risk profile for this reason, however I consider given the long time to retirement (it's likely Mr S wouldn't have been able to retire anytime before state retirement age), taking higher risk to try to lower the shortfall was reasonable.

The contentious point here are the higher charges in Mr S's new recommended pension. It needed to outperform his existing provisions by 0.54% for Mr S not to be worse off financially in retirement. This percentage didn't include the effect of initial advice charges (which were 4% of Mr S's transfer value) and the adviser's ongoing adviser charges which were 0.5% per year. It seems Mr S was already receiving ongoing advice from the adviser, so this wouldn't have necessarily affected the difference in costs, but the initial advice charge would have increased the figure of 0.54% the new plan needed to make up in returns.

The main reason why Mr S's proposed new plan was more expensive was that the recommend fund had higher charges. It was a multi-asset fund which would be actively managed and rebalanced by fund managers. Such active managed funds are generally more expensive than regular managed funds which Mr S was invested in his existing pension.

The adviser's suitability report at the time made clear that fund managers would aim to beat the market and had the potential to achieve higher than average returns. However, it wouldn't guarantee better returns and looking back investors might question why they paid higher charges for no higher returns. Some investors preferred low-cost funds as they didn't think fund managers could beat the market over time accepting that lower cost funds unlikely would be top-performers in any given year.

Quilter advised Mr S that an active management strategy was right for him and that a similar fund with Scottish Equitable would have been more expensive. However, I'm not persuaded that the adviser did enough to justify this recommendation and the additional cost for Mr S. He was already invested in a mix of varied funds in line with his attitude to risk which could have been further diversified if required by changing or adding to the funds he had. It's possible that an active managed fund might have resulted in better returns, however I can't see that any analysis was done which showed that Mr S's investments were underperforming or that his new fund historically had performed better. I wouldn't expect the adviser to be able to guarantee better returns. However, I consider any comparison of fund performance would have been reasonable in order to come to a conclusion that the new plan would likely result in better results for Mr S. Mr S's existing funds would also be rebalanced regularly to make sure they would remain in their risk profile and if Mr S decided to keep on

having ongoing advice the adviser could have made sure at least once a year that the funds were still generally in line with Mr S's attitude to risk. Quilter have pointed out that ongoing advice does not provide the same service as a fund manager who actively monitors the investments and can respond to market movements and make investment changes far quicker. I agree that these are different services. I just think Mr S didn't need a more expensive active fund manager for reasons I've set out further below.

I note that the comparison with a similar fund in the Scottish Equitable plan was only done after the adviser's compliance team noted this was needed. Mr S's existing plan had an extensive range of funds provided by different investment managers. I'm not persuaded that the fund the adviser selected for comparison -and which was more expensive than the Old Mutual fund- was the only active managed fund that was available. In any event, I'm not convinced that Mr S required an active managed investment approach. He was already investing in higher risk investments and he only had limited funds (around £40,000). I don't think he reasonably needed the additional risk of paying higher charges which might not have resulted in increased returns to make up for these charges.

I also considered the adviser's other reasons why a pension switch was suitable which included that Old Mutual Wealth offered flexible income drawdown and Mr S would benefit from only having one pension provider and large fund discounts. Mr S only had one plan, so he didn't need any consolidation and his existing pension did offer large fund discounts already. If Mr S wanted to access his pension flexibly through income drawdown he would have needed to change his pension. On advice of his compliance team the adviser added a sentence to the suitability report to say that Mr S would possibly look to semi-retire and wanted access to his funds at 55 if he needed some funds for any business purposes.

However, Mr S was still six years away from even being able to access any funds from his pension and there was no concrete plan that he needed to access a lump sum at 55. Even if he needed to access his funds flexibly, he didn't need to change his pension at age 49. He could have remained in his cheaper pension and changed plans if and when required.

Based on what I have seen, I can't see that it was in Mr S's best interest to transfer his pension and incur higher charges. He should have been advised to stay where he was.

Putting things right

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 been given suitable advice. I take the view that he would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr S's circumstances and objectives when he invested.

What must Quilter do?

To compensate Mr S fairly, Quilter must:

- Compare the performance of Mr S's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Quilter should also add any interest set out below to the compensation payable.
- Quilter should pay into Mr S'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's pension plan, it should pay that amount direct to him. But 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 isn't a payment of tax to HMRC, so Mr S won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr S's actual or expected marginal rate of tax at his selected retirement age. I expect Mr S will be a basic rate tax-payer. However, if Mr S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Quilter pension	Still exists and liquid	Notional value from previous provider	Date of transfer	Date of my final decision	Not applicable

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr S's investment had it remained with the previous provider until the end date. Quilter should request that the previous provider calculate this value.

Any withdrawal from the Quilter pension 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'll accept if Quilter totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Quilter will need to determine a fair value for Mr S' investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Quilter must pay the compensation within 28 calendar days of the date on which we tell them Mr S accepts my final decision.

If Quilter fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr S wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, then I consider the measure 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr S's circumstances and risk attitude.

My final decision

I uphold Mr S's complaint and require Quilter Financial Planning Solutions Limited to follow the redress instructions 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 21 January 2026.

Nina Walter
Ombudsman