

The complaint

Mr J complains that Quilter Life & Pensions Limited (Quilter) failed to follow his instructions to make a transfer of his pension policy.

What happened

Mr J said he contacted Quilter in February 2021 to request a transfer to a new provider. He didn't hear anything and complained in October 2021. Quilter made an offer of compensation but he didn't think it was adequate and wanted to be compensated for lost growth due to the delay.

Quilter said Mr J had a collective retirement account (CRA) which was a personal pension scheme. It had been working on an in-specie transfer to the new provider since February 2021. However one of his funds was suspended and was within the crystallised part of his pension plan, further there was delay in re-registration of crystallised funds (which can often take three to six months). This caused issues with the automated transfer system. In addition Quilter had moved to a new platform which had also caused some problems. It accepted this had inadvertently delayed the transfer. It offered £250 by way of apology. This was later increased to £400 in total. It provided a timeline of events. It said Mr J had not suffered a financial loss as it was an in-specie transfer and he was not out of the market. Further the need to re-register funds to implement the transfer was outside of its control.

My provisional decision

I issued a provisional decision in this case. I said that in order to make an award for financial loss and distress and inconvenience I needed to find that Quilter had done something wrong. It was clear that Quilter accepted it did and that a calculation for financial loss was appropriate. However it did not agree about the start date for that calculation. It thought this should be the start of October and not August. I therefore focused on that issue as neither party had disputed the other findings made by the investigator.

It argued in particular about the time from 25 February to 1 June 2021. It said it replied on 25 February outside of its 48 hours service level confirming it could do an in-specie transfer. It didn't receive any further instructions from the new provider until 1 June 2021 so felt it should not be responsible for the delay during this time.

I have set out an extract from the timeline of events for that period based on information supplied by Quilter.

- *24/02/2021 – IFA called to query how we can accept a transfer out with suspended funds. We confirmed we can process a reregistration.*
- *25/02/2021 – Email to adviser:*

This is certainly something I can help you with. Providing the receiving scheme is able to accept the suspended fund it is possible to do an in-specie transfer.

- 22/03/2021 – Email to IFA, we need an Origo request to proceed.
- 15/04/2021 – Email from IFA regarding the transfer progress.
- 25/05/2021 – Reply to IFA:

Apologies this reply is coming late. I can confirm that the transfer request has been stopped as the policy is crystallised with suspended funds. The provider has put a note on the Origo transfer service on 04/02/2021 for new provider to re-request the transfer again once all funds are available.

I can confirm there is still a suspended fund on the policy. The provider can facilitate re-registration transfer out for un-crystallised account with a suspended fund (a partial transfer will be sent and the suspended fund follows at a later date once the suspension is lifted). However this is not the same for crystallised accounts because for a crystallised transfer to be an authorised payment according to HMRC regulations, all sums and assets of the drawdown fund must be transferred together.

- 26/05/2021 – Reply from IFA

It is our understanding that the suspended fund is the XX fund which can be moved in- specie whilst suspended as long as the receiving scheme can accept it which I believe they can.

May I ask if there is any other suspended funds in the portfolio and if it is just the LF Equity fund why this fund cannot be moved.

- 01/06/2021 – New provider called - Altus is not allowing them to key a full transfer out, it is being rejected each time.
- 01/06/2021 – Email from New provider - I tried reaching you by phone to discuss the above cases (ATI ref's) but was unable to reach the transfer/re-reg team direct, I've been provided this email address and hope you can assist in getting this transfer moving.

The above altus cases have been rejected by yourselves as fund provider do not facilitate partial transfers out, totally understandable, the New provider confirmed they don't either. However it is not a partial transfer, the 2 altus cases amount to the full value.

Due to limitations on Altus around pre-transfer conversion instructions multiple cases were necessary, essentially 2 of the client's fundsrequire to be transferred into the same fund... pre-transfer and then converted to another fund ... post-transfer, unfortunately when Altus sees 2 separate and different fund lines being converted into the same fund it can't handle this and does not allow the case to proceed, it assumes the user has made an error.

Before we submit this transfer on altus again please can you confirm that, if we are to submit 2 separate cases for the same client that consists of the full value of their pension, it will not be rejected your end as a partial transfer.

I'm happy to own this case at this end if I can be provided with the name and contact number of someone in your team who can keep an eye on this request to make sure it's not rejected again.

Please let me know how is best to proceed.

- 02/06/2021 – Above email sent to our IT partner.

I could see that there were further exchanges between the parties between 25 February 2021 and 1 June 2021. I noted Quilter said it replied to the adviser on Tuesday 25 May and didn't hear anything further until Tuesday 1 June. But I noted that in its reply it apologised and expressly notes the reply is coming late. Further the time from 25 May to 1 June was only a period of 4 working days (ignoring the date of receipt and reply) so I didn't think there was evidence that there was unreasonable delay in responding to Quilter on 1 June 2021.

Based on the timeline above I could agree that not all of the delay was attributable to Quilter. But the other parties involved were not party to this complaint so I couldn't consider or make any award against them. Even if I took into account the delays by third parties I still thought it should have been possible to complete this transfer within 6 months. I said that because:-

1. once the IT issues were resolved the time period from the requests to fund managers (to transfer investments) to the investment assignments is mostly completed within a period of two to three weeks at most.
2. Apart from the cancellation of one fund only two re-registrations took much longer.

So overall I thought it was reasonable to conclude that the transfer could have completed much more quickly but for the delays by Quilter.

I considered the investigator's suggestion of a period of 6 months from the start in February 2021. There was no fixed time period for the completion of an in-specie transfer as it relied on the co-operation of third-party investment managers to deal with the re-registrations. This is for the most part outside the control of both the transferring and receiving scheme. However six months was typically towards the longer end of the time periods suggested.

However on balance and for those reasons and based on the evidence presented if Quilter had replied to the other parties more quickly I thought it should have been able to complete the transfer within 6 months and I thought it would have been reasonably possible to start the transfer by 1 August 2021 rather than 1 October 2021 as Quilter suggested.

Quilter by contrast said that the investigator seemed to have assumed it would have taken 2 months for the IT partner to find a solution and a further 2 months to complete the transfer based on how long it actually took. Based on this it argued that from 1 June 2021 the IT issues would be resolved by 1 August and the transfer then complete by 1 October 2021. But for the reasons given above I didn't think that the start date should be 1 June 2021.

Financial loss

I therefore considered an award for financial loss. In doing so I noted this was an in-specie transfer so there would not have been a financial loss when Mr J wasn't out of the market (save for any funds that couldn't be transferred and needed to be encashed). But Mr J was advised to change his investments post transfer so I considered how quickly this was done as this affected his loss. If the change to the new investments was not done reasonably soon after the transfer then there were arguments that the delay didn't affect the change in investments. To that end I asked for details of when the investments were changed and supplied copies of the reply to Quilter.

I noted the in-specie transfers were finally requested between 25 January 2022 and 7 February 2022. These were then mostly completed by 10 February 2022 with some as early

as 2 February 2022.

However:-

- one completed on 21 March, one on 10 May 2022 and one was cancelled on 7 March.
- Quilter said that a fund investing in Japan was cancelled on 7 March 2022 and sold on 9 March 2022 for around £5,500 which was then included in the transfer payment of around £5,570 sent to Mr J's new scheme on 4 April 2022.
- Two further cash transfer payments were sent for around £966 on 16 May 2022 and around £36.00 on 27 June 2022
- Post transfer the advice was to switch to another portfolio. Mr J said that the first switch into the new portfolio was on 24/02/2022 and the second switch of the remaining assets was on 21/04/2022.
- I had seen evidence to show that total assets worth around £450,000 were sold on 25 February and settled on 2 or 3 March 2022. Around £450,000 was then reinvested on 1 or 2 March in the new range of funds.
- On 21 April 2022 around £102,000 of assets were sold (of which around £98,000 was in a cash fund) and around £108,000 invested on 22 April and settled between 26 and 28 April 2022.

I could see that there were a large number of funds to disinvest and then reinvest so I could understand that it was reasonable for Mr J to group the changes in investments. This is what seems to have happened in March and April 2022. I thought that the changes were made within a reasonable time after the transfer so I didn't think they should be disregarded in calculating any loss.

This service had supplied Quilter with copies of these supporting papers so it should have all that it needed to rerun the transfer as though it happened at the earlier date of 1 August 2021.

Calculating financial loss

The aim of a calculation for financial loss was to put Mr J back in the position he would have been in but for the delay caused by Quilter. I didn't know whether there was a loss as the calculations would need to be completed.

Mr J may be better or worse off due to the difference in timing of the transfer and then the investment switches, so Quilter would need to do a calculation to see if this was the case.

I appreciated that the transfer of investments and cash transfers took place on different dates. In order to calculate whether Mr J had suffered a loss Quilter should:-

1. Rerun the transfer and investment switches for Mr J's pension as if the transfer had taken place on 1 August 2021.
 - a. Most of the transfers were done by 10 February and the investment switches were started on 22 February and 21 April, which was around 2 weeks and 10 weeks (respectively) after the first set of transfers was completed. Quilter should therefore work out how many units Mr J would

have in the new investments and any cash in respect of switches made on:-

- b. 22 February 2022 as if they were instead made on 13 August 2021 and
 - c. 21 April 2022 as if they were made on 8 October 2021.
2. Quilter should then calculate the value of those investments and cash as at the date of my Final Decision to give a Notional Value.
 3. The Notional value of Mr J's pension should be compared to the actual value of Mr J's new pension plan as at the date of my Final Decision. If the Notional Value is less than the Actual Value the amount of the difference is Mr J's loss.
 4. If there's a loss, Quilter needs to pay that amount to Mr J's pension plan so that it has the correct value, taking into account any available tax relief, charges and annual allowance issues.
 5. If any payment for loss is not made within 30 days of Quilter being notified that Mr J has accepted my Final Decision Quilter should further add interest at the rate of 8% simple per annum to the amount of that loss from the date of my Final Decision to the date of actual payment to Mr J.

The amount should if possible be paid into Mr J's new pension plan with his new provider. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into Mr J's pension isn't possible or has protection or allowance implications, it should be paid directly to Mr J as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Mr J hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

If Quilter believes it should deduct any interest from such payment it must provide Mr J with an appropriate certificate to enable him to present this to HMRC.

Quilter should provide Mr J with copies of its detailed calculations to enable him to check them. Mr J will need to provide Quilter with details and if needed unit prices of his new investments at the dates of the various switches to enable it to make the calculation (to the extent that information has not already been provided to Quilter by this service).

Distress and inconvenience

I considered an award for distress and inconvenience. Such an award was to reflect the impact on Mr J and not to punish Quilter. I thought the impact had been considerable and more than the level of inconvenience that is expected in day to day life. On balance and for those reasons I thought the award of £400 proposed by the investigator for the trouble and upset caused by the delays was fair and reasonable in this case.

Before I issued my final decision I asked:-

1. Both parties to comment on whether the loss calculation is workable and whether any

further detailed direction is required to calculate this. For example it may be that Mr J has made further contributions or transfers-in that need to be disregarded or that he has taken a lump sum or benefit. Further he may have changed investments.

2. Mr J to confirm what rate of income tax he pays in the current 2022/2023 tax year and whether this is likely to remain the same in the 2023/2024 tax year when this payment will most likely be paid.

If Mr J can confirm whether there are any annual allowance or lifetime allowance protection issues that prevent the payment of the compensation into his pension account with his new provider such that the compensation should instead be paid to him in cash.

I proposed to uphold this complaint.

I proposed to direct that Quilter Life & Pensions Limited should within 30 days of this service notifying it that Mr J has accepted this decision :-

1. Pay Mr J an amount of £400 for distress and inconvenience (to the extent that it has not already done so).
2. Calculate and pay to Mr J such amount as is calculated under my provision for calculating financial loss as set out above.

Mr J accepted my proposed decision. He confirmed that his tax rate for the 2022/23 and 2023/2024 tax year will be 20%. He also confirmed there were no lifetime allowance or annual allowance issues.

Quilter said it reiterated the points it had already made that it was not reasonable to expect it to progress a transfer before it received a valid instruction. It said it correctly rejected the transfer request in February 2021 so it was unreasonable to expect the six-month time frame to start from then, particularly as the scheme requested a partial crystallised pension transfer, which HMRC do not allow. The transfer request received in February 2021 was not valid. The timescale should only commence once it received a valid instruction. It did not dispute that it had caused delays but still felt the initial date for comparison should be 1 October 2021. It confirmed the information already supplied regarding the sale of assets with the new provider was enough to enable it to complete a loss calculation. It said it would issue the payment to Mr J's pension scheme unless there were reasons it couldn't do this in which case it would pay Mr J direct.

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.

I have considered again what Quilter has said about the start date for the calculations. I accept their point that they would not have been able to process the transfer without a valid transfer request. It previously said it thought this was on 1 June 2021. As it said in the past it thought the investigator assumed it took 2 months for the IT partner to resolve the problem and another 2 to complete the transfer. Based on this it thought that if it had been contacted on 1 June 2021 expressing problems, by 1 August 2021 the new provider would submit a new request and by 1 October the transfer would be complete. By implication it is saying that 6 months from the date of the valid request would not bring you to August and a better date was October.

But as I explained in my provisional decision:-

1. six months is already towards the longer end of what is typical for such transfers
2. I noted that once the transfer started it was completed within a matter of weeks.
3. Multiple transfer requests were made on several different bases and times but rejected by the system.
4. At one point the financial adviser contacted Quilter about the process on 15 April but it didn't respond until 25 May, so this delayed the date at which it would first have received a valid request. That date would otherwise have been several weeks earlier.
5. I don't think it is fair or reasonable that the delay caused by Quilter's new IT system is one which Mr J should suffer. It is up to Quilter to make sure its system is working appropriately. So I don't think its suggested 2 months to resolve this should be built into the timeline at all.

For all those reasons and for the reasons set out in my provisional decision I think that had there not been system issues and delays by Quilter on balance based on the evidence I think the transfer would have been made much sooner and therefore it is fair and reasonable to assume that it would have been possible for the transfer to start by 1 August 2021.

Putting things right

As I have not changed my mind Quilter should make a payment for any financial loss and my award for distress and inconvenience as set out above.

Mr J has not said that he has made any additional contributions to his new pension or changes in investments since the transfer took place. If it emerges that further contributions or changes in investments have taken place these will need to be disregarded.

My final decision

I uphold this complaint and direct that Quilter Life & Pensions Limited should within 30 days of this service notifying it that Mr J has accepted this decision :-

1. Pay Mr J an amount of £400 for distress and inconvenience (to the extent that it has not already done so).
2. Pay Mr J such amount (if any) as is calculated in accordance with the **calculating financial loss** section of my provisional decision and set out above. As Mr J has confirmed there are no Lifetime allowance protection issues the amount of any loss can be paid directly into Mr J's new pension scheme. If such payment is not made within 30 days of Quilter being notified that Mr J has accepted my Final Decision, Quilter should further add interest at the rate of 8% simple per annum to the amount of that loss from the date of my Final Decision to the date of actual payment to Mr J.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 23 May 2023.

Colette Bewley
Ombudsman