

## **The complaint**

Mr D has complained about the way that Quilter Cheviot Limited ('Quilter Cheviot') has managed his investment portfolio and account. Mr D has also complained about poor communication, response to his complaint points and Quilter Cheviot's treatment of him as a vulnerable customer. He considers Quilter Cheviot has breached the Financial Conduct Authority's ('FCA') Principles and The Equality Act 2010.

## **What happened**

At the time of bringing his complaint Mr D had been a client of Quilter Cheviot for over 20 years. His investment portfolio comprising a SIPP and ISA account was valued at around £350,000 and was managed on a discretionary basis by an executive director – his investment manager ('IM') – at the Manchester office. The IM managed the portfolio by choosing from a panel of investments, as selected by Quilter Cheviot, that would suit an investor's selected model portfolio.

Mr D has said that in 2022 – without his knowledge or approval – he found the management of his portfolio had been transferred to the Leeds branch and his new IM was a less senior staff member.

Mr D complained about this and the poor performance of his portfolio to Quilter Cheviot who responded on 7 March 2022;

- It accepted there had been some very short-term underperformance, but portfolio performance was broadly in line with the benchmarks used.
- The transfer and the new IM had come about because of an internal reorganisation and Mr D had suitability reviews with the new IM in April 2020 and April 2021, so Mr D had opportunities to raise any concerns at the time.

It was as a result of this letter and a call of 12 April that Mr D became more concerned as he hadn't realised his account had been transferred to a different IM at the Leeds office. Mr D raised this as a further complaint point.

Mr D requested a new IM on 19 May 2022. Quilter Cheviot acknowledged this as a complaint point on 25 May, but Mr D's request wasn't met.

Mr D was unhappy and brought his complaint to this service in June 2022 along with some other complaint points which Quilter Cheviot needed the opportunity to assess as those complaint points hadn't been raised before. As well as the above complaint points, he told us that Quilter Cheviot didn't respond to his expressions of dissatisfaction, he hadn't agreed to his phone calls with Quilter Cheviot to be recorded, and it should have sought his express consent to do so.

Mr D also said Quilter Cheviot hadn't acknowledged that he is a vulnerable, disabled consumer with mental and physical impairments and should have liaised with him about this under the Equality Act 2010. By it not doing so had caused him additional significant distress

and inconvenience which could have been avoided and for which Mr D was in receipt of counselling.

After contacting the regulator, the Financial Conduct Authority ('FCA'), Mr D says he had been advised that Quilter Cheviot may have breached some of the FCA Principles, and its MiFID regulatory obligations around complaint handling. He had been given inconsistent information about how it handled clients' verbal expressions of dissatisfaction and hadn't responded to his complaint within the applicable time limits. There had been confusion about his complaint being dealt with. Mr D also said that his portfolio had underperformed over the medium and long term in comparison with the benchmarks.

Further to conversations with our investigator, Quilter Cheviot offered Mr D a meeting with his IM at its Leeds office and an ex-gratia payment of £200. But Mr D wasn't happy with the amount offered – particularly as he was a vulnerable customer – and wanted his portfolio to be transferred back to the Manchester office. The investigator continued reviewing the complaint. And the additional complaint points raised were sent Quilter Cheviot as it hadn't previously been given the opportunity to address his complaint in its entirety and it had until 31 October 2022 to respond.

After further discussion with this service our investigator suggested to Quilter Cheviot that it offer Mr D a meeting with a new IM at its Manchester office. Mr D was looking for between £4,000 and £6,000 for the distress and inconvenience he had been caused which impacted him more because of his health issues. Quilter Cheviot was of the opinion it hadn't done anything wrong and the earlier offer of £200 was as a gesture of goodwill only.

Our investigator went on to consider the merits of the complaint and didn't think it should be upheld. She said;

- Quilter Cheviot had responded to Mr D's complaint points about the change in his IM in its letter of 7 March 2022. Any subsequent complaint points raised hadn't been responded to by Quilter Cheviot, but its response of 7 March advised he could bring his complaint to this service if he wasn't happy.
- She couldn't see that Mr D had suffered any detriment because of the change of IM – Mr D didn't usually have face to face meetings as they were carried out by phone so there was no change. However, the new office was nearer to Mr D's home so this would have been more convenient for him if a meeting was needed. Quilter Cheviot was entitled to make the IM change and the investigator couldn't see the change was unfair.
- The new IM was qualified and had reviewed Mr D's portfolio with him in April 2020 and 2021 and written to him. The portfolio had been managed in line with Mr D's investment objectives and attitude to risk.
- The investigator couldn't find any evidence that Mr D had been told his portfolio was going to be looked after by a different IM further to his call on 12 April 2022. Shortly after Mr D had made a formal instruction to change IM and Quilter Cheviot formally treated this as a complaint on 25 May. But after that it offered him £200 and a full review at a face-to-face meeting, which Mr D rejected. He was informed in September that it couldn't offer him a new IM. The investigator couldn't agree that Quilter Cheviot had breached any rules. It had communicated with him about his complaint and his request for a new IM – which it rejected.
- Quilter Cheviot had been managing Mr D's portfolio as it should have been and reported this to him in compliance with FCA reporting rules. A refund of fees wasn't appropriate.

- The investigator couldn't agree that Quilter Cheviot had said the portfolio would perform in line with the benchmark and she didn't have any evidence the portfolio performed worse after the change in IM. Mr D was invested into the Quilter Cheviot Growth Strategy portfolio, and she couldn't see how that would differ between IMs.
- She outlined the FCA Principles Mr D had referred to and didn't consider they had been breached.
- Quilter Cheviot was aware Mr D was a vulnerable client – it had this recorded and dealt with it appropriately. She couldn't see any evidence that Mr D asked for adjustments in the way it dealt with him, and it didn't comply.
- After Mr D spoke with the Manchester office on 12 April, he expected it to contact the Leeds office. But Mr D spoke with the Leeds office shortly after and the investigator was satisfied Mr D's queries were responded to even if that was because he had made contact rather than the Leeds office contacting him.
- Mr D had been informed in April 2022 about who he should contact for his different requirements – complaints, portfolio management and data protection. So, it was clear who he should speak with. Quilter Cheviot hadn't done anything wrong in this and the purpose of the call had been made clear.
- Quilter Cheviot hadn't done anything wrong in its attempts at resolution – a face to face meeting and £200 compensation. The investigator found that the complaint process was properly followed.
- Mr D should refer to the Information Commissioner's Office ('ICO') about data protection, the phone recordings, but the investigator did refer to rule 10.A.1.6 found in the FCA's Senior Management Arrangements, Systems and Controls Handbook (SYSC) 10.A.1.6 which she hoped would be useful information in resolving the data protection complaint.
- She could only make an award for distress and inconvenience if she had found that Quilter Cheviot had done something wrong, which she hadn't.

Mr D didn't agree with the outcome but with the exception of saying that he wanted to prepare evidence for an appeal and being given additional time to do so, Mr D didn't provide anything further.

As the complaint remains unresolved, it has been passed to me for a 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

This service is an informal dispute resolution service set up as a free – to consumers – alternative to the courts. The purpose of this decision is to set out my view on what I think is fair and reasonable in the individual circumstances of the complaint having considered everything. And not to offer a point-by-point response to everything the parties have said.

I am aware of Mr D's strength of feeling about his complaint. And also, how much effort he has made in bringing it, particularly bearing in mind his health issues and the impact that bringing the complaint has had on him.

After reviewing the complaint, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why in more detail below but briefly;

### Summary of my findings

- I don't uphold Mr D's complaint about the transfer of his account to a new IM. Quilter Cheviot was entitled to appoint an IM for Mr D's account. It has already acknowledged that Mr D should have been formally told about this, but Mr B was qualified to manage that account.
- The portfolio was suitably invested, and in line with Mr D's agreed investment objectives and risk profile.
- It is unfortunate that the portfolio didn't perform as well as had been hoped but that is a performance issue which is not sufficient reason to uphold the complaint provided the portfolio was suitably invested, which I am satisfied it was.
- Quilter Cheviot was aware of Mr D's vulnerable customer status and managed it appropriately in its dealings with him.
- I can't see that Mr D has been disadvantaged because of this.
- I don't agree that Quilter Cheviot breached any of the FCA's Principles or was wrong in its recording of phone conversations.

I'll now go onto explain further how I reached my findings.

And as already referred to in the above summary, Mr D has complained that Quilter Cheviot breached some of the FCA Principles. These have a wide application and I have therefore considered all of Mr D's points with the Principles in mind as a relevant consideration throughout my decision.

### The change in IM

Mr D's portfolio was managed on a discretionary basis by an IM – who I shall refer to as 'Mr A' – in Quilter Cheviot's Manchester office. In its March 2022 response to Mr D's complaint Quilter Cheviot clarified that Mr D's portfolio had been transferred to another IM in the Leeds office – who I shall refer to as 'Mr B' in my decision. Mr D has said that he didn't agree with this change. He has said the Leeds office wasn't as well staffed as the Manchester office and Mr B was inferior to Mr A.

Quilter Cheviot has told us that Mr A and Mr B worked together in managing Mr D's portfolio in the Manchester office until Mr B moved to the Leeds office. Mr B then took sole management of the portfolio in January 2020 and that Mr D was made aware of this in April 2020.

While I'm satisfied Quilter Cheviot was entitled to make such a decision – it can use its own judgment in how it manages its resources – I've reviewed the file and listened to phone recordings to see how the change came about and how Mr D was treated during the process particularly bearing in mind he says he didn't agree to it. The available evidence shows;

- In 2018 – when Mr D became a direct client of Quilter Cheviot – Mr B is referred to during a phone call because of his location and his willingness to visit Mr D. During that call it's also explained Mr A and Mr B sat very near each other, worked in the same team, and carried out the same work, but Mr B's locality to Mr D would make sense in coming to see him. Mr A emailed Mr D in June/August to introduce Mr B with a mind to setting up a meeting to discuss the portfolio and investment strategy.

- Mr B called Mr D in February 2019 for a catch up further to emails sent to Mr A and again in May when Mr D called to say a meeting would be good. Mr D asked if that could be done over the phone which was something Quilter Cheviot could offer. Mr D contacted Mr A in April asking for the contact details of his Leeds office colleague, Mr B.
- In March 2020 Mr D spoke with Mr B who referred to the Leeds office – which was temporary at the time, but which was soon to be permanent. This was confirmed in a further call in April. It was explained that the Leeds office was where Mr B was situated, and Mr D should use the new number. This was again mentioned in December and there was a further call in April 2021 during which it was discussed that Mr D's account was with Mr B because of his Leeds location and because Mr B wanted Mr D as a client.
- When the annual reviews were carried out by Mr B in April 2020 and 2021 these were carried out over the phone and a 'suitability note' produced. Mr D was subsequently written to by Mr B to confirm what was discussed. The latter of those two letters originated from the Leeds rather than the Manchester office.

While Mr D has said that he didn't authorise the change in IM – and Quilter Cheviot accepts this should have been communicated to him – I think it's clear from the above that he had a relationship with Mr B, both over the phone and in writing, about the management of his account. And although there was no formal standalone announcement of the transfer of Mr D's account, I think Mr D should reasonably have been aware there had been one, given what the available evidence shows. And while I acknowledge Mr D's unhappiness in not being formally told of the change, Quilter Cheviot was entitled to make that decision. Mr D's relationship agreement was with Quilter Cheviot and not an individual IM.

The FCA register shows that Mr A and Mr B carried out the same investment activities;

12. Giving personal recommendations on and dealing in securities which are not stakeholder pension schemes or personal pension schemes or broker funds

14. Managing investments

So, both Mr A and Mr B carried out the same controlled functions within Quilter Cheviot. And despite the fact that Quilter Cheviot was entitled to appoint an IM as it saw fit – it was Quilter Cheviot which was responsible for the management of Mr D's account and not any individual that worked for it – I don't think Mr D has been treated unfairly during the change process, albeit I appreciate he would have liked to have given his agreement, or otherwise.

Bearing in mind that I don't find that Quilter Cheviot did anything wrong by changing Mr D's IM I don't uphold this complaint point, but nonetheless there is a complaint about the performance, so this is something I have gone on to consider.

#### The performance of the portfolio and benchmarks used

I can't consider performance in and of itself, but I can consider whether the portfolio was unsuitable for Mr D or whether it's been mismanaged.

I've reviewed the suitability note from April 2020 further to Mr D's discussion with Mr B. Mr D was retired, single and with no dependents. Mr D's ISAs were invested for capital growth and income and his SIPP for growth. Mr D didn't have any need for the funds – he didn't intend on making any withdrawals – and they represented 19% of Mr D's overall net worth excluding his mortgage free home. Mr D had a significant capacity for loss (35% without impacting his finances and standard of living as assessed by Quilter Cheviot and confirmed

to Mr D in its suitability letters) and his risk rating was medium/higher. Mr D's ISA was invested into Quilter Cheviot Balanced Strategy portfolio and his SIPP into the Global Strategy portfolio. The MSCI PIMFA Private Investor Balanced, and Growth benchmarks were used for performance comparison. My understanding is that the investment profiles selected for Mr D didn't change between Mr A and Mr B.

Bearing in mind Mr D's personal and financial circumstances, investment objectives, attitude to risk and capacity for loss etc, I don't think the investments made for Mr D were unsuitable for him. The investments themselves were collective investments included within Quilter Cheviot's Balanced and Growth Strategy portfolios. As mentioned above, my understanding is that the IM had the flexibility to choose from an underlying selected panel of funds to tailor an investor's portfolio.

Provided a portfolio is invested in line with its overall objectives and disclosed risk – in this case for capital growth and income for his ISAs and capital growth for the SIPP over the medium to long term by investing in a broad range of assets – collective investments, within the agreed risk profile, then it wouldn't be fair or reasonable for me to uphold the complaint on this point. I haven't seen anything to suggest that the portfolio was invested outside of its stated investment objectives or risk profile.

And the fact that the risk of underperformance of the portfolios materialised against the benchmarks, does not automatically mean that the Quilter Cheviot did anything wrong. In the absence of any evidence that Quilter Cheviot mismanaged the portfolios – and the performance of the portfolios alone doesn't evidence this – I am unable to say that Quilter Cheviot has done anything wrong in the overall management of Mr D's investments.

While I can understand why Mr D may not be happy with the performance of the portfolio during the period in question, but the issue of portfolio performance is not straightforward in that it is actively managed. This means the money is invested in specific assets of funds chosen by Mr D's IM. If the portfolio in a certain period performed poorly that's because the IM had taken certain decisions that hadn't paid off – at least in the period under review. That's disappointing, of course, but reflects the IM exercising his judgment – which he was supposed to do. It doesn't mean the IM had been negligent or failed in his duty of care. And it doesn't mean the IM's decisions won't pay off over the longer term.

Taking all of the above into account, I am satisfied Mr D's portfolios were suitable and not mismanaged, so I don't uphold this element of Mr D's complaint.

#### Mr D's request for a new fund manager and repayment of fees

As I've said above, it was a business decision that Mr B would continue to manage Mr D's portfolio, and this was explained to him in March 2022 in its final response to Mr D's complaint.

Mr D spoke with Quilter Cheviot on 19 May 2022 and asked for a new IM preferably based in Manchester. Quilter Cheviot acknowledged this as a complaint on 25 May and which Mr D brought to this service on 21 June as Quilter Cheviot had already addressed this point in its final response to the complaint, so he was entitled to do so.

This resulted in Quilter Cheviot – in August 2022 – offering Mr D £200 as a gesture of goodwill and a meeting with his investment manager – which would have been Mr B – in the Leeds office for an open discussion about his portfolio, investments, and performance etc.

This was rejected but it's clear that Quilter Cheviot wasn't offering Mr D the option of a new IM. And I note from other Quilter Cheviot correspondence that if Mr D chose to move his

portfolio to another investment manager, then it would assist with that process to ensure it was done smoothly. I'm satisfied that Quilter Cheviot made clear in March 2022 that it was its decision that Mr D should remain with Mr B as his IM. And subsequent to that it was Mr D's choice whether to stay with Quilter Cheviot with Mr B acting as his IM or he could move his portfolio elsewhere.

Both Mr D's ISAs and SIPP were invested in line with their respective investment strategies that had been agreed between Mr D and Quilter Cheviot. I've seen no evidence that the investments weren't being managed. Mr D was sent valuations in the usual way and it's clear that discussions were had with Mr D during this time.

As I've not seen anything to suggest that Quilter Cheviot hadn't been managing Mr D's portfolio during this time, it wouldn't be fair or reasonable to ask it to pay back to Mr D fees for the service it had supplied.

Mr D has told us and provided supporting evidence from his medical practitioners that he has found the whole process of his dealings with Quilter Cheviot about his unhappiness with the management of the portfolio and the complaint process very difficult. This inevitably has impacted on his physical and mental wellbeing. I don't doubt this to be the case and I'm sorry to hear of the upset this caused Mr D and the consequences it had on his health. Making a complaint like this requires a lot of effort and Mr D is clearly invested in his complaint and the outcome of it.

But I'm satisfied that Mr D was told Mr B would remain as his IM. And as there's no evidence that Mr D's portfolio wasn't being managed in line with the agreed investment objectives so a repayment of fees wouldn't be fair as Quilter Cheviot fulfilled its commitments.

#### Mr D's vulnerable customer status

The FCA guidance (FG21/1) refers to a vulnerable customer as 'someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.' Its guidance goes on to say a business should;

- 'understand the needs of their target market/customer base
- make sure staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
- respond to customer needs throughout product design, flexible customer service provision and communications
- monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make improvements where this is not happening'

Quilter Cheviot told us that Mr D was formally noted as a vulnerable client in April 2021. But it's clear that the business was aware of Mr D's health much earlier than that;

- During a call with Mr A on 30 January 2018 Mr D refers to his health which he says is always up and down. He has diabetes – which Quilter Cheviot knew about – but said he also had a bipolar disorder. But he went on to say he dealt with it well, gave lectures about it and donated to a related charity.
- In the May 2019 fact find Mr D's recorded health was 'Bi-polar – managed ongoing with medication'
- The suitability notes drafted after the calls with Mr D in April 2020 and 2021 both record 'Noted as vulnerable as he is bi-polar but managed with medication'

- I've seen a phone note of 11 December 2020 which says Mr D 'firstly gave me an update on his health. He is diabetic and also bipolar but feels as though he is managing well. He lectures on these conditions and does work for [a related] charity.'
- The April 2021 suitability note said Mr D was 'Noted as vulnerable as he is bi-polar but managed with medication.' The note goes on to say 'We have him formally noted as vulnerable as he is bi-polar but managed very effectively with medication. He is happy to confirm we can hold SCD data for him.' SCD or 'Special Category Data' is sensitive information that Quilter Cheviot is told by a customer, and which would be relevant to the services it provided. This could include information about a customer's health, and it is collected to ensure Quilter Cheviot provided an investment service most appropriate to the customer's circumstances.

I asked Quilter Cheviot whether it made any allowances for Mr D as a vulnerable client. It doesn't have any formal record of this, but said it hoped its actions and the phone records evidenced how supportive it was.

It's clear from the phone calls that Mr D was capable of having discussions about his investments and financial circumstances. Mr D has told us that he may come across as competent when speaking over the phone, but this may not always necessarily be the case.

But while it's clear from the calls that Mr D vocalises the downsides of his conditions, I am satisfied that Quilter Cheviot should not reasonably have identified, based on what it knew, that Mr D had any special needs over and above the service it was already providing him.

I am aware that because of Mr D's diabetes, this can impact on his mood, as can his bi-polar condition but I haven't seen or heard anything that Mr D has suffered a financial loss as a result of Quilter Cheviot failing to meet or respond to his needs or in any way received a detrimental service or one that didn't suit his needs. Nor have I heard anything to suggest that Mr D needed a supportive third party during his dealings with Quilter Cheviot. All the notes record that Mr D managed his health effectively with medication.

And bearing in mind Mr D's conditions it seems to me it was prudent that his investments were managed on a discretionary basis. That would have prevented Mr D from potentially making investment decisions that ordinarily he wouldn't have made if either of his conditions worsened during a particular call or time period.

I've seen a copy of Quilter Cheviot's 'Vulnerable Clients – Policy and guidance'. It includes guidance on the identification of someone who was vulnerable, recording that status and the suitability of investments for the vulnerable. I haven't seen anything to suggest that in its dealings with Mr D Quilter Cheviot acted outside of that policy or acted in a way which was inconsistent with the regulatory guidance or otherwise not fair or reasonable.

Taking all of the above into account, I've seen nothing to suggest that Mr D hasn't been treated appropriately by Quilter Cheviot in its dealings with him bearing in mind his status as a vulnerable customer. Nor have I seen anything to show that Mr D suffered any harm or that Quilter Cheviot has not acted with appropriate levels of care in its dealings with him.

#### Data protection

Mr D says he didn't give his permission for Quilter Cheviot to record the phone calls they had. I note the FCA does require that a business notify new and existing clients that calls relating to financial instruments will be recorded. Quilter Cheviot's terms and conditions make clear that it may record calls, so Mr D was notified this was the case. But Mr D can



take this matter further with the Information Commissioner's Office if he wishes to pursue this point further.

### Complaint process and communication

It's clear that Mr D is unhappy with the communication he had with Quilter Cheviot as well as its lack of response to his further complaint points which he additionally raised with this service when he referred his complaint. Mr D said the handling of his complaint hasn't been in line with regulatory requirements.

Quilter Cheviot issued its final response to Mr D's initial complaint points in March 2022. They were primarily about the performance of the investments and the change of IM. Mr D brought his complaint to this service but was still in contact Quilter Cheviot and which resulted in further complaint points being made.

Mr D was emailed by Quilter Cheviot on 25 May 2022 to confirm that he had raised a formal complaint and that it would get back to him in due course. However, Mr D wasn't responded to, and he brought his complaint to this service the following month in any event. Before this service can consider a complaint, the business needs the opportunity to address those further points. We allowed Quilter Cheviot eight weeks to address the complaint, but it didn't provide a final response. It was at this point our investigator started considering the complaint further.

Mr D was still in contact with Quilter Cheviot during this time and after listening to the calls its clear that he was frustrated. He was still upset about the change in IM and performance, despite the final response addressing those points and he spoke with several members of staff to try to move things forward. Mr D was advised that speaking with different staff members wasn't helping to resolve the matter and was in part causing some of the confusion. It was more appropriate to streamline the process to be more efficient. And during these calls Mr D was advised to speak with Mr B about his portfolio, the complaint team about his complaint and also the data protection team about any data protection queries.

And Quilter Cheviot also told us that Mr D had said he was involving a lawyer in the complaint from May to August 2022 and that it was waiting for that letter in order for it to respond. But that letter never materialised in order for it to address the points Mr D wished to raise.

So, while Mr D didn't receive the responses he would have liked and it is evident he was frustrated and upset about this, but I'm satisfied that there were clear lines of communication available to him about his complaint, his portfolio, and data protection issues.

I appreciate that Mr D will be disappointed with my decision. It's clear he feels strongly about it and has gone to a lot of effort in bringing his complaint, and I thank him for submissions he has made. However, I hope I have been able to explain to Mr D how and why I have reached the decision that I have

### **My final decision**

For the reasons given, I do not uphold Mr D's complaint about Quilter Cheviot Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 April 2024.

Catherine Langley

**Ombudsman**