

The complaint

Mrs E complains Quilter Financial Planning Solutions Limited ("Quilter") mishandled her request to switch her investments into cash, causing loss.

What happened

Mrs E emailed Quilter on Thursday 27 October 2016 saying she might move her investments into cash to safeguard them, due to future uncertainty, and it might be best to do this before she went away for five weeks on 5 November. Quilter replied agreeing to discuss this with her the next day.

A call followed on Friday 28 October 2016. It isn't disputed that Quilter told Mrs E at that time to write a letter to the investment provider to get her investments moved into cash. Mrs E emailed Quilter a draft of her letter that afternoon. She sent it later that day. Her letter said: *"With immediate effect, I would like to switch all of my investments into [a cash account of the provider's]."*

Quilter says the provider's terms and conditions indicate such a letter would be acceptable and it also phoned the provider and got confirmation of this from the provider on the phone. It noted the provider's terms about *"Selling all or part of your investments"* say: *"You can do this at any time, and we will carry out your instructions as soon as we can after receiving them. If we receive your instruction online before the relevant intra-day dealing cut-off time... we will normally do this on the same Business Day. If you make an instruction by telephone, fax or post, it may be processed on the following Business Day."*

Quilter said the terms *"also specify that you can ask [the provider] to switch between funds at any time"*. Quilter said that based on these terms it would've expected the provider to accept and follow the instructions Mrs E had given.

The provider's internal records show it received Mrs E's letter on Monday 31 October 2016 and at that point it decided it couldn't act on the letter and would instead seek instructions from her adviser in a format it could accept.

The provider has since said that fund switches have to be done online or on the phone or, if by post, using its own switch form. In essence it says it accepts written instructions to sell holdings to cash without a form, but not to switch holdings. The latter involves reinvesting money in some way, such as buying new funds, for which the provider requires declarations. It says the switch form allows these to be made, as does internet trading, and for a phone sale the declarations would be taken over the phone.

The provider called Mrs E on Tuesday 1 November 2016 to say her letter wasn't what it needed to carry out the switch and it suggested she contact her adviser to have it done online. Quilter was also contacted about this that day. The result was Quilter placed the switch request that day - and I gather it was done online.

"Confirmation of Switch Instruction" documents sent to us by Quilter show the switch instructions were received before midday but after 11am on 1 November 2016. A switch

confirmation from the provider shows sales of both ISA and non-ISA holdings dated 2 November 2016.

Key facts documents Quilter has sent us said, of fund pricing: *"All funds are priced daily at a set time (the 'daily pricing point') ...When you buy or sell funds you will normally get the price that applies at the next daily pricing point after we receive your instruction."* It says more detail is given online. There it says: *"Most funds are priced at 12 noon and the dealing cut-off is 11am..."* So Mrs E's holdings were sold on 2 November 2016 at prices set that day.

Our investigator thought Quilter could have submitted the switch instruction to the provider on Monday 31 October 2016 and asked Quilter to find out what the investments would've been worth that day and on the following day. To use 31 October 2016 prices, the instruction would've needed to be given before 11am on 31 October 2016.

Quilter has sent us key facts illustrations dated 1 November 2016 showing a total of value of £167,767.53 that was available at that time to be switched into cash. Quilter has since suggested this was the value on 31 October 2016. The prices available to the adviser to input on 1 November 2016 would've been those from the day before.

The provider sent us historic values and the value shown on those for 31 October 2016 - a Monday - was identical to the figure shown for 28 October 2016 - the previous Friday. As it wasn't clear how those two values could be the same, we queried this with the provider. We also pointed out to the provider that when producing the key features for the switch request on 1 November 2016, the adviser used a combined value of £167,767.53. The provider has since checked its records for the backdated valuation and has provided a screenshot for the value on 31 October 2016 of £167,767.53 and also confirmed *"the figures do match those of the IFA's"*. So this is the value that would've been paid had instructions been received by the provider before 11am on Monday 31 October 2016.

This compares to the value Mrs E actually had transferred into cash which was £165,635.34 – as confirmed by the value shown on documents for the 2 November 2016 sales and the 3 November 2016 purchases.

I wrote to Quilter and Mrs E to explain that our investigator's view meant that if Mrs E would have had a higher sum transferred into cash if the instruction had been placed earlier, then Quilter should compensate her for the shortfall and pay her interest and a sum for inconvenience.

Quilter didn't agree. In summary it said:

- As a preliminary matter, Mrs E's funds had grown by £10,649 in less than five months following a fund switch recommended by her adviser in June 2016.
- The move into cash lasted only a matter of weeks, after which Mrs E changed her mind and wanted to reinvest the funds. There was a delay and Quilter offered Mrs E redress for this, which she accepted.
- Mrs E acknowledged in her 27 October 2016 email to Quilter that the adviser would be very busy. And she asked for the switch to take place before 5 November 2016. The adviser responded that day and arranged a call for the following day – so Quilter spoke to Mrs E at the earliest possible opportunity.
- Quilter spoke to the provider that day too and the provider told Quilter it would accept a letter from the client with her instructions. This mirrored what the terms and conditions say, in which the provider states it accepts instructions by post.

- Quilter spoke again to Mrs E on 28 October 2016 and told her she could write to the provider with her instructions. Mrs E sent Quilter a draft of her letter that day. Quilter was contacted by Mrs E on 1 November 2016 saying the provider had said the switch must be done by Quilter (her adviser). Quilter submitted the instruction immediately and confirmed the combined value at that time of £167,767.53. So Mrs E's objective of being switched to cash prior to 5 November 2016, was met.
- The time taken did not involve what Quilter would regard as a protracted delay and Quilter acted immediately upon Mrs E contacting it. Quilter cannot be held liable for the provider giving Quilter incorrect information and in turn [for the provider] not acting on the instructions Mrs E gave directly to the provider.
- The provider told Quilter that Mrs E could write in with her instruction to switch to cash. Therefore Quilter cannot be liable for misinformation from the provider.
- Quilter also cannot be liable for the length of time it takes the provider to implement the switch once it was submitted. Mrs E was invested in many different funds that would need to be sold.
- So Quilter disagrees that Quilter (Mrs E's adviser) was at fault. Instead Quilter acted quickly and efficiently on behalf of its client. There would be no reason for Quilter to cause undue delays or intentionally not assist Mrs E, even more given that in the words of Mrs E the relationship with her Quilter adviser was close and one of friendship – which the Quilter adviser in turn reciprocates was the relationship they both had at the time.
- Our first investigator didn't think Quilter was at fault and examined the policy terms, concluding that these showed instructions to switch could be made by post. That investigator also asked the provider further questions about its process. Also, based on valuations obtained by our investigator – to which Quilter was not privy – the investigator concluded that if the switch had taken place a day earlier – which is what I suggested should've happened - there was no evidence of a loss when comparing a switch finalised on the 2 November rather than when it took place on 3 November 2016.

In summary and conclusion, Quilter strongly disagreed with the suggestion that it is at fault, disagreed with the reasoning for redress and emphasised that its adviser was guided by the product provider and cannot be held liable for information the provider gave him that told him Mrs E could write directly to the provider.

Mrs E's view remains that the switch could and should have happened on 31 October 2016. She says the value of her investment on 1st November was £168,143.11 but it was worth £165,634.34 after the delay and her loss is £2508.79.

As the matter couldn't be resolved informally it has been passed to me to decide.

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've decided to uphold the complaint. I'll explain why.

I'd mention that Mrs E's complaint to Quilter had two other parts I've not discussed but to which Quilter referred in passing above. One concerned advice to move from an existing investment and another concerned a move from cash back into the market. Mrs E accepted an offer to settle the second of these. She hasn't sought to pursue the first further here. So in

my decision and in my findings here I discuss only the remaining part of Mrs E's complaint.

I accept the provider's terms and conditions indicated written instructions could be given for a fund switch. But they didn't detail the form those instructions needed to take. At minimum, as a switch is not just a sale of the existing investment but the reinvestment of the proceeds, a written instruction would need to specify precisely where to reinvest those proceeds. The cash account specified by the consumer in her letter was only available for ISA investments. Her non-ISA proceeds were instead reinvested in a cash fund that she hadn't mentioned in her letter. So even if the provider had needed no more than an unambiguous and actionable instruction, the letter did not provide this as far as the non-ISA investments are concerned. Also I don't think it unforeseeable that in the absence of clear instructions concerning both parts of a switch transaction, for the provider may decide to not carry out just part of the instruction and to refer back to the consumer instead.

In any case, I'm satisfied the provider did require more than just a clear instruction it could carry out. It also wanted Mrs E to agree or acknowledge certain terms or features relating to the investments that she was purchasing, and so wanted instructions online, by phone or on its particular form. This is what the provider has claimed and the notes it made at the time suggest that it did not act upon Mrs E's instruction because it wasn't in the form it required.

It seems to me that given the lack of detail in the terms as to the form a written instruction ought to take, a reasonable course to take would be to ask the provider for clarification – and it seems to me that Quilter's adviser took the same view because Quilter says it did indeed call the provider to ask about this.

Quilter's position is that it was then given incorrect information in that it was given to understand or told explicitly that a letter of the kind Mrs E wrote was a permissible way to request the transaction she wanted.

Quilter hasn't provided records from which I could verify exactly what was said in any such conversation. If the question asked related to the sale of assets, then, as I understand it, a letter of the kind Mrs E sent would have been acceptable and it is quite possible this is the answer Quilter was given. But if the question was about a switch, my understanding is that it would've been incorrect for the provider to suggest the use of a letter like the one Mrs E used. I don't know that the provider did give Quilter incorrect information in this way, but it seems to me that if it did then this would be something for Quilter to take up with the provider - I'm not persuaded it is fair instead for Mrs E to be disadvantaged as a result of Quilter's exchange with the provider.

In my view Quilter decided to give Mrs E information on how to carry out the transaction - a transaction on investments Quilter had already, incidentally, been involved in advising on – so it needed to make sure the information it gave was correct. I'm satisfied that an instruction of the kind Mrs E sent wasn't and wouldn't have been acceptable to the provider – so the information Quilter gave Mrs E wasn't correct.

In saying this I don't discount what Quilter says about the information being wrong because of an error by the provider, but this doesn't make me think it isn't fair and reasonable for Quilter to compensate Mrs E for the consequences of the incorrect information it gave her. In saying this I note Quilter had sight of the letter Mrs E sent before she sent it.

I have also considered what Quilter has said about how the provider ought to have carried out Mrs E's instruction (at least, I presume, insofar as Mrs E's letter specified actions that were possible) based on what Mrs E did send originally.

I reach no concluded view on whether it was fair for the provider to choose not to carry out

Mrs E's instructions insofar as it would've been able to do this for her ISA. I'm not looking at a complaint about the provider. But I'm satisfied the provider's process and policy was not to accept instructions of the kind that Mrs E sent and to refuse them in the way it did. On that basis I'm satisfied that Quilter should be responsible for what followed from the provider's rejection of the written instructions Quilter had suggested that Mrs E send to the provider. It was a rejection that was foreseeable with knowledge of the provider's policy and process. I don't overlook Quilter's claim that the provider misled Quilter as to that policy, but I don't agree this makes it unfair or unreasonable for me to hold Quilter responsible here for losses Mrs E suffered as a result of the incorrect information Quilter gave her.

I note what Quilter has said about how the adviser acted promptly and actively to help Mrs E. I accept all of that and my conclusion is not based on any failing due to delay by Quilter. Quilter wasn't obliged to carry out the switch straightaway, or even to deal with Mrs E's query straightaway – it was entitled, as it did, to arrange to assist Mrs E with her issue at a point in time when it could properly deal with it. In my view Mrs E could have no complaint if the conversation had not happened until later than it did – the following week for example - or if Quilter had arranged the transaction to take place later than it actually did.

But I am satisfied that Quilter gave the consumer incorrect information and that the result of this was the consumer wasted time and effort writing a letter and also that the earliest her switch could happen after that was when the provider got the letter and got in touch with her about it, which was 1 November 2016. Quilter at that point did act to remedy the situation and in my view wasn't at fault for any delay in how it acted on 1 November 2016. But had Quilter not give Mrs E incorrect information, I'm satisfied most likely her instruction would've been given – by her by phone for example - and carried out on 31 October 2016 at prices set on 31 October 2016. Mrs E would as a result have had a higher value transferred into cash than was actually transferred two days later. In my view this is a loss and one that falls within the scope of the duty Quilter owed to Mrs E when undertaking to give her information of the kind it gave her. So I'm satisfied it is fair and reasonable for Quilter to compensate Mrs E for that loss.

The information we have shows the value on 31 October 2016 was £167,767.53 and so Mrs E's loss is that value less the value she actually had immediately after the transfer to cash, which I understand was £165,635.34. Mrs E told Quilter she wanted the transaction completed before she went away, which wasn't until a few days later, but this isn't in my view a reason for Quilter not to compensate her for losses flowing from the incorrect information it gave her in the way I've discussed and described already above.

So, in light of what I've said above and for the reasons I've given, I uphold Mrs E complaint.

I'd mention that Quilter points out there was no incentive for the adviser to seek to delay Mrs E's instruction or to give her incorrect information. I agree and I've seen nothing to suggest Quilter wasn't doing its best to assist Mrs E promptly with the transaction she wished to carry out in accordance with its longstanding role as her trusted adviser.

Putting things right

Quilter Financial Planning Solutions Limited should put things right by paying Mrs E the difference between the value her investments had on 31 October 2016 as stated above and the actual value of her investments immediately after the 3 November 2016 switch into cash.

Quilter should add simple interest at the gross rate of 8% per year to the redress amount from 3 November 2016 and until the date the redress is paid to Mrs E.

Quilter should also pay Mrs E £150 for the distress and inconvenience she was caused to

suffer as a result of the incorrect information she received from Quilter. In particular she spent time writing and sending a letter the provider rejected and she suffered a delay to the switch and disappointment due to the fall in value her investments suffered in the meantime.

My final decision

In light of what I've said above, and for the reasons I've given, I uphold this complaint.

Quilter Financial Planning Solutions Limited must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 8 March 2024.

Richard Sheridan
Ombudsman