

The complaint

Mr V has complained about the advice that he received from Quilter Financial Limited to transfer his two occupational pension schemes into a Self-Invested Personal Pension (SIPP) to facilitate the purchase a plot of land in the Cayman Islands.

What happened

In 2011 Mr V received a telephone call from a company whose business is the selling and development of land in the Cayman Islands. I will refer to this company as Firm A in my decision.

Firm A offered Mr V the opportunity to invest in land in the Cayman Islands and was told that the investment could be made through his pension savings. Mr V expressed an interest in this investment, so Firm A put Mr V in contact with a financial adviser. The financial adviser that Firm A put Mr V in contact with was an appointed representative of Quilter.

Mr V held two defined contribution occupational pension plans. Quilter recommended that Mr V transfer his two occupational pension plans into a Self-Invested Pension Plan (SIPP) so that the SIPP could then invest in a plot of land in the Cayman Islands. The land would be purchased from Firm A.

In 2012 Mr V went ahead with Quilter's advice and transferred his two occupational pension plans into a SIPP. The provider of Mr V's new SIPP was recommended to him by Quilter. The transfer values from Mr V's two pension schemes totalled approximately £36,000, and from this £27,500 was used to buy a plot of land in the Cayman Islands from Firm A.

In November 2022 Mr V complained, through his lawyers, to Quilter about the pension transfer advice that they'd given to him.

Quilter responded to Mr V's complaint in December 2022. Quilter said that they had been unable to locate any file or record from when they had advised Mr V to transfer his occupational pensions in 2012.

In their reply to Mr V's complaint, Quilter said that they were not responsible for the advice for Mr V to invest in the Cayman Islands plot of land.

However, in their response letter to Mr V's complaint, Quilter went on to say: "*Nonetheless, in conducting a thorough review of your client's investment, made possible through the*

transfer of his pension plans to the (SIPP provider), unfortunately, we have been unable to conclude that Mr V was provided with sufficient information in 2012 that would have enabled him to come to an informed decision as to whether the Cayman Islands investment was to his benefit. We are therefore unable to conclude that the recommendation of the pension transfers, which facilitated the subsequent investment, was appropriate. As a result, we are prepared to uphold this complaint and make a settlement offer to Mr V".

Quilter then set out details of their settlement offer to Mr V. Within their settlement calculations Quilter included a valuation for the Cayman Islands plot of land. Quilter said that they did this because they believed that the plot of land was still valued at £27,500. Quilter also said in their settlement offer that they would pay the fees on Mr V's SIPP for five years to allow time for the Cayman Islands land investment to be sold from the SIPP.

Mr V wasn't happy with Quilter's response to his complaint. He thought that the Cayman Islands plot of land was illiquid and therefore should have no value in Quilter's settlement calculation. Mr V therefore referred his complaint to the Financial Ombudsman Service.

An Investigator within the Financial Ombudsman Service reviewed Mr V's complaint. They concluded that the Cayman Islands plot of land held in Mr V's SIPP is illiquid and should therefore be treated as having no value in the settlement calculation.

Quilter didn't agree with the Investigator's view so asked for Mr V's complaint to be brought to an Ombudsman.

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.

Quilter said in their response letter to Mr V's complaint that the advice given to him to transfer his two occupational pensions into a SIPP to facilitate the investment into the Cayman Islands plot of land was not appropriate. Quilter upheld Mr V's complaint.

I therefore think that there is agreement between the parties in this case that the advice given to Mr V by Quilter to transfer his two occupational pension schemes into a SIPP to facilitate investment into land in the Cayman Islands wasn't suitable.

Because Quilter think that the pension transfer advice they gave to Mr V in 2012 wasn't suitable, they've offered to make a compensation payment to him. Quilter then set out details on how their compensation calculation would be completed. Within their calculation Quilter has said that the land held in Mr V's SIPP is still valued at £27,500. This is the same amount that the land was bought for in 2012.

Mr V has not accepted that the plot of land is still worth £27,500. Instead, Mr V, through his lawyers, has claimed that the plot of land cannot readily be sold and is illiquid. As a result, Mr V believes that a zero value for the plot of land should be reflected in Quilter's compensation calculation.

Mr V's lawyers wrote to Quilter in January 2023 to say that Mr V had decided not to accept Quilter's compensation offer. Mr V's lawyers said that there had been no communication between Firm A and Mr V's SIPP provider since 2013.

Mr V's lawyers also said that Mr V had contacted his SIPP provider in 2020 to ask them for an up-to-date valuation of his SIPP investments. Mr V's lawyers said that Mr V's SIPP provider had tried to contact Firm A to obtain a valuation for the plot of land, but the SIPP

provider didn't receive a response from Firm A. Mr V's lawyers also said that no valuation for the plot of land has been provided since 2012, which was when the plot of land was bought.

Quilter replied to Mr V's lawyers in February 2023. They said that Firm A is still an active business and is still selling properties in the Cayman Islands. Quilter went on to say: *"As such, we have no reason to believe that your client's asset has a zero value or is illiquid, and that he should be able to dispose of the asset within five years, the fees for which we are prepared to cover. Consequently, we can confirm that we do not intend to amend our settlement offer to your client"*.

Quilter has pointed to Firm A's website and Facebook page as evidence that Firm A is still an active business and is still selling properties in the Cayman Islands.

Quilter has also said that a SIPP valuation produced by Mr V's SIPP provider in 2019 showed that the land investment was valued at £27,500.

Mr V's lawyers have said that if he were to retain the land, Mr V *"would have been out of pocket and also burdened with trying to sell an asset with no value in a foreign country with different laws and regulations"*.

In response to this Quilter have argued that Mr V was *"perfectly happy"* to buy an asset *"in a foreign country with different laws and regulations"*. Quilter have therefore said that they think this argument *"does not stand up to scrutiny"*.

Mr V changed the lawyers who are advising him in this complaint in August 2023. Mr V's new lawyers has said that Mr V has confirmed to them that he has not had any recent contact with Firm A. Mr V's new lawyers also said that they hadn't initiated any contact with Firm A and could make no reference to whether Mr V's previous lawyers had established any contact with Firm A.

In response to this update from Mr V's new lawyers, Quilter have said: *"It should also be noted that at the time of the investment in 2012, Mr V was just 38 years old, so still had almost 30 years before he reached his state pension age and therefore ample time to continue saving towards his retirement."*

To reiterate our previous response, we cannot accept that Mr V's Cayman Islands investment is illiquid and has no value when neither he nor his representative has made any attempt to establish this as a fact. Neither can we accept the FOS stance that the investment is illiquid and has zero value simply because you "think it is reasonable".

Meanwhile, we have been carrying out further research into land for sale in the Cayman Islands, and as you can see from the attached, (Firm A) Development has two plots of land currently for sale at (location) Grove on Cayman (island), similar to Mr V's, so clearly such plots of land are readily marketable. Other real estate agents, including reputable firms such as (third party), are also currently marketing plots of land for sale at (location) Grove on Cayman (island). the two plots of land being marketed by (Firm A) both have a price tag of \$78,000 or approximately £64,000, so more than double what Mr V paid for his plot of land eleven years ago".

Quilter went on to say: *"On the basis of the FCA statement in their publication, 'FCA Mission: Our Future Approach to Consumers', dated 6 November 2017: "in line with FSMA, we expect consumers to take reasonable responsibility for their choices and decisions." . . . we find it inexcusable that neither Mr V nor his representative has made any attempt to establish the value and marketability of his 'investment' in the Cayman Islands before the complaint was brought"*.

I think that Quilter are saying above that as Mr V was aged 38 when the Cayman Islands land investment was made in 2012, then he had time to build savings within his pension by the time he reached retirement. But I think that Mr V's complaint is about the pension transfer advice that he received from Quilter. The advice was for Mr V to transfer both of his occupational pension schemes into a SIPP and Quilter has said that advice was unsuitable and has upheld his complaint. I don't think that Mr V's age is relevant to his complaint.

The section of the publication "*FCA Mission: Our Future Approach to Consumer*" that Quilter has referred to above says: "*In line with our principles of good regulation, we expect consumers to take reasonable responsibility for their choices and decisions. The precise degree of reasonableness will depend on the circumstances, for example a consumer who has taken regulated advice should be able to rely on it being appropriate. However, we also know that some consumers' low levels of financial capability, financial resilience or level of confidence in managing their money and finances, coupled with behavioural biases, make it difficult for regulators and firms to set a universal expectation of consumers. So, while we have regard to the general principle that consumers should take responsibility for their choices and decisions, we know that there are very real factors that might limit their ability to do so.*"

I think that Mr V did take regulated advice from Quilter to transfer his pensions, so that he could then invest into the Cayman Islands plot of land. I therefore think that the statement above is saying that Mr V should have been able to rely upon the regulated advice that he received from Quilter. Quilter also said in their response letter to Mr V's complaint that the Cayman Islands land investment was "*an obviously unsuitable and high-risk investment*". I therefore don't think that it was incumbent upon Mr V to try and obtain details of the value or marketability of "*an obviously unsuitable and high-risk investment*" before he brought his complaint to Quilter.

I also note that Mr V tried to obtain a valuation for the land in 2020, but his SIPP provider received no response from Firm A.

I think that Quilter is also saying above that Mr V, or his lawyers, need to establish as "*a fact*" that the Caymans Islands land owned by Mr V's SIPP is illiquid and has no value. But in their response to Mr V's complaint in December 2022, Quilter said that the Cayman Island land held in Mr V's SIPP was an "*undiversified, unregulated, illiquid investment*". I think that Quilter were then of the opinion that the land investment was illiquid.

However, I think that Quilter is now claiming that the land is not "*illiquid*" and has said that other plots of land are valued at more than double what Mr V's land was bought for. To support their claims Quilter has provided screenshots from Firm A's website and has said that Firm A currently has plots of land for sale in the same area of the Cayman Islands as where Mr V's land investment is located.

Quilter has also provided a screenshot from an online holiday let website of holiday accommodation available for renting. This screenshot is of course for a finished property development and not a plot of land, but Quilter argue that the screenshot is evidence that the area of the Cayman Islands where Mr V's SIPP's holds the land investment is a popular tourist destination. Quilter also say that there are dozens of other holiday rental properties available in the same area.

Quilter has also referenced a third party that, in addition to Firm A, is marketing plots of land in the same area of the Cayman Islands where Mr V's SIPP land investment is held, as evidence that Mr V's land is readily marketable.

I've carefully studied this further information and evidence supplied by Quilter. I think that

these do show plots of land for sale in the Cayman Islands as Quilter has said. But I think that using the value that Firm A is currently marketing plots of land for on their website cannot be taken as providing an accurate valuation for the actual plot of land held in Mr V's SIPP, or whether Mr V's land is readily marketable. Instead, I think it reasonable that for the actual plot of land owned by Mr V's SIPP to be accurately valued, an independent local land agent or equivalent would need to be engaged to provide such a valuation.

I therefore don't think it reasonable to assume that because plots of land in the same area are being advertised for sale by Firm A on their website at more than double the value that Mr V's land was bought for, then this means that Mr V's actual plot of land can be readily sold and is therefore not illiquid.

In their final response letter to Mr V, sent in December 2022, Quilter said: *"(Quilter) ought to have taken into consideration Mr V's proposed investment when advising on the switch to the SIPP and positively advised against a switch where it was to facilitate such an obviously unsuitable and high-risk investment, involving moving Mr V's pension funds to a structure which was an undiversified, unregulated, illiquid investment, and would represent his only pension provision, an outcome carrying obvious signs of consumer detriment"*.

I think that as Quilter are saying that the investment in the plot of land was *"obviously unsuitable and high risk"* then Mr V should not have been advised by Quilter to transfer his two pensions to facilitate the investment in land in the Cayman Islands.

I therefore don't think that it would be fair or reasonable for Mr V to have to retain an *"obviously unsuitable and high risk"* investment within his SIPP, which would continue to carry *"obvious signs of customer detriment"* for him, which he would then have to try and sell.

Mr V's original lawyers said Mr V would be left with selling a property in a foreign country. Quilter's counter argument was that Mr V was happy to buy an asset *"in a foreign country with different laws and regulations"*. But as Quilter have said, they should have positively advised Mr V not to transfer his pensions to facilitate the investment, but Quilter failed to do this. I therefore don't think it reasonable or fair that given Quilter's failures, Mr V is left with trying to sell the plot of land from his SIPP.

Mr V has said that his SIPP provider tried to contact Firm A in 2020 to obtain a valuation, but they received no response from Firm A. Quilter has argued that Mr V should try and contact Firm A to obtain a valuation. But I think that Mr V's SIPP provider has tried to contact Firm A to obtain a valuation and has had no success.

Quilter has however referred to the SIPP valuation produced in 2019 by Mr V's SIPP provider as evidence that the land was then worth £27,500. I have seen a copy of this valuation and it does show the value of the SIPP land investment at £27,500, together with a very nominal amount remaining as cash. No other SIPP assets are shown in the valuation.

However, as I've said above, Mr V's lawyers say that his SIPP provider has had no contact with Firm A since 2013.

I therefore think it's more likely that when showing a value of £27,500 in the 2019 SIPP statement, Mr V's SIPP provider is quoting the amount paid for the land in 2012 and not a recent valuation. I therefore don't think that the value of £27,500 shown in the 2019 SIPP statement can be taken as an accurate value for what the plot of land was worth then, or what it may be worth now.

Mr V did make an investment in land in the Cayman Islands through his SIPP in 2012. However, to facilitate this investment, Quilter advised Mr V to transfer his two occupational pension schemes into his SIPP, advice that Quilter has now said was unsuitable.

I therefore think that the outcome proposed by Quilter would leave Mr V retaining an unsuitable investment within his SIPP, with no guarantee of its value or that it can be sold within the next five years. I also think that Mr V would have to deal with the issues, complexities and time that could be involved with selling the plot of land in the Cayman Islands from his SIPP. I don't think that this would be a fair or reasonable outcome for Mr V.

As I've said above, I've not seen any evidence which shows that the plot of land held in Mr V's SIPP can be readily sold, or at what price it could be sold at. Also, in December 2022 Quilter described the land as an illiquid investment.

Quilter state they believe Mr V will be able to sell this asset within five years. But this is still considered in the redress below, whilst still classing the land as illiquid.

Therefore, on balance, I think that it's fair and reasonable that the Cayman's Islands land investment held in Mr V's SIPP should be classed as an illiquid asset and its value put at zero when calculating compensation due to Mr V.

Putting things right

I now turn to how Mr V should be compensated for the delays identified above.

For the reasons given above, I think that a reasonable approach would be for Quilter to put Mr V back in the position he would have been in, as far as is reasonably possible, had it not been for their failings.

Quilter should therefore make an assessment to consider what, if any, losses Mr V suffered as a result of their advice to transfer his two occupational pension schemes into a SIPP to facilitate the purchase of a plot of land in the Cayman Islands. Quilter should:

- Calculate the end date value of Mr V's SIPP portfolio. This is the current value of Mr V's SIPP portfolio. If, at the end date, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, Quilter should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to Mr V's SIPP provider. This amount paid by Quilter should be included in the actual value before compensation is calculated. If Quilter is unable to purchase the illiquid investment, the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Quilter may wish to require that Mr V provides an undertaking to pay them any amount he may receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Quilter will need to meet any costs in drawing up the undertaking. The end date value of Mr V's SIPP portfolio is figure "X".
- Calculate the notional value of Mr V's SIPP at the end date assuming that Mr V's pension portfolio had remained with his previous two pension providers until the end date. Quilter will need to contact Mr V's previous pension providers in order to complete their calculation. Any additional sum paid into Mr V's SIPP should be added to the notional value calculation from the point in time when it was actually paid in. If, however, Mr V's previous pension providers are unable to calculate a notional value, Quilter will need to determine a fair value for Mr V's investment instead, using the following benchmark: For half the investment: FTSE UK Private Investors Income

Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmarks, which are then used instead of the notional value in the calculation of compensation. The notional value of Mr V's SIPP portfolio is figure "Y".

- The notional value ("Y") should be compared with the actual value ("X") of Mr V's pension as at the end date. If the actual value ("X") is greater than the notional value ("Y"), no compensation is payable. If the notional value ("Y") is greater than the actual value ("X"), there is a loss and compensation is payable.
- If, having completed their calculations, Quilter identify a loss they should also pay interest on this loss, calculated from the end date to the date of settlement at 8% simple.

If there is a loss, Quilter should pay into Mr V'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 V's pension plan, it should pay that amount directly to him.

However, had it been possible to pay into the plan, it would have provided Mr V with 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 V won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr V's actual or expected marginal rate of tax at his selected retirement age. I think that it's reasonable to assume that Mr V is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%.

However, if Mr V 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%.

I think that Mr V's SIPP only exists because of the investment in the plot of land in the Cayman Islands. So that Mr V's SIPP can be closed and further fees that are charged to be prevented, the Cayman Island investment needs to be removed. I've set out above how this might be achieved by Quilter taking over the land investment, or this is something that Mr V can discuss with his SIPP provider directly.

But we don't know how long that will take as third parties are involved, and we don't have the power to tell them what to do. If Quilter is unable to purchase the Cayman Islands land investment, then to provide certainty to all parties, I think it's fair that Quilter pay Mr V an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for Mr V's SIPP to be closed.

Why is this remedy suitable?

I've chosen this method of compensation so that if Quilter are unable to obtain a notional value from Mr V's previous pension providers, then they will still be able to complete the notional value calculation using the proxy that I've detailed above.

Mr V has said that his investment objective was to achieve income together with some growth, but with a small level of risk to his capital.

I think that the average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return with low risk to his capital. The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. I think that it's a reasonable measure for an investor prepared to take some risk to get a higher return.

I therefore think that the above detailed equal balance of the FTSE UK Private Investors Income Total Return Index and the average rate of return from fixed rate bonds would reasonably meet Mr V's investment objective and risk profile.

In addition, Quilter should pay Mr V £250 as compensation for the distress and inconvenience that he's suffered as a result of their failings.

My final decision

My final decision is that I uphold Mr V's complaint against Quilter Financial Limited and Quilter Financial Limited should compensate Mr V as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 27 December 2023.

Ian Barton
Ombudsman