

## The complaint

Mrs B is unhappy ongoing adviser charges totalling £5972.42 were taken from her Self-Invested Personal Pension (SIPP) after she told Quilter Financial Services Ltd she no longer required ongoing advice.

## What happened

In August 2018 Mrs B had transferred her defined benefit (DB) pension into a SIPP. The value in 2020 was about £1.2m, managed on a discretionary basis by Quilter. There were also annual advisory reviews, charged at 0.25% of the portfolio, with an adviser that is now part of Quilter.

Quilter was unable to carry out a review directly with Mrs B in August 2020 and so sent a 'Statement of Continued Suitability' to her instead. Mrs B was also considering making investment changes towards socially responsible investments in August 2021, and during discussions with Quilter about that she asked for the ongoing advice service to be cancelled.

After her instruction, further fees of £1,292 and £4,679 were deducted in October 2021 and April 2022. As the payments were made in advance for services yet to be provided (and which now won't be provided), Quilter ultimately offered Mrs B £5,509 compensation in cash in July 2022. This allowed for 20% tax relief on paying as much as possible of the compensation back into the SIPP (£3,600 gross), and a 15% reduction to the remainder to allow for the future tax treatment of funds that couldn't otherwise be paid into the pension.

Although investments had already been cashed in to meet the overcollected charges, Quilter also calculated that Mrs B was better off as a result of this at the time of its offer, because the markets had fallen. As a goodwill gesture it made no further downward adjustment to the amount offered. £300 was also added for the distress and inconvenience she suffered.

Mrs B has told us that she hasn't accepted Quilter's offer and so hasn't received this money. She remains unhappy about the assumption made that she will pay some of the compensation back into her SIPP, resulting in an reduction for tax relief. This is because she doesn't feel she's had enough support from Quilter on how to get this payment into her pension. She now also asks why it took the adviser until October 2021 to inform AJ Bell that she had cancelled the ongoing advice, and what would have happened if she hadn't queried the discrepancy. She is seeking a full refund of the overcollected fee, plus a reconsideration of the compensation for distress caused.

Our investigator asked Mrs B if she intended to use part of the redress to pay one year's maximum contribution to her SIPP. Referring to the additional paperwork being involved she has said she felt this was too difficult, and probably wouldn't do it.

As a result, the investigator thought Mrs B's complaint should be upheld because the right tax adjustment was to reduce the total fees by 15%. This was an appropriate adjustment to ensure she was not overcompensated because eventually, Mrs B would take a 25% tax-free cash sum from her pension pot and the remainder would likely be taxed at the basic rate. The investigator also said that Quilter should re-establish whether there was an investment

loss from these excess funds not being invested in the pension up to the present date.

Quilter didn't agree with the investigator. It maintained that its offer best ensured that Mrs B was placed back into the position she would have been in, had the money remained in her pension – by assuming she will pay it back into the pension. As its offer was fair and reasonable at the time it was made, it didn't consider it was obliged to recalculate if the position with any investment loss had changed.

I issued a provisional decision on this complaint on 7 June 2023. In that decision, I said that I wouldn't ordinarily agree with Quilter's expectation that it is for Mrs B to make all the arrangements herself to redirect part of the payment it proposed to make to her, back into her pension scheme. As an ombudsman service, we do aim to put the consumer back into the position they would have been in had the error not taken place, but subject to the limitations on getting redress paid into a pension and the associated requirements.

Compensation that is paid into a pension is now treated as a tax-relievable member contribution (essentially, on the basis that there is no latitude in the HMRC rules for it to be treated as anything else). So, Quilter is entitled to make a reduction to account for full basic tax relief on any payment it is making into the pension. In Mrs B's case, this is limited to compensation of £3,600 gross (after tax relief is added back on), as she has confirmed she has no earnings to support a higher contribution.

However in my view, there needs to be a degree of co-operation between the respondent business and the consumer for a payment into their pension to be fairly achieved. I would expect the business to be willing to make the payment (or part of it, in this case) directly to the pension provider – and obtain the necessary forms for Mrs B to sign. It doesn't seem to me that there was going to be this level of assistance from Quilter in this case, so I'm not surprised that Mrs B objected.

Where it isn't possible to achieve payment of compensation into the pension, we wouldn't expect a business to reduce the payment by the full 20% of basic rate tax relief. As the payment would have to be made to Mrs B in cash instead, we would consider what tax she would later have to pay on these funds if they were still in the pension, that she now won't have to pay. For most people, the answer to that is 15% - because if they pay basic rate tax, they only do so on 75% of the proceeds, as 25% is the tax-free element. In actual fact though, I think these points have become moot because of something else I've noticed about Mrs B's situation.

The last valuation we had for Mrs B's SIPP looked to be over the lifetime allowance (LTA), which is currently £1.073m. From what she's told us it seems likely that Mrs B has, or will in future, put a total value of benefits into payment that exceed this figure if she puts her pension into drawdown. Mrs B may want to check her paperwork to see if this is the case.

Although the government recently abolished all the other tax charges for exceeding the LTA, there is still no additional tax-free cash available once benefits in excess of the LTA have been put into payment. That means that the additional funds in the pension that a cash payment represents, would have been taxed at the full rate of 20% as income.

So, irrespective of how Quilter pays compensation to Mrs B – whether it is a cash payment or if some of it goes directly into her pension - I think that the correct answer will be to reduce that payment by 20%. As I'm not satisfied that Quilter's offer to Mrs B was calculated correctly, I also think it's reasonable to look again at whether those amounts, had they remained invested in her pension in October 2021 and April 2022, would have been worth more today.

The closest benchmark to the way Mrs B's pension is invested, that I have access to, is the FTSE UK Private Investor Balanced Total Return Index. This contains a similar split of shares to bonds as in Mrs B's current portfolio. At the time of my provisional decision, that Index was almost exactly the same level as its values in both October 2021 and April 2022, and of course fluctuates on a daily basis. So, my provisional decision was that I didn't think it was necessary for Quilter to make any further uplift to the refund of charges.

I invited both parties to respond to the provisional decision and my comments about the level of award which should be made for distress and inconvenience, which I'll revisit below.

Quilter agreed with the provisional decision. Mrs B said that she felt she would have to accept the compensation for financial loss, but she made the following comments about how she'd been treated by Quilter:

- Quilter had dealt with the matter in a high handed manner with no real apology nor concern for their customer.
- She had to wait for a considerable length of time to get any resolution during which time Quilter was content to leave her position unresolved.
- It was a concern that systems are not in place to pick up incorrect fee payments.
- In view of Quilter's unhelpful tone and it requiring her to take the matter to the ombudsman, she felt an increased sum should be paid for the upset caused.

Mrs B also clarified that she has accessed a small lump sum of £24350 and is taking a small monthly income of £1383 since November 2022. She has no other pension funds .

### **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 note Mrs B was minded to accept the compensation for financial loss, although she did have concerns about the distress and inconvenience payment.

In terms of the financial loss, I set out in the provisional decision (above) how this should be calculated. At the time of my provisional decision, there hadn't been a material increase in the benchmark index of performance closest to how Mrs B's pension was invested, and as that was very recently checked I'm not persuaded it's necessary to look at this again.

Mrs B's comments about how much tax-free cash she's taken, suggest that she hasn't yet crystallised all of her pension pot. But given its value at the time of the complaint, which is likely to continue increasing over time, I remain of the view that it's likely Mrs B will crystallise benefits which exceed her lifetime allowance in total – *before* the redress payment is taken into account. So, a 20% reduction to allow for future income tax on this payment is in my view fair and reasonable.

Quilter also made a £300 offer for distress and inconvenience to Mrs B, which I said in my provisional decision was fair and reasonable, and consistent with the level of awards this service would have made in comparable situations to Mrs B's. She has said in response that the £300 doesn't go far enough in recognising how Quilter has dealt with her, but I'm satisfied that it does.

It was clearly a mistake for Quilter not to cancel the ongoing fee arrangement, but on being made aware of its mistake it made proposals to put this right. Mrs B didn't agree with those proposals and brought them to the Financial Ombudsman Service, but this hasn't resulted in

more compensation from Quilter. As Quilter didn't take into account that Mrs B was already over her lifetime allowance, I've set out above how it would be fair for Quilter to pay her slightly less and reduce the payment by 20%.

I don't think this is evidence of Quilter treating Mrs B in a high handed manner or being unwilling to put matters right. Mrs B had a choice whether to accept Quilter's original offer or ask this service to look into it, with no guarantee that the amount on the table would remain the same. We don't increase the awards we make for distress and inconvenience simply because of the extra inconvenience of referring a complaint to this service.

I understand Mrs B's strength of feeling about what would have happened if she'd not questioned the payment, but this is a matter of speculation. It doesn't alter that Mrs B now has an award from this service for her financial loss which puts her back into the position she would have been in, but for Quilter's mistake.

### **My final decision**

I uphold Mrs B's complaint and require Quilter Financial Services Ltd to pay her back the fees it wrongly deducted from her pension, reduced by 20% to allow for future income tax that would otherwise have been paid when these sums were withdrawn from the pension as income. I also require Quilter to pay her the £300 compensation it has already offered for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 20 July 2023.

Gideon Moore  
**Ombudsman**