DRN-5968575

The complaint

Mr E complains that he was given unsuitable advice by an appointed representative of Quilter Financial Services to switch his personal pension to an Old Mutual Wealth Collective Retirement Account.

What happened

Mr E was advised to transfer his Friends Life personal pension to a new plan with Old Mutual Wealth in 2015. 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.

Quilter rejected the complaint and said the complaint about the advice had been raised too late as it had happened more than six years ago and Mr E ought to have reasonably realised 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.

One of our investigators incorrectly assumed Quilter had changed their stance on our jurisdiction. He considered the complaint and upheld it. He didn't have any concerns with Quilter's assessment that Mr E was a balanced investor and he didn't consider the new pension was invested with too much risk. However, he was concerned that the difference in charges wasn't explained clearly enough and that taking into account all advice and product charges, Mr E's new plan would have to perform 1.82% better than his old pension. He considered there was a real risk this couldn't be achieved and Mr E could be worse off in retirement. The investigator considered that Mr E was already invested suitably in his existing plan and so should have been recommended to stay there. He asked Quilter to carry out a loss calculation comparing his current pension value with the position Mr E would be in now if he had stayed in his existing plan.

Mr E's representative accepted the investigator's view. Quilter didn't comment on the investigator's findings on the advice but raised the time limit issue again. They said Mr E transferred his pension in 2015 with a value of £66,632. He also made additional contributions totalling £900 before he took a tax-free cash lump sum of £16,429 in October 2016. They calculated that his pension value at the time must have been £65,717 which was less than what he had transferred despite making additional contributions. They consider Mr E ought to have realised that his pension had lost money. Even though the loss wasn't considerable, Quilter considered it would have been significant enough for Mr E personally.

Mr E had said he only became aware there might be an issue once he had contacted a professional representative in 2024. The investigator disagreed that the loss here would be enough to reasonably put Mr E on notice something might have been wrong with the advice he received in 2016 when he took his tax-free cash lump sum. He would have been reasonably aware values could go up and down and also that charges would be applied, so a fluctuation which was fairly minor was not sufficient here to raise reasonable concerns about the advice. The investigator considered the complaint was raised within the regulator's time limits and reiterated his view that the advice had been unsuitable.

Quilter still disagreed and asked 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.

Jurisdiction

I agree with the investigator that Mr E has complained within the applicable time limits for the same reasons. I also considered whether at any later point after 2016 he ought to have been reasonably aware that he had cause for complaint, however I can't see that his pension value decreased excessively at any point before 2021 (three years before Mr E raised his complaint) or that anything else ought to have reasonably made him aware of concerns about the advice before he spoke to his representative.

Unsuitable advice

I also agree with the investigator's view 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 E'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.

Quilter was not able to provide a fact find from 2015, but only a recommendation summary. I've also seen an attitude to risk questionnaire and an illustration for the new pension plan. I can see Mr E was 54 at the time of the advice and it's likely that Mr E was simply looking to review his pension provisions. There is no evidence of any more specific objectives. Later fact finds show Mr E didn't have any other savings or investments. A workplace pension was mentioned but no details were recorded. Mr E's attitude to risk was assessed as balanced which seems reasonable given his answers in the risk questionnaire he completed and his time to retirement (in a later fact find he said he was looking to retire at state retirement age of 67). In some later annual reviews Mr E changed his attitude to risk to conservative and then changed it back to balanced in later years. It's likely he had an attitude to risk which was at the lower end of balanced. Both the investments in his existing pension as well as the recommended new investments were broadly aligned with this. I don't think Quilter recommended investments which were too high risk or lacked diversification.

However, like the investigator, I have concerns about the lack of reasonable justification for recommending Mr E to transfer out of a pension plan which was suitable for him in exchange for a pension arrangement which was significantly more expensive.

The recommendation summary showed Mr E's existing plan had a reduction in yield due to charges of 0.58% compared to 1% in the new Old Mutual Wealth plan. I note that the Old Mutual Wealth illustration at the time in fact showed the reduction in yield was 1.1%. This just factored in the product charges. By moving to the new pension, Mr E also incurred an initial advice charge of 3.6% and ongoing advice charges of 1% per year which brought the overall reduction in yield up to 2.4% per year. This means Mr E's new plan had to perform 1.82% per year better than his existing pension just to break even. I can't see that this was explained in the recommendation report or that there was any reasonable assumption that the new plan would likely achieve this outperformance. A bullet-pointed, very generic list of advantages of the transfer noted that Mr E would have access to historically better performing funds. However, I can't see that any specific comparison was done with Mr E's existing investments to support a view that there was a good chance his funds would outperform his existing pension funds when the additional charges were factored in. So there was a significant risk Mr E would be worse off in retirement.

I've considered that Mr E was receiving ongoing advice which he didn't have with his existing pension. However, I can't see that he had a specific need for this, particularly given that he was still many years away from retirement, had only limited funds and he was in a lifestyling policy which would have adjusted his pension risk the nearer he got to retirement. Even if he had wanted to receive ongoing advice, he could have had this on his old policy and still paid lower charges overall.

I also considered the other listed advantages of a transfer, but can't see any persuasive reason which justified the higher charges and the risk of being worse off in retirement. It listed the removal from with-profit funds without giving any reasons why this was beneficial for Mr E. It noted the advantage of investing all of Mr E's monies onto the Old Mutual Wealth platform which would reduce costs. However, Mr E didn't have any other monies to invest. It also listed the advantage of being able to invest in line with Mr E's attitude to risk when he already was invested appropriately in his existing pension. He could access flexible benefits in his new plan, but I can't see that it was explored whether Mr E had this option with his existing provider. Also, at the time of the advice he didn't have immediate plans to access funds from his pension, so a transfer for this reason wasn't necessary either.

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

Putting things right

My aim is that Mr E 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 Mr E 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 E's circumstances and objectives when he invested.

<u>What must Quilter do?</u>

To compensate Mr E fairly, Quilter must:

• Compare the performance of Mr E's investment with the notional value if he 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 pay any loss into Mr E'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 E'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 E won't be able to reclaim any of the reduction after compensation is paid.

• The notional allowance should be calculated using Mr E's actual or expected marginal rate of tax at his selected retirement age. I expect Mr E to be a basic rate taxpayer, so the reduction would be 20%. As Mr E has already taken his tax-free cash lump sum, the reduction of 20% can be applied to the whole compensation amount if paid to Mr E in cash.

Quilter should provide the details of the calculation to Mr E in a clear and simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Quilter Pension derived from the Friends Life transfer	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 E's investment had it remained with the previous provider until the end date. Quilter should request that the previous provider calculate this value.

Any additional sum paid into Mr E's new pension should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from Mr E's new 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 no notional value can be obtained

If the previous provider is unable to calculate a notional value, Quilter will need to determine a fair value for Mr E's investment instead. Mr E's existing pension plan was invested in a 10 year lifestyle strategy. This meant 10 years from retirement (which was from October 2016 for Mr E) his pension would gradually be invested in lower risk funds (by 10% per year).

The investigator recommended Quilter to use the following benchmarks to reflect this.
Mr E's representative already said they would be happy for Quilter to use the benchmarks instead of a notional value if they want. And Quilter didn't make any comments on the redress recommendations, so I see no reason to depart from the investigator's recommendations in this particular case which are:

Benchmark 1: FTSE UK Private Investors Income Total Return Index

Benchmark 2: For half the investment FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds.

Benchmark 1 should apply from the date of transfer until 31 October 2016. After that Mr E's plan would have applied the lifestyling strategy moving 10% of funds per year into lower risk funds.

So Quilter should decrease the percentage of Benchmark 1 by 10% per year and increase the percentage of Benchmark 2 at the same time. To illustrate this means:

90% of Benchmark 1 and 10% of Benchmark 2 for the period of 1 November 2016 to 31 October 2017

80% of Benchmark 1 and 20% of Benchmark 2 for November 2017 until November 2018

and so on until the date of my final decision.

Why is this remedy suitable?

• Mr E wanted capital growth with a some risk to his capital.

• If the previous provider is unable to calculate a notional value, then I consider using the benchmarks as set out above is appropriate.

• The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

• 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's a fair measure for someone who was prepared to take some risk to get a higher return.

• I consider that Mr E's risk profile was broadly in line with the FTSE UK Private Investors Income Total Return index. However, this risk would have been gradually reduced when his policy would have started lifestyling from 31 October 2016. It does not mean that Mr E would have invested some of his money in a fixed rate bond and some in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr E could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold Mr E's complaint and require Quilter Financial Services Limited to follow the redress instructions as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 16 January 2026.

Nina Walter
Ombudsman