DRN-3358337

The complaint

Mr C says Petrus Financial Services ('PFS'), taken over by Quilter Financial Services Ltd ('Quilter') in 2019, serviced his Pensions arrangements (a Personal Pension and a Self-Invested Personal Pension/'SIPP' – the 'PENSIONS'). He says, upon its takeover, Quilter ought to have identified that overpayments were being made into the PENSIONS' cash account(s) and ought to have rectified that, but it failed to do both and it was left to him to notice the problem around March 2021. The matter was corrected in April 2021. He holds Quilter responsible for lost growth on the overpaid cash account deposits during the relevant period.

What happened

One of our investigators looked into the matter and agreed that Quilter can reasonably be held responsible for it. In the main, he said:

- Quilter's takeover of PFS in June 2019 did not include previous liabilities, so it was responsible for servicing the PENSIONS only from then onwards. Its service included annual reviews. However, in the context of the takeover it ought reasonably to have conducted a review, as the incoming servicing firm at the time, to ensure the PENSIONS were suitable for Mr C. Quilter conducted such a review, but the adviser appears to have focused on a recommendation to transfer the SIPP to another provider – which Mr C did not follow. Thereafter, no meeting was held until March 2021. Then Mr C noticed the cash account overpayments.

- Quilter should have noticed the cash account overpayments in the course of its review in 2019. It says Mr C should have noticed them earlier, as they were present on the PENSIONS' statements, but this information was not so easily accessible in the statements and he had been assured by his previous PFS adviser that the cash account deposits were required to cover charges/fees. As such, it is not reasonable to say Mr C should have noticed the overpayments earlier.

- The overpaid cash would have been better used, for investments in the SIPP, by the discretionary managers ('DM') Mr C had appointed to manage its investments. The overpayments were noticed late and, until then, the overpaid cash was not used for such a purpose. Quilter was responsible for that and it should pay Mr C compensation accordingly.

The investigator initially considered the use of a market-based benchmark for the calculation of lost growth (of the overpaid cash), but he considered both parties' comments on this. They agreed on the use of the PENSIONS'/SIPP's investments/portfolio as a natural benchmark, because that would have been where the cash went had it not been overpaid, over time, into the cash account(s). The investigator reflected this in his revised findings. However, the parties differed on and disputed other aspects of his findings.

Quilter's point about the redress benchmark appears to have been made in the event that the case remains upheld, but it has also been made without prejudice to its primary view that the case should not be upheld. It says Mr C refused to engage with its adviser on his transfer recommendation and in terms of continuing with its service thereafter, so it is unfair to find fault with Quilter in the matter; that it is implausible Mr C would not have been able to notice, and would not have noticed, the statements' information about the cash account in 2019 (even before Quilter's takeover in June that year); and, also without prejudice to its primary position, that there ought to be an end date to the calculation of redress, that it should be 16 April 2021 when the excess deposited cash was retrieved and passed to the DM for investment.

The investigator was not persuaded by Quilter's arguments on fault, for the same reasons he had previously explained, and he considered that any lost growth related to the excess cash deposits during the relevant period would have an ongoing effect to date, so redress should be calculated to the date of settlement (without an earlier end date).

Mr C disputed the redress calculation start date used by the investigator – which was the date in October 2019 on which Quilter issued its review recommendation. He says Quilter took over servicing of his account in June 2019 and cannot reasonably be given an allowance of four months in terms of when it should have conducted the review (and identified and corrected the cash account overpayments). He considers that the start date should be set soon after the June 2019 takeover. In response, the investigator retained the view that the October 2019 recommendation date is a fair start date, especially as there was no promise of a review recommendation within a specific timeframe and given that Quilter needed a reasonable period of time to consider Mr C's circumstances and the pension transfer that it recommended.

The matter was referred to an ombudsman.

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.

Quilter disputes liability in this case. On balance, I am not persuaded that it is justified to do so. I am mindful that Mr C had a firm (that is, PFS and then Quilter) to provide professional advisory servicing to the PENSIONS and a firm to provide active discretionary management of the PENSIONS'/SIPP's investments (that is, the DM). In this context, I do not expect him to have undertaken a hand-on approach with the PENSIONS, their suitability and/or the SIPP's investments' management. These were matters he reasonably left in professional hands and he paid fees for the professional services received in that respect.

If there is evidence that Mr C noticed and was aware of the cash account overpayments earlier than 2021 but did not highlight that until 2021, that is a different matter and could be a matter for further consideration. However, I have seen no such evidence. Instead, Quilter's argument is that he ought to have noticed and become aware of the overpayments earlier than 2021. For the reasons given above, and on balance, I disagree. There is also merit in the investigator's observation that this information was probably not easily accessible for him (Mr C) in the statements, hence the probable reason why he did not identify it until late. Especially, I consider, in the context set above where he does not appear to have had a hands-on approach with the PENSIONS and where that was reasonable because he had engaged professionals, at his expense, to undertake that hands-on approach on his behalf. This is not a generic finding that a client with an adviser and a discretionary investment manager need not pay attention to investment statements, but it is a finding that in Mr C's case these arrangements added to the reasons why he probably did not notice the cash overpayments in the statements.

Quilter's other argument is that its review and recommendation (of a transfer) was frustrated by a lack of engagement from Mr C. Its transfer recommendation is irrelevant to the specific matter (about the cash account overpayments) in the present complaint. As the investigator said, the overpayments ought reasonably to have been identified by Quilter during the review. Fees and charges are important elements in investments and pensions, so I cannot envisage a basis on which Quilter could justify not checking over fees/charges and fee payment arrangements in the PENSIONS, within its advisory servicing remit and as part of the review. That would have been enough to identify the overpayments. Its transfer recommendation had no impact on this consideration, and vice versa. It continued to service the PENSIONS into 2021 – including up to Mr C's discovery of the overpayments in this year – so, contrary to what it seems to have suggested, there does not appear to have been a disruption (or threat of that) in the continuation of service from 2019 onwards.

Overall and on balance, I am persuaded that Quilter conducted a review of the PENSIONS in 2019 as it should have, but it was wrong not to have identified and corrected the cash account overpayments that already existed at the time; and it ought reasonably to have done so within the review.

It is not disputed that the cash account served the sole purpose of ensuring access to cash required to meet the fees and charges associated with the PENSIONS. I have not seen evidence that cash was to be held arbitrarily or for any other reason. Instead, there is evidence that Mr C expected the rest of his PENSIONS'/SIPP's value to be under the DM's active and discretionary investment management. It follows from this that, as the parties and the investigator have said and agree, the portfolio of investments as managed by the DM is an appropriate and natural benchmark to use in determining how the cash overpaid into the cash account would have performed but for the overpayment, and in determining redress in this case.

Setting an artificial end date would be wrong because the portfolio continues to date and has not been encashed. Available evidence – based on documentation, shared with us by Mr C, on the DM's management of the investments – is that cash that should have been invested earlier than the correction (on 16 April 2021) would have had performance that continues, on a complete/comprehensive basis (not one limited to 16 April 2021), to date broadly in line with how the relevant portfolio has performed and been managed to date. Quilter's suggestion of an artificial end date is therefore unfair.

I understand Mr C's dispute over the start date. However, on balance and based on the facts of his case, I consider it reasonable to use the date (in October 2019) on which Quilter issued its review recommendation to him. Quilter took over the service to his PENSIONS in June 2019; I have not seen evidence that PFS' prior liabilities were expressly novated to Quilter (as would have been the case in order for them to pass) so Quilter's responsibility in the present complaint cannot reasonably pre-date the takeover; Mr C met with Quilter in August 2019 for what appears to have been a handover; both sides met again on 23 October 2019 during which the PENSIONS appear to have already been reviewed and the SIPP's portfolio was discussed; and Mr C appears to have referred to a financial planning document from Quilter that followed in December 2019.

To its credit, Quilter appears to have taken a reasonable and considered approach to the serious matter of reviewing the PENSIONS upon its takeover. The introduction/handover meeting was not unreasonable in the circumstances, given that Mr C was previously with PFS for a considerable period of time, and the review appears to have been done (and was discussed) within two months thereafter. The review, as a whole, is what should be considered. Quilter's wrongdoing was/is its failure to identify and correct the cash account overpayments as part of the review, but the review was not limited to that (or to fees/charges) only. It covered the PENSIONS as a whole, hence the resulting SIPP transfer recommendation. Overall, on balance and in the circumstances of Mr C's case, I am not quite persuaded that it was unreasonable for Quilter to have a handover meeting with him within two months of taking over and then to complete its review within the two months that followed. I am also particularly mindful that both parties knew the DM was actively managing the relevant investments, so they were not neglected during this period.

For the above reasons, I consider it reasonable to use the meeting on 23 October 2019 as when Quilter ought to have identified the cash account overpayment, brought it to Mr C's attention and corrected it (whereby, thereafter, no further overpayments would have happened and the total of any excess/overpayment in the cash account(s) at the time would have been made available to the DM for investments) – so 23 October 2019 is the redress calculation start date.

Putting things right

The 'total excess cash' is defined as follows –

The specific total amount of cash overpaid in deposits into Mr C's PENSIONS'/SIPP's cash account(s) (which ever the relevant and precise overpayments were made into during the period in question) and sitting in the cash account as of 23 October 2019, plus the total of all subsequent overpaid deposits into that account(s) from this date (23 October 2019) and up to April 2021.

Quilter must calculate the total excess cash.

My aim is to put Mr C as close as possible to the position he would now be in but for the total excess cash having been uninvested between 23 October 2019 and April 2021, and in the context of the ongoing effect of that (to date) as I addressed in the previous section. I consider that the compensation exercise that I order Quilter to conduct below serves to achieve this. Mr C is ordered to engage meaningfully and co-operatively with Quilter to provide it with all information and documentation, relevant to its calculation and payment of compensation (including calculation of the total excess cash), which it does not already have.

What must Quilter do?

To compensate Mr C fairly, Quilter must do the following:

- Compare the performance of the total excess cash with that of the benchmark shown below. If the *fair value* is greater than the *actual value* the difference must be paid to him in compensation. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Pay any interest set out below. Income tax may be payable on any interest paid. If Quilter is required by HM Revenue & Customs to deduct income tax from the interest, it must tell Mr C the deduction amount and give him a tax deduction certificate if he asks for one, for him to reclaim the tax from HM Revenue & Customs if appropriate.

- Pay the compensation into Mr C's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into his pension plan if it would conflict with any existing protection or allowance. If the compensation (and interest) cannot be paid into his pension plan, pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he was or is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he took or would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the calculation of the compensation to Mr C in a clear and simple format.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
The Total Excess Cash	Still Exists/ Undefined	Mr C's SIPP Investment Portfolio as managed by the DM	23 October 2019	Date of settlement	not applicable

actual value

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

fair value

This is what the investment/total excess cash would have been worth at the end date had it produced a return using the benchmark. The calculation of performance, the benchmark comparison exercise and the calculation of compensation must reflect the fact that the total excess cash began with the '*specific total amount of cash overpaid in deposits into Mr C's PENSIONS'/SIPP's cash account(s) … as of 23 October 2019*' and continued to build over time on the basis of '*all subsequent overpaid deposits into that account(s) from this date (23 October 2019) and up to April 2021*'. The calculations and exercise must reflect performance(s) in the context of each increase in the size of the total excess cash over the relevant time. Furthermore, any withdrawal, income or other payment out of the investment/total excess cash should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Quilter totals all those payments and deducts that figure at the end instead of deducting periodically.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000 or £355,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr C’s case, the complaint event occurred after 1 April 2019 (it happened after June 2019) and the complaint was referred to us after 1 April 2020 (it was referred to us in 2021), so the applicable compensation limit would be £355,000.

My final decision

For the reasons given above, I uphold Mr C’s complaint and I order Quilter Financial Services Ltd to calculate and pay him compensation as set out above, and to provide him 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 Mr C to accept or reject my decision before 23 August 2022.

Roy Kuku
Ombudsman