

## The complaint

Mrs W is unhappy she's been charged £2,658.38 for advice from an adviser with Alexander House Financial Planning Limited (Alexander House) when she didn't accept the recommendations.

Alexander House is an appointed representative of Quilter Financial Limited (Quilter). Quilter is responsible for the advice given.

## What happened

In brief, Mrs W met with the adviser on 31 July 2021. She signed an '*Authority to Proceed*' (ATP) to confirm she'd received and reviewed the literature listed, which included '*Terms of Business*' (TOB). After reviewing Mrs W's existing pension provision the adviser presented his recommendations at a second meeting on 9 October 2021. He recommended that Mrs W transfer most of her existing pension plans to a Quilter Collective Retirement Account (CRA). Mrs W was unsure and the adviser made some further recommendations. In the end Mrs W didn't accept the recommendations and she didn't switch any of her existing pension arrangements.

The adviser told Mrs W she'd have to pay for the advice and work carried out. At first he indicated the full fee was due but on 20 October 2021 he confirmed only 75% was payable. Mrs W told the adviser she wasn't prepared to pay that. On 21 October 2021 the adviser sent his invoice for £2,658.38. Mrs W wasn't happy about the service she'd received and complained.

Quilter didn't uphold the complaint. In its final response letter dated 29 November 2021 Quilter made a number of points, including:

- By signing section A of the ATP Mrs W confirmed she'd received and reviewed the TOB. The adviser would've explained the document during the meeting and that the initial fee was 4% of the amount transferred (if less than £250,000 in total). Mrs W may have considered what he said was vague but he didn't know then the exact amount to be transferred.
- The TOB says, on page 8, that at Stage 4 (the stage Mrs W had reached), 75% of the agreed fees will be invoiced. It was unclear if the TOB document was left with Mrs W but in any event it was emailed to her later that day so she could've queried it.
- There was also a WhatsApp exchange where Mrs W questioned if the initial charge was a one off or annual fee. The adviser confirmed it was the former. And he said all the fees and charges were in the TOB, adding '*please review for your peace of mind*'.
- Quilter maintained that the initial and further recommendations were suitable and met Mrs W's requirements as a balanced investor looking for active management and consolidation. Both recommendations had been pre-approved by the Compliance Quality Assurance Team. There was no evidence of any pressure on Mrs W to make a final decision. She'd been given over a week to review matters and ultimately decided against taking any action.
- The adviser had initially mistakenly thought the whole fee was due but he quickly communicated the correct position. He was unfamiliar with the position as it wasn't

something he frequently experienced. He'd done a considerable amount of work, research and analysis. He hadn't acted unprofessionally or provided poor advice. He'd correctly followed all procedures and after conducting due diligence he'd made a suitable recommendation in line with Mrs W's circumstances and requirements.

- Quilter asked Mrs W to settle the outstanding invoice.

On 9 December 2021 solicitors instructed by Alexander House sent a Pre-Action Protocol for Debt Claims letter to Mrs W requesting payment of the invoice. Mrs W paid the amount due on a without prejudice basis.

Mrs W asked us to look into what had happened. Amongst other things she told us she was initially contacted by the adviser in late 2020 after making an on line pension enquiry. Mrs W didn't go ahead then but she contacted the representative again in July 2021 because she wanted tax advice. At the meeting on 31 July 2021 the adviser said he could only help with pensions. Mrs W's existing pension plans were discussed. Mrs W said she'd welcome the opportunity to consolidate them but only if that was sensible and one fund was better than her existing funds.

Mrs W said the adviser didn't tell her about staged fees. He emailed the TOB the same day but she didn't have any reason to think the fees would be any different from what had been discussed. She did query the 4% initial fee. Although the adviser referred to the TOB he didn't mention the staged fees.

When the adviser presented his recommendations Mrs W was confused as it was all about consolidating her funds – she'd made it clear she'd only do that if it made sense. She didn't feel the report contained sufficient information about how her existing pension funds were doing compared with the fund recommended. When she read the report she found that fund had much higher charges and hadn't performed as well as her existing funds. And the illustration showed that, because of the charges, the fund at retirement would be significantly reduced. Mrs W says the adviser later called and texted her multiple times to try to get her to agree to the recommendations. She says it all led to her losing faith in the adviser and telling him she no longer wanted him to act for her.

One of our investigators considered Mrs W's complaint. In summary, he agreed Mrs W had been provided with the '*Guide to Our Services*' and TOB documents. The latter said, on page 8 under the heading, '*Cancellation of Advice Process after Initial Engagement*', if the adviser was asked to stop work after the client had agreed to the fees, the client would be invoiced as set out, depending on what stage had been reached. Stage 4 was where the adviser had presented his recommendations but before starting implementation. 75% of the agreed fees (subject to a minimum of £500) were payable.

At a meeting on 31 July 2021 Mrs W had signed a declaration to confirm she'd read and reviewed the documents provided. And the adviser had sent an email after the meeting with a copy of the TOB. On 6 August 2021 Mrs W had raised a query about the initial charge so it seemed she'd read what was said about charges. The investigator thought, even if the charges if Mrs W decided not to proceed with the recommendation hadn't been explicitly discussed during the meeting, the TOB had been provided within an appropriate timescale and Mrs W had the opportunity to raise any concerns before any work was undertaken by the adviser. She hadn't done so and it seems she only became unhappy about paying the fee once she'd decided against accepting the recommendation.

But the investigator went on to consider other factors which, in his view, meant Mrs W shouldn't have to pay the fee. And, as well as saying the fee should be refunded with interest, the investigator thought Quilter should pay Mrs W £500 for the trouble and upset

she'd suffered. The investigator pointed in particular to the solicitor's letter threatening legal action and the impact the adviser's actions had on Mrs W.

Mrs W was happy to accept the investigator's view. Quilter wasn't. It said it was confused because Mrs W's original complaint had been (and quoting from Mrs W's email) about *'the level of charges and lack of information in reference to those charges pertaining to the report'*, not about unsuitable advice. Quilter also quoted what the investigator had said in his view. On the one hand, he'd agreed the issue to determine was whether the cancellation fee was applied appropriately by Quilter. And he'd confirmed he was satisfied Mrs W had been made reasonably aware of the cancellation fee applicable should she decide not to proceed. But the investigator had gone on to say a fee should only apply where a suitable recommendation had been made. He didn't think the recommendation was suitable and so the cancellation fee shouldn't be payable.

Quilter termed that a *'surprising leap in a different direction and a particularly harsh conclusion'*. Quilter said it strongly believed the advice was suitable and appropriate. The adviser had met and got to know Mrs W. Advice was subjective and Quilter didn't propose to argue the pros and cons of each and every point. It said it could accept the situation if the advice was clearly and definitely not suitable but that wasn't the case. And, as it involved a proposed pension transfer, the recommendations had been pre-approved by a highly qualified and experienced Compliance Quality Assurance team and deemed suitable and appropriate.

Quilter referred to the TOB which clearly stated that 75% of the agreed fees are payable after the presentation of a recommendation but before implementation. Quilter had already forwarded evidence as to the amount of work, research and analysis which was carried out in good faith and in the best interests of the client. Yet it now seemed fair for Mrs W not to pay the adviser for that work when she wasn't specifically complaining about the actual advice. Quilter didn't think the investigator's view was fair and reasonable and asked for the matter to be referred to an ombudsman to decide.

The investigator said that Quilter's final response letter outlined the complaint points raised by Mrs W which did include the quality of the advice and the service and which she considered justified all charges being waived. The investigator confirmed the complaint would be passed to an ombudsman for review.

### **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 the investigator reached and the reasons he gave as to why he was upholding Mrs W's complaint.

I agree with what the investigator said about whether Mrs W was adequately informed about the adviser's fees, and in particular that she'd be liable to pay a percentage of the agreed fee even if she didn't accept the adviser's recommendations. Even if that wasn't discussed during the meeting I think Quilter did enough to bring its fees to Mrs W's attention and she knew or ought to have known she'd still be charged even if she didn't accept the recommendations. A copy of the TOB was emailed to her. And, when she queried the 4% initial charge the adviser reminded her that all the fees and charge were set out in the TOB which he asked Mrs W to review.

I think the 75% charge reflects that the bulk of the work done would be the fact finding, research and analysis which would inform the recommendations. I don't think that level of

charging is unreasonable. And, although the adviser may have initially indicated the full fee was due, he did correct that quickly and confirmed that 75% of the agreed fee was payable.

Against that background, I can, to some extent, understand why Quilter thinks that should be an end to the matter and Mrs W is liable to pay the adviser's fee. But, although my starting point is the contractual agreement which Mrs W entered into, I've also thought about what's fair and reasonable in all the circumstances of the complaint. That's consistent with DISP (Dispute Resolution) 3.6.1R which requires me to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

I don't think Quilter disagrees, simply because a fee for a service or product has been agreed, that must mean the fee will be payable in any event and regardless of whether there are any issues with the service or product. Quilter's position is that there was nothing clearly wrong with recommendations made. I've considered suitability below. But what I'm saying is that any concerns about the quality of the service is something which it's fair to take into account in deciding if Mrs W should be required to pay the fee.

Quilter will also know that we have an inquisitorial role which means we can look beyond the way in which a complaint is put to see if there are any other issues which the complainant hasn't pointed to. But I don't think that's really relevant here because, as the investigator noted, Mrs W did raise concerns about the suitability of the advice and the service she'd received in her complaint. That's reflected in Quilter's final response letter. And, on her complaint form, Mrs W said, amongst other things, she didn't think the advice was in her best interests as moving her existing pension plans to the CRA would've resulted in higher charges and lower performance and so less money when she retired.

I think the investigator was right not to focus exclusively on whether the fees (including any fee payable if the recommendations weren't accepted or implemented) had been disclosed or brought to Mrs W's attention but to see if there were any other factors which should also be considered. I've adopted a similar approach in considering what led to Mrs W's unhappiness about paying Quilter's fee.

Quilter says there's nothing to say the recommendation was clearly not suitable. But, and bearing in mind the points made by the investigator, I disagree. I think the indications are that the recommendation to switch to the CRA wasn't justified. In summary, Mrs W was seeking advice about whether her existing pension plans were appropriate. Although it seems some changes may have been recommended (for example switching one of her plans to a lower risk fund or spread of funds more aligned to her balanced attitude to risk), I don't see that her existing arrangements were obviously unsuitable.

In 2009 the then regulator, the Financial Services Authority, published a report and checklist for pension switching. It's still applicable today. The checklist identified four main areas where consumers had lost out, including being switched to a pension that was more expensive than their existing arrangements without good reason. I don't think the reasons put forward by the adviser were justified and when the switch came at the expense of likely lower retirement benefits for Mrs W.

I agree with the investigator that options within Mrs W's existing arrangements weren't explored in favour of a new, complex and higher charging arrangement that appeared likely to deliver significantly lower benefits at retirement. I think that must call into question the suitability of the advice. Indeed it seems Mrs W identified the higher charges were likely to result in lower retirement benefits and that was the central reason she rejected the advice. She'd made it clear that consolidation might be an option but only if that made sense – so not at the cost of reduced benefits. I also think some of her recorded objectives were

questionable. All in all, I think suitable advice would've been to retain her existing arrangements.

I don't see it would be fair for Mrs W to have to pay a fee for advice that wasn't suitable. I agree with the investigator that the fee should be refunded, together with interest at 8% pa simple, from the date Mrs W paid the fee to the date of the refund.

I also think the distress and inconvenience amount proposed by the investigator is fair and reasonable and in line with the sort of award we'd make in a case such as this. As the investigator noted, being threatened with legal proceedings is a serious issue and would've been very upsetting and worrying for Mrs W. I can see that alone will have caused her a considerable amount of distress. She also had to find a significant amount of money quickly in order to avoid legal proceedings being instigated against her for a sum which I've decided it wouldn't be fair for her to have to pay.

I don't expect Quilter to agree but I hope I've explained why I've endorsed the approach taken by the investigator and the outcome he recommended.

### **My final decision**

I uphold the complaint.

Quilter Financial Limited must refund to Mrs W the fee of £2,658.38 with interest at 8% pa simple from the date of payment to the date of settlement and pay Mrs W £500 for distress and inconvenience suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 14 March 2023.

Lesley Stead  
**Ombudsman**