

The complaint

Mr N complains that an appointed representative of Quilter Financial Services Ltd failed to identify there was a rebalancing feature on his existing Aegon pension. Six months after investing with Quilter, his pension fund was switched to cash crystallising a loss when he'd wished to remain invested.

Mr N would now like Quilter to recompense him for the loss he says he's incurred because of his savings being incorrectly rebalanced to cash.

What happened

In March 2018, Mr N met with an adviser from Quilter to discuss his retirement planning needs. At the time he held a pension with Aegon that was invested in a cash fund. The Aegon plan had been used the year before by his previous adviser to accept the funds from a defined benefit (DB) pension transfer. In June 2018, after assessing Mr N's circumstances, Quilter recommended he retain the Aegon plan but undertake a fund switch into the Premier Multi-Asset fund. At the same time, Quilter were added to the plan as Mr N's servicing adviser allowing them to administer the policy on his behalf.

In December 2018, Aegon automatically switched Mr N's savings out of the Premier Multi-Asset fund and into cash. In March 2019, Mr N received his Aegon valuation statement that was showing a loss, so he queried this with his adviser. After looking into the issue, Quilter was advised by Aegon the policy contained a rebalance feature. That meant on the plan anniversary, the funds would be automatically sold down to cash.

Unhappy with the loss, Mr N raised a complaint with the original adviser who facilitated the DB transfer. Mr N's complaint was declined by that firm as they didn't believe they'd done anything wrong. So, Mr N raised a complaint with this service about that provider, which was considered and subsequently not upheld.

As Mr N was unhappy with that outcome, he raised a complaint with Aegon for not making Quilter aware of the rebalance feature. In summary, Aegon rejected Mr N's complaint on the basis that his Quilter adviser had access to their online portal, so he would've been able to access Mr N's plan details and switch off the rebalance option should he have wished. Mr N then complained to this service. His complaint was considered by one of our investigators and again, not upheld.

Wishing to hold someone to account for the error, Mr N then complained to Quilter in April 2022. After reviewing his complaint, Quilter concluded they were satisfied they'd done nothing wrong. They also said in summary:

- That Mr N should've been aware there was a rebalancing feature. That's because the rebalance option was included on the original application form he completed in 2017 and he also received a contract note in January 2018 explaining it was included.

- As the monies came from a DB transfer completed on an insistent customer basis, Mr N must've known the basis of which the Aegon pension was set up on at the time.
- They were of the view that as rebalancing is such an unusual feature, it was Aegon's responsibility to let Quilter know and not for them to ask Aegon.

Mr N was unhappy with Quilter's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he'd already raised with Quilter, that they should've identified the rebalancing feature and switched it off.

The complaint was then considered by one of our investigators. She concluded that Quilter hadn't treated Mr N fairly and felt his complaint should be upheld. She also said in summary, that it was Quilter's responsibility to ensure the plan was set up in the manner they'd agreed with Mr N as they provided the advice to retain the plan.

Quilter however, disagreed with our investigator's findings. In summary, they said given Aegon had stated they're going to revise their procedures to include details of rebalancing on future queries suggests there's a gap in the information they've previously given out. Our investigator was not persuaded to change her view as she didn't believe Quilter had presented any new arguments she'd not already considered or responded to already.

Quilter then asked the investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision explaining that I was planning to uphold Mr N's complaint. For completeness, I've set out the findings I made in full below.

My provisional decision

I have considered all the evidence provided and arguments to decide what's fair and reasonable in the circumstances of this complaint. Whilst I've considered all the detailed submissions made by both parties, this decision focuses on the crux of the issues, which reflects the informal nature of this service. I consider this to be determining whether Quilter should be held accountable for the losses Mr N says he suffered because his pension was switched into cash. Having done so, I'm upholding this complaint and for broadly the same reasons as the investigator. I'll explain why below.

I've read the various detailed submissions from Mr N, Quilter and the complaints linked to both his previous adviser (who facilitated the DB transfer) and Aegon. There's been much contention around why the original adviser added the rebalancing feature to Mr N's plan, the fact he should've been aware of its existence and that Aegon should've highlighted this to Quilter. However, this decision focuses on the actions of Quilter as opposed to Mr N's previous adviser or Aegon.

But, it's important to understand the background about how Mr N found himself in this position. When Mr N received advice from his previous financial adviser about his DB scheme, they advised him not to move it. He subsequently went against that advice and asked them to undertake the transfer on an insistent customer basis. He initially asked them to move the DB monies into his existing Aviva scheme. After looking at that plan, his adviser informed him he could only arrange for the funds to be moved to his existing Aegon SIPP. The transfer application form was completed in November 2017 and in March 2018, Mr N sought advice from Quilter on how to invest the proceeds. We understand the rebalance feature was added as a default option but was immaterial to Mr N's circumstances at the time. That's because Mr N had explained to his adviser, he'd always planned to move the

monies from the Aegon plan to his Aviva policy after the DB transfer had completed. That position changed when he took advice from Quilter, and they advised he leave the Aegon plan where it was and undertake a fund switch only.

As the monies came from a DB transfer completed on an insistent customer basis, Quilter said Mr N must've known the basis of which the Aegon plan was set up on at the time. That's because the rebalance option was included on the DB transfer/ Aegon application form he completed in 2017 and he received a contract note in January 2018 pointing this out. However, Mr N was an inexperienced customer and even if he did know it was included at the time (and understood what it was), given Mr N was paying Quilter to provide him with new advice, it's not unreasonable for him to conclude Quilter had fully reviewed the plan and reconfigured it to his needs which they'd just recently established.

I asked Aegon what information is sent to either the adviser or consumer when a rebalance is undertaken. Aegon explained that contract notes or notifications aren't issued in such circumstances because they take the view as the rebalance instruction is added by the adviser, they should know when the alteration is due to happen. In addition, Aegon pointed to their terms and conditions that highlighted they wouldn't issue contract notes on rebalance transactions. And in any event, they said details of the rebalance would always be available to view in their portal whenever either the consumer or adviser logs into the account. So, as the rebalance was added by the consumer's former adviser, Quilter wouldn't necessarily know it existed until such time it was identified in the Aegon system. Quilter said it was Aegon's responsibility for them to highlight the rebalance feature. Something which Aegon didn't do when Quilter wrote to them asking for detailed plan information.

However, I'm not persuaded by Quilter's arguments that fault for the unwanted rebalance lies elsewhere. The important consideration here is what was under Quilter's sphere of influence at the time of the rebalance. Whether or not the rebalance feature should've been added when the DB transfer was undertaken, I think is largely irrelevant to this complaint. That's because Quilter were added to Aegon's system as his servicing adviser in June 2018. From that point forward, it didn't matter what had come before as they became ultimately responsible for ensuring the plan was calibrated in the manner with what had been agreed with Mr N. Quilter were paid an 'implementation fee' and an ongoing fee to look after Mr N's pension and as such, should have had sufficient checks in place at both the start of the relationship and on an ongoing basis to ensure his wishes were being applied correctly to how and where his monies were being invested.

Quilter were aware Mr N's plan had to be administered on Aegon's portal. Had they properly checked his plan at the start of the relationship, they ought then to have noticed the rebalance feature. The same feature was also covered in Aegon's terms and conditions and whilst it's not clear if Quilter had a copy of those, if they did not, they should have asked for a set.

Contrary to Quilter's contention, I don't believe Aegon have admitted their systems are deficient by failing to highlight the rebalance feature when they provided plan information to them. Aegon have only explained they've passed feedback about the complaint into the relevant team who will then consider whether they need to alter their processes in the future. They've given no warranty they'll make such a change or indeed, if it's even necessary. I well suspect that's just a normal housekeeping process they follow when reviewing root cause on all complaints they receive.

Finally, Mr N explained that he spoke to his adviser on the telephone in January 2019 querying his plan after he'd seen the value decrease in the Aegon portal. Whilst Quilter say they've no record of this discussion, I've no reason to doubt Mr N's version of events. Mr N explained he questioned why the value had fallen with his Quilter adviser who he says, told

him it was likely to be a consequence of normal market variations. I'm of the view this discussion is important because I think Quilter missed an opportunity to 'stop the loss'. Had they checked the Aegon portal as part of the discussion with him, I think it more likely than not they would've identified Mr N's monies had been incorrectly rebalanced. That would've given them the opportunity to put things right sooner. I well suspect given Mr N was assured the decreases were nothing to worry about, he had no reason to question the issue further until he received his statement in March 2019.

So, overall for the reasons set out above, I uphold the complaint and require Quilter to put things right in the manner I've set out below.

Responses to my provisional decision

After reviewing my provisional decision Mr N contacted this service and explained he didn't have anything further to add. Quilter did not provide any further comments.

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.

As neither party has presented any further information, it therefore follows that I uphold the complaint for the same reasons I've already set out above.

Putting things right

Fair compensation

My aim is that Mr N should be put back as closely as possible into the position he would probably now be in if had his funds not been switched to cash.

I'm satisfied that what I've set out below is fair and reasonable given Mr N's circumstances and objectives when he invested.

What must Quilter do?

To compensate Mr N fairly, Quilter must:

Compare the performance of Mr N's investment with the notional value if it had remained within the same funds. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

Quilter should also add any interest set out below to the compensation payable.

If there is a loss, Quilter should pay into Mr N's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Quilter is unable to pay the compensation into Mr N's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the

compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr N won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr N's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr N is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr N would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Pay Mr N £200 for the length of time it's taken Quilter to resolve the rebalancing issue. Allied to this, Mr N had to raise complaints with two other businesses and this service on both those occasions to get to this point so the £200 will recompense Mr N for the inconvenience and trouble caused.

Income tax may be payable on any interest paid. If Quilter deducts income tax from the interest, it should tell Mr N how much has been taken off. Quilter should give Mr N a tax deduction certificate in respect of interest if Mr N asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Aegon pension	Still exists and liquid	Premier Multi-Asset fund	28 December 2018 (<i>date switched to cash</i>)	Date of my final decision	8% simple per year if Quilter have not paid any redress due within 30 days of the decision

Actual value

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

Notional value

This is the value of Mr N's investment had it remained within the original Aegon funds until the end date. Quilter should calculate this value.

Any withdrawal, income or other distributions paid out of the investment should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Quilter totals all those payments and deducts that figure at the end.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr N didn't want his monies rebalanced to cash and therefore, this will place him back in the same position he would've been in as if the sale had not taken place.

My final decision

I uphold the complaint. My final decision is that Quilter Financial Services Ltd should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 June 2023.

Simon Fox
Ombudsman