

The complaint

Mr T complains about advice given by Findlay & Co Financial Solutions Limited, an appointed representative of Quilter Financial Planning Solutions Limited (Quilter) to transfer his personal pension to a new pension arrangement with a different provider.

For convenience I've just referred to Quilter below but references to Quilter should be taken as meaning Findlay & Co Financial Solutions Limited as appropriate.

Mr T's complaint arises out of the same factual background as a similar complaint made by his wife. So my decisions in both cases are correspondingly similar.

In August 2019 Quilter advised Mr T to transfer his existing personal pension with Clerical Medical to a new personal pension arrangement with Old Mutual Wealth. The transfer was recommended as the new arrangement offered flexible access drawdown (FAD) which allowed Mr T to take 25% of his pension tax free without drawing an income. Mr T was charged an upfront fee of 3% of his fund's value for the advice.

Mr T later complained to Quilter. Amongst other things he said he could've switched to a different pension arrangement which offered FAD with Clerical Medical or Scottish Widows at no extra cost. He also said that he hadn't been provided with all the relevant information.

Quilter didn't uphold the complaint. It referred to Mr T's meetings with the adviser and the suitability report issued on 19 August 2019. Quilter said Mr T had been made fully aware of his options and the adviser's charges.

One of our investigators looked into what had happened. He upheld the complaint. He noted that information Clerical Medical provided to Quilter during the advice process said:

"Drawdown isn't available directly from the plan. Clerical Medical Income Drawdown (minimum value of £50,000 after any tax free cash) and Scottish Widows Retirement Account (minimum value of £30,000 before any tax free cash) options would be available"

As Mr T's fund value was £214,577.54 as of 16 August 2019, both options were available to him. The investigator said there was no evidence that Quilter had considered them. He noted the work done by Quilter in connection with the recommendation to switch providers. But he thought most of that would've been avoided if a switch to a different Clerical Medical or Scottish Widows product had been recommended. And it should've been covered by the ongoing advice fee Mr T was paying. The investigator set out how Quilter should work out if Mr T had suffered any loss as a result of switching to the new arrangement with Old Mutual Wealth.

In response Quilter agreed that Mr T could've transferred to a drawdown product within Clerical Medical. However Quilter said that wouldn't have been covered by the ongoing servicing fees which were to cover the cost of servicing the existing plan and not advising on any new product. Quilter maintained that the same fees would've been incurred.

The investigator's view was that whether the ongoing advice fee would've covered switching to a new policy with Clerical Medical wasn't the real issue – which was that the adviser hadn't been transparent about the fact that Mr T could switch into another plan offered by the existing provider. Mr T had said that he wasn't told that was an option. And the suitability report didn't mention it.

The advisor should've told Mr T that he could change to a different policy with Clerical Medical. And it would've been reasonable for him to recommend that Mr T try and switch himself before incurring any further fees. The investigator thought, if the adviser had suggested that, Mr T would've completed a switch without changing his investments or incurring any costs.

Quilter accepted that Mr T hadn't been told that switching to another Clerical Medical policy was an option. That was an oversight by the adviser and that option should've been explored.

The original client agreements were no longer available. But Quilter said that ongoing fees were for assessing continued suitability, performance and ongoing servicing of the existing plan. Where a new advice process was required and a new product recommended to meet changed circumstances, a new fee would be charged to cover the cost of the research, advice and implementation. Quilter didn't agree that the adviser should simply have recommended that Mr T try to switch within Clerical Medical. Simply using an option from the current provider without researching the rest of the market might not have got the best option for the client. The adviser wouldn't have done all of the work free of charge. Even if the outcome was to switch within Clerical Medical/Scottish Widows, a similar level of fees would've been incurred.

Quilter had spoken to Scottish Widows about the drawdown options that would've been available. A selection of portfolios were available but based on Mr T's established and agreed cautious attitude to risk, there was only one that would've been suitable for him - the Scottish Widows Pension Portfolio 5, Series 4. Quilter's approximate calculations, based on the redress methodology the investigator had proposed, indicated that the adviser's recommendation would've outperformed that Scottish Widows portfolio, even with no fees deducted.

Quilter said the main issue seemed to be the fees. But these were discussed with several times and Mr T had signed the Authority to Proceed on 8 August 2019 and the Adviser Fee Agreement on 23 September 2019. The fees were also disclosed in the suitability letter which was provided prior to Mr T agreeing to proceed with the recommendation,. And the cooling off notice issued by the provider also disclosed the fees. Mr T didn't raise any concern or objection. Although Quilter agreed that the option of drawdown with the existing provider wasn't explored, Mr T was still better off even after the deduction of the fee he was complaining about.

The investigator considered Quilter's comments but he wasn't persuaded to change his view. He said the issue wasn't the fee charged. But that Mr T didn't think the work needed be done and so the fee was unnecessary. If Quilter was saying that Mr T's existing investments with Clerical Medical weren't commensurate with his attitude to risk then the adviser should've addressed that earlier, given that Mr T was 60. The adviser should've made Mr T aware that he could complete an internal switch free of charge. If Mr T was better off as a result of the recommendation there'd be no loss and so no compensation would be due.

The investigator told both parties he'd refer the complaint to an ombudsman to decide. Mr T produced a copy of a letter dated 23 September 2020 in support of his case.

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 agree with the conclusions reached by the investigator and the reasons why he said the complaint should be upheld. I also think what he proposed as to how Quilter should work out if Mr T had suffered any loss was reasonable.

Quilter agrees that there were shortcomings on the adviser's part - Quilter accepts the adviser didn't explore the option of switching to a different product with Clerical Medical/Scottish Widows which had a drawdown option, which Mr T's existing Clerical Medical policy didn't offer. And it seems that Quilter accepts that Scottish Widows did offer a suitable drawdown product, even though the investment choice may have been limited due to Mr T's cautious attitude to risk.

If Mr T was otherwise happy with Clerical Medical and his investments, I think remaining with Clerical Medical would've been Mr T's first choice. I think that option should've been explored first. If Clerical Medical offered a suitable product, I think the adviser could've endorsed that. In the circumstances I'm not sure that detailed research into the rest of the market would've been required in order to ascertain what another suitable solution for Mr T might be. Like the investigator, I'm not convinced that the same degree of work (and fees) would've been involved.

I further understand that Mr T was paying a fee for ongoing advice. Quilter has said it didn't cover further advice about a new product and wouldn't have covered a recommendation to switch to a different product with the same provider. But Quilter hasn't been able to produce a copy of the client agreement so I can't say for certain what was and wasn't covered. I think it's possible that what Mr T was looking to do would've been covered by an ongoing advice fee and when he'd be moving to another product with the same provider. And, without sight of the client agreement, it's difficult for Quilter to demonstrate otherwise.

I've also taken into account, even if Quilter is right that Mr T has suffered no overall loss, it's possible he's suffered a loss in relation to his tax free cash. I say that because, as I understand it, Mr T's full fund value was transferred from Clerical Medical and the adviser's 3% fee (£6,525) was taken before the tax free cash was paid. If no or a reduced fee should've been paid then more of the fund would've been available as tax free cash. For example, if no fee should've been charged then Mr T has potentially lost £1,631.25 – that is 25% of the fee he paid. But whether that translates into an actual loss will depend on if he pays any tax when he comes to make withdrawals. I note the suitability report said Mr T thought any withdrawals in future years would be within the nil rate tax band.

Quilter's position is that, even taking into account the fee Mr T paid, he's done better by switching to Old Mutual Wealth than he'd have done had he remained with Clerical Medical. If that's the case then, even though I'm upholding Mr T's complaint, no redress will be payable by Quilter on the basis that there's no financial loss.

Putting things right

I think what the investigator said about how Quilter Financial Planning Solutions Limited should work out whether Mr T had suffered any financial loss is fair. I've clarified how any compensation should be paid.

To ascertain whether Mr T has suffered any financial loss, Quilter Financial Planning Solutions Limited should compare:

- A) the notional value of Mr T's pension had it been transferred into the most suitable option offered by Clerical Medical or Scottish Widows – which it seems would've been a drawdown arrangement with Mr T's residual fund invested the Scottish Widows Pension Portfolio 5, Series 4 – and taking into account the ongoing advice fee Mr T had agreed with Quilter prior to August 2019; and
- B) the value of Mr T's existing pension at the date of calculation.

If subtracting B from A produces a figure of zero or less, then Mr T has suffered no financial loss and no compensation is due. If subtracting B from A produces a figure greater than zero, then Mr T has suffered a financial loss equal to this amount and should be compensated accordingly.

I'd add that, if there's a loss, the compensation should, if possible, be paid into Mr T's pension plan. The payment should allow for the effect of any charges and any available tax relief. It shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T as a lump sum. We'd usually say that a deduction for income tax that would otherwise have been paid can be made – if Mr T would've paid income tax on any amounts withdrawn from his pension fund then it would be fair for that to be reflected in any compensation. But, as I've said above, I'm not sure Mr T would've incurred any income tax on any future withdrawals. And so I didn't say he'd suffered a loss in respect of his tax free cash. By the same token I think it would be fair to assume he won't pay any tax on future withdrawals and so, if a cash payment is made to Mr T, no deduction for notional tax should be made.

My final decision

I uphold the complaint. Quilter Financial Planning Solutions Limited must pay redress (if any) as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 August 2022.

Lesley Stead
Ombudsman