complaint

Mrs and Mr T say an Appointed Representative ('AR') of Quilter Financial Services Ltd ('Quilter') gave them unsuitable advice to switch investments in 2013. Mrs T appears to lead the complaint.

background

Mrs and Mr T had Individual Savings Accounts ('ISAs'), Personal Equity Plans ('PEPs') and a deposit fund. They say the AR had recommended the investments historically and that they were tax efficient; that in 2013 they discussed with him an objective to generate income from their invested funds; that he recommended liquidation of the investments, use of the proceeds and the deposit fund for reinvestment; that they used some of the proceeds to clear a mortgage and that he recommended reinvestment of the remainder (less around £1,000) in an offshore investment bond ('the bond') with a guaranteed 5% per year income (for 20 years).

Mrs and Mr T complain, mainly, as follows:

- The bond's guaranteed income was defeated by advice from the AR against withdrawing income, in order to avoid tax consequences – so no income was withdrawn from it. It should be noted that she did not ask for a *guaranteed* income, she simply sought income to substitute lost earnings and the AR could have met this objective from existing arrangements – without the switch he recommended.
- The AR's recommendation letter was not received in 2013, the copy given to them in 2017 was their first sight of it and it contains inaccuracies they would have challenged in 2013 (had they seen it at the time). In addition, their investor profile does not appear to have been properly assessed (or assessed at all) in 2013.
- Liquidation of the pre-existing investments and the loss of their tax efficiency were unsuitable; the bond was less tax efficient.
- The AR misrepresented himself as an independent financial adviser, however his recommendation(s) was restricted by his AR status.
- The initial charge and recurring advice charge for the bond are unreasonable.

Quilter's response is mainly as follows:

- Mrs T's objective in 2013 was to have guaranteed income of around £500 per month to replace lost earnings. There is no evidence that the AR advised Mr T to liquidate his PEPs for the reinvestment in 2013.
- Terms of business and key facts documentation given by the AR to Mrs T at the outset confirmed his restricted status in terms of recommending investments from a limited product range; confirmed the cost of advice; and confirmed the initial and ongoing charges that applied. Mrs T received the initial advice from the AR, so it is reasonable for her to have paid for that. The bond had cheaper annual management and fund charges than the previous investments.
- An Attitude to Risk ('ATW') questionnaire completed in April 2013 shows that her ATW was assessed and was concluded as 'balanced' – which is reflected in the recommendation letter.
- The *guaranteed* income – which Mrs T required – was not available from the ISA, so the tax benefits of the ISA were outweighed by the guaranteed income available from the bond.

- There was a tax benefit in the reinvestment because previous 5% withdrawals (without incurring tax) were based on the original capital invested, whereas the reinvestment was based on the appreciated value at the time, it reset the basis for the 5% calculation and allowed more money to be withdrawn within the 5% limit (without incurring tax). In addition, the 5% withdrawals were reset as withdrawals of capital so no income tax applied, and there was no taxation within the offshore bond as there was in the onshore bond that existed previously. [Mrs T disputes reference to the onshore bond and says it formed no part of the reinvestments in 2013.]
- Mrs T retained a sum representing the 5% income withdrawals for a year, so withdrawals from the bond were deferred for the same period (until May 2014). Mrs T says she was concerned about starting the withdrawals in 2014 because the bond provider suggested to her that there would be tax consequences in doing so, but there is no evidence that the AR advised her not to start the withdrawals. However, it accepts that the withdrawals should have been activated in 2014 and were not. [Mrs T disputes reference to retention of capital representing the first year's withdrawals and says no such capital was retained.]
- It accepts that the recommendation letter contains inaccuracies and it upheld this aspect of the complaint as Mrs T should have received a recommendation/suitability letter that accurately recorded the relevant elements of the financial advice given to her.
- It also accepts that Mrs T did not receive the ongoing servicing she was entitled to, so it has offered to refund all the ongoing adviser fees to her inclusive of the growth they would have achieved but for their deductions. In addition, it has offered £250 for the trouble and upset caused to her.

One of our investigators looked into the complaint and concluded it should be upheld. He considered that both the liquidation and reinvestment recommendations were unsuitable, mainly because the bond was not an improvement on the pre-existing investments; the recommendations lost Mrs and Mr T the tax benefits they had in the pre-existing investments; the initial charge associated with the bond was somewhat excessive; a guaranteed income does not appear to have been as important as Quilter argues, especially given the inaccuracies in the AR's fact finding at the time; overall, it is unlikely Mrs and Mr T would have proceeded with the reinvestment if they were fully informed.

Quilter disagreed with this outcome and retained its key arguments. It said Mrs T's non-tax payer status at the time must be noted and that, overall and in this context, the bond was at least equally tax efficient as the pre-existing ISA, it had lower charges and it gave Mrs T the guaranteed income she sought. Mrs T welcomed the outcome but said that the AR's fundamental and severe breach of her (and Mr T's) trust must be noted. She also commented on the investigator's proposal for redress.

The investigator reviewed the complaint and concluded as follows:

- The bond and the pre-existing investments (including a 'Zurich bond') were broadly similar, both were tax efficient and consisted of similar underlying assets. The bond also had cheaper fund charges, however the initial advice fee outweighed this.
- The bond undertook lower risks than the pre-existing investments, which meant it had less of a chance of achieving the same performance as the pre-existing investments. This was compounded by the need for the bond's performance to also make up for the initial advice charge outlay.

- Overall, Mrs and Mr T should not have incurred an initial advice fee for a bond that provided broadly the same benefits as the pre-existing investments but was unlikely to perform as well as the pre-existing investments. This made the bond unsuitable.
- The chargeable event that arose in 2018 when Mrs T was advised – by a third party – to surrender the bond is remote to the AR's responsibility as it was not advised by him, so it would not be fair for Quilter to be responsible for any tax that arises from it.
- Mrs T should be paid £500 for the trouble and upset caused to her; she should be paid (with interest) a refund of all the adviser's fees; she should be paid separate compensation for loss of the Zurich bond; she should also have redress for the unsuitable bond calculated on the basis of a combined FTSE UK Private Investors Income Total Return Index and fixed rate bonds benchmark.

Mrs T accepted this outcome but clarified, mainly, that the chargeable event matter is not an issue because the liability that arose was zero and that the Zurich bond was not a part of the liquidation and reinvestment event in 2013 (it was surrendered separately, months after the event). Quilter vehemently disagreed with the outcome. In the main, it retained its previous points and stressed as follows:

- There is a conflict between the investigator's suggestion that the bond was comparable to an interest bearing account and the fact that stock market investments behave differently to such an account. It is also unfair to compare the bond with the pre-existing investments because the latter did not provide a guaranteed fixed income, which the former did.
- The investigator continues to ignore the fact that Mrs T was a non-tax payer, in terms of his comparison of tax benefits.
- Mrs T requested investment advice, she was given such advice and it was reasonable for her to pay for that. In this context, it is unreasonable to award her a refund of the initial advice fee.
- There is a conflict between, on the one hand, the balanced ATR on which the AR's recommendation was made and the investigator's comments about the unsuitability of lower risk investments and lower returns, and on the other hand, the combined benchmark that has been proposed which is also of a lower risk profile.

The matter was referred to an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Summary

I conclude as follows:

- The investment switch to the bond was unsuitable because, on balance, it was not worth recommending to Mrs and Mr T, and I am not persuaded that Mrs T sought its guaranteed income.
- Mrs and Mr T should be awarded £500 for the trouble and upset the matter has caused them.
- As the bond was unsuitable, Mrs and Mr T should receive a refund of all ongoing advice fees (inclusive of lost growth) they incurred, as offered by Quilter.

The above conclusions are consistent with the investigator's findings. I do not address the other areas treated by the investigator, other than my conclusions on the initial advice fee and redress benchmark matters summarised directly below. I do not consider them necessary to determine Mrs and Mr T's complaint. Within this finding, I also note that Mrs T concedes the chargeable event matter is not a complaint issue and that the Zurich bond is also remote to the complaint.

I agree with the investigator that Mrs and Mr T should receive a refund of the initial advice fee. However, for reasons given below, I consider that the award should reflect the likelihood that they would have sought – and would have had to pay for – advice in any case.

For reasons given below, I agree with the investigator's finding on the benchmark to be used to calculate redress for the unsuitable bond.

Unsuitability

I consider, on balance, that the fact find and suitability/recommendation documentation presented by Quilter are unreliable. Both Mrs T and the investigator have highlighted inconsistencies and inaccuracies in the latter. Quilter concedes the same. Mrs T also disputes the fact find document. It is not clear whether (or not) Quilter concedes that this too is inaccurate, but I am persuaded that it is just as unreliable as the suitability letter.

Without breaching the privacy of some aspects of Mrs T's circumstances in 2013, it is noteworthy that sections of the fact find document do not reflect those circumstances – where it would have been relevant to do so – and that some inputs in those areas even conflict with those circumstances. A confusion then arises further into the document where the same set of circumstances are expressly noted, having previously been ignored in earlier fact finding categories. There is also evidence that suggests incorrect financial information within the document. Overall and on balance, I do not consider the document to be reliable.

Quilter's assertions about Mrs T having an objective for guaranteed income is broadly based on these two unreliable documents (one of which Quilter itself considers to be unreliable). In other words, it does not appear to have a credible basis to support its argument about what Mrs T's objective was. In contrast, I consider Mrs T's submissions in this respect to be broadly credible. She does not deny that she sought income to substitute lost earnings and, on balance, I accept her point that she did not specify a need for *guaranteed* income.

Quilter's argument for the suitability of the bond is mainly based on the guaranteed income element. Given my conclusion above, it follows that this argument falls away. What remains, in the main, is an investment switch to the bond that, as argued by Mrs T and noted by the investigator, does not justify itself as being suitable. Mrs T has argued that the income she sought could have been explored from within the pre-existing investments – which appears possible – and the investigator noted that other options could have been considered in this respect. Quilter's secondary argument for suitability of the bond is the bond's cheaper fund charges. However, as the investigator said, that was outweighed (or at least counter balanced) by the significant 5% initial advice fee – which I address further below – that Mrs and Mr T incurred in the process.

I do not propose what particular or precise recommendation should have been made to Mrs and Mr T in 2013 and/or would have been suitable for them. I do not have to. It is sufficient to establish, for the purpose of treating the complaint, that the AR's recommendation was unsuitable for the reasons given above. It is also sufficient to say that, at best, the bond was recommended for an objective (that is, income – not *guaranteed* income) that possibly could have been met within the pre-existing investments. The AR does not appear to have considered or properly considered this. His recommendation lacks sufficient justification for the investment switch.

Initial Advice Charge

It is not disputed that Mrs T sought investment advice in 2013. Whilst the AR's advice was unsuitable, her need for advice was/is arguably distinct so in the absence of the AR's unsuitable advice she (and Mr T) would still have sought and obtained investment advice at the time. They would also have had to pay for such advice. In broad terms, the charge for initial investment advice can usually be around the 2% (of invested assets) level, so I agree with the investigator's finding that the 5% they incurred in 2013 was unreasonable.

With regards to the notion of a refund, I consider that the difference between the average 2% rate and the 5% they incurred – that is, 3% – is a fair refund for the reasons given above. Refunding of the ongoing advice fees (inclusive of lost growth) has already been conceded and offered by Quilter.

Redress Benchmark

The investigator's view explained that the combined benchmark was suitable because Mrs T sought income, with some growth and a small risk to her capital. I consider this broadly consistent with evidence from Mrs T.

I have noted Quilter's arguments that the benchmark conflicts with the AR's assessment of a balanced ATR – which, for the sake of completeness, Mrs T does not appear to have conceded – and with the investigator's comments about the performance of lower risk investments. As stated above, I consider the AR's fact finding documentation to be unreliable – and, on balance, I also consider that this extends to the ATR assessment documentation completed by the AR. The notion of lower risk investment performance is one of the points treated by the investigator which I do not consider necessary to determine.

Overall and on balance, Mrs and Mr T appear to fit into the description of investors who sought income, some growth and a small risk to their capital and, as I repeat below, the combined benchmark proposed by the investigator is consistent with this service's approach for such an investor profile.

Trouble and Upset

I agree with the investigator's view to double – from £250 to £500 – the trouble and upset award offered by Quilter. £500 is broadly consistent with the sort of trouble and upset award that this service will make in cases like Mrs and Mr T's.

fair compensation

I consider that fair compensation will be to put Mrs and Mr T as close as I can to the position they would probably now be in if they had not been given unsuitable advice by the AR. I take the view that they would have behaved differently. It is not possible to say *precisely* what they would have done differently but I am satisfied that what I have set out below is fair given their circumstances and objectives at the time.

what must Quilter do?

To compensate Mrs and Mr T fairly, Quilter must:

- Compare the performance of the investment/bond they switched to with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation for financial loss is payable.
- Pay interest as set out below. Income tax may be payable on any interest awarded.
- Refund to them all of the ongoing advice fees they incurred on the bond (with compensation for lost growth as offered by Quilter in its letter of 4 April 2018) between the start and end dates below; and interest at the rate of 8% simple per year from the end date below to the date of settlement.
- Refund to them the initial advice fee at the rate of 3%, as explained above (that is, the 3% segment of the 5% they incurred), with interest at the rate of 8% simple per year from when the fee was incurred to the date of settlement.
- Pay them £500 for the trouble and upset they have been caused.
- Provide them with the calculation of compensation in a clear and simple format.

Investment	status	benchmark	from ("start date")	to ("end date")	additional interest
AEGON Offshore Bond	surrendered	for half of the investment, the Bank of England average return from fixed rate bonds and for the other half, the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	date of investment	date of surrender	8% simple per year from the end date to the date of settlement

actual value

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

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Quilter should use the monthly average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs and Mr T wanted income and capital growth with a small risk to their capital.
- The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to capital. The FTSE UK Private Investors Income Total Return Index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds, and would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs and Mr T's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objective. The 50/50 combination would reasonably put them into that position and it broadly reflects the sort of return they could have obtained from investments suited to their profile.

my final decision

For the reasons given above, I uphold Mrs and Mr T's complaint and I order Quilter Financial Services Ltd to pay them compensation as detailed above and to provide them with a calculation of the compensation in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr T to accept or reject my decision before 29 May 2020.

Roy Kuku
Ombudsman