

The complaint

The estate of Miss I complains that Quilter Financial Services Ltd (Quilter) failed to provide the product Miss I required when it advised her to transfer to a Self-Invested Personal Pension (SIPP). As a result of this, withdrawing her tax-free cash took longer than it ought to have done and the fund value fell in that time. It is also alleged that a pension was transferred without her authority.

What happened

Miss I contacted a firm, who Quilter are responsible for, for advice about her pension arrangements.

In July 2021 Quilter recommended that Miss I transfer an Occupational Pension Scheme and another smaller pension to a SIPP.

The transfer of the personal pension was received in October 21 and the OPS in November 21. However, Miss I's partner enquired why the personal pension had switched as she had told Quilter that she had changed her mind about transferring it.

In January 2022, Miss I attempted to withdraw tax free cash from the SIPP but the SIPP provider said this couldn't be done without Quilter's involvement. This was because the funds were uncrystallised.

Quilter said as Miss I had chosen not to pay for ongoing service it would cost £500 for it to carry out the work. Or Miss I could remove it from her plan and do it herself. Miss I's partner on her behalf complained as they'd believed she already had flexi-access drawdown and that the product should've been ready to use. He also stated that they'd made clear they wanted to end the relationship with Quilter and were surprised to find they were still attached to the plan.

Miss I was eventually able to take the tax-free cash in July 2022. But in this time the fund value had fallen and less tax-free cash was paid than if the product had been setup for immediate withdrawal.

Miss I's partner complained on her behalf. He said that they were under the impression that they already had flexi-access drawdown and didn't need anything further from the adviser to access their money. They made it clear they didn't want an ongoing service so the adviser ought to have made sure the product was in that format. He felt that the adviser had purposely left this in place so further advice/services would be required from Quilter. He also said it had been made clear prior to the transfer that they would be looking to access the tax-free cash and therefore the product they'd received was unsuitable.

Quilter responded to say it disagreed it had done anything wrong. And didn't uphold the complaint.

The complaint was submitted to this service and Miss I's partner added that Quilter had produced forged documentation to cover up that Miss I hadn't requested the transfer of the

personal pension. Quilter said it completely disagreed with this statement and this should be a matter for the police, if Miss I's partner wished to take it further.

Our investigator looked into matters and upheld the complaint. In summary he said:

- With regards to the personal pension, at the time it was agreed Quilter would return the commission on the transfer. And Miss I and her partner had been happy to leave the funds from this transfer in the SIPP. They then accessed these funds as part of the 25% withdrawal. So, a resolution had already been reached in relation to this matter.
- Miss I had thought she was entering into a flexi-access drawdown product and the investigator said the evidence suggests this is what the adviser thought he'd set up as well. As initially he told Miss I's partner to go back to the provider to explain it was wrong when it had told them that more work was required to access the funds.
- Whilst it had been recorded Miss I didn't require income or tax-free cash, emails prior to the transfer from Miss I's partner, indicated that they would look to access the tax-free cash. Therefore Quilter ought to have provided a product that allowed her to access the tax-free cash immediately.
- He concluded that Quilter should compensate for any loss due to the delays and pay 8% simple interest on top.

Quilter disagreed with the investigator's findings in summary it said:

- In relation to the personal pension, the transfer could've been reversed as it was within the cancellation period but the client suggested if the commission was refunded she would be happy to keep the advice and transaction as they were. The adviser said as a gesture of goodwill he agreed to this and reimbursed Miss I in full
- The claims of falsification of documents is totally unsubstantiated and without merit. The client had previously said she'd not received the suitability report until the adviser produced evidence showing signatures and emails confirming she had read it and had no further questions.
- As the client had not requested that any income was required in the transfer process the product was suitable. The product would've been the same regardless of whether Miss I required tax-free cash or not.
- Had Mrs I said she needed immediate access to the tax-free cash then the funds would've been crystallised and allowed flexi-access immediately. But Miss I had not done so.
- Miss I didn't want to pay an initial fee and declined the ongoing service agreement. She was reverted to a Re-active Service as explained in the suitability report.. *'You have declined to accept the offer of the Ongoing Service. The initial fee explained above is deducted as set out to pay for the services to date only. We will not routinely provide further services without your explicit request, and you accept that further services may be subject to an additional fee. I will not assess the continued suitability of your holdings and will not send you an annual Statement of Continued Suitability'*.
- Without this in place, to access the tax-free cash Miss I either needed to contact the provider and sort it out herself or she could've elected to get the adviser to do it for

her. The fact it took seven months is down to failings on her part and Quilter shouldn't be held responsible for this.

- The first the adviser had known about the intention to take tax-free cash was the email of 19 January 2022. This was after the date of the transfer and so after the date the adviser was paid up to, to act on her behalf. Miss I had many months between the advice and the transfer completing to instruct the withdrawal of funds, this would've been an easy task for the adviser.
- Miss I had opted to do all future administration herself by declining the ongoing servicing agreement. The delay's in accessing flexi-access drawdown were her own doing as the product had been suitable.

Very sadly whilst the case was awaiting a final decision, Miss I passed away. The complaint was then brought on behalf of the estate of Miss I. Miss I's partner said in relation to the investigator's recommendation and Quilter's comments:

- He believed Quilter had used two different versions of Miss I's authority forms to make it look like she had authorised the transfer. The authority form provided was missing a page that showed the details of the scheme involved. And the code on the top of the forms showed it was in relation to the OPS transfer and not the personal pension.
- He wanted action to be taken regarding this and our website says fraud is something we can consider.
- Quilter should be brought to account for this and to stop this behaviour being repeated.

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.

And having done so I agree with the findings reached by our investigator and for broadly the same reasons. I'll explain why.

Before I set out my findings, I'd like to pass on my condolences to Miss I's partner.

Both parties have made a significant amount of points and submissions and I have briefly summarised above, what I consider to be the key arguments. We are an informal dispute resolution service and part of my role is to get to the heart of the matter. So whilst I've considered everything that has been submitted, I do not mean it as a dis-service by not commenting or referencing every point made, this is simply a reflection of our role.

The transfer of the personal pension

Miss I's partner wants us to investigate further in regard to the transfer of the smaller personal pension into the SIPP. He believes documentation has been forged to meet Quilter's arguments. And he wants action to be taken regarding this. However, our role is to put customer's back into the position they would've been in (or as close as possible) but for the error made by the business.

Its not clear from the evidence we do have what occurred and both parties dispute what the other has said. However, as the investigator explained, a resolution was already reached on the transfer prior to the complaint reaching this service. If I was to find that the transfer shouldn't have proceeded, to resolve the matter we'd look to return the funds to the previous provider. But the evidence shows that Miss I at the time was happy to keep the funds within

the SIPP and accepted a refund of the commission charged by the adviser. Miss I then used these funds as part of the tax-free cash withdrawal process.

Therefore, I don't think any further investigation of this point is required, if a mistake was made it is not for us to put in place punitive measures, only to put things right for the customer. But as a resolution was reached at the time, I will not comment on this matter further.

Did Quilter provide Miss I with the correct product and did it act fairly and reasonably?

Quilter has argued that it provided suitable advice because the product Miss I transferred to would've been the same whether she required tax-free cash or not. However, I don't think this is the key question, the crux of the matter is whether the funds should've been crystallised so that Miss I could access her tax-free cash without further issue.

The adviser says it was clearly recorded at the time of advice that Miss I wouldn't require any income or tax-free cash and therefore the funds were transferred uncrystallised. And the first mention of the tax-free cash being required was after he'd already finished the work he'd been employed to do, after the transfer had been completed on 19 January 2022. However, I disagree.

The suitability report said *'Another key component to flexibility is that you can access capital in ad-hoc lump sums, which can meet any unforeseen costs or help with future capital needs such. Access for further lump sums is attractive to you as this will provide peace of mind that you have money on demand if needed'...a transfer will enable you to have control over your fund according to the 'Flexi Access Drawdown' rules... This will enable you to take the level of benefits you need, as and when you need it, if at all'.*

The adviser seems to be arguing that as this would still be the same product, the product was suitable and the above is correct as the product did allow this. But I think it's clear Miss I would've thought she could easily access flexible drawdown without any further advice, fees or administrative changes being required to access flexi-drawdown.

And I think the email dated 13 October 21 (in advance of the transfer) from Miss I's partner makes clear they would be looking to access the tax-free cash. After receiving the suitability report which said in one place:

'You do not expect to need to withdraw any income from your pension funds in your lifetime.'

Mr I responded to ask if this was important as:

'would want to access the 25% tax free and possibly smaller regular amounts up to tax free yearly limit - does the 25% immediate drawdown preclude any more drawdowns for the year?

*and is this payable on transfer or do I have to apply to **redacted** (SIPP provider) personally to obtain the drawdown sum'.*

I think this is a clear indication that funds would be requested. And it ought to have brought about further conversations between the adviser and Miss I and her partner to make sure the SIPP was in the correct position and suitable for their needs.

Had this occurred, I think it would've become clear that Miss I would be wishing to access her tax-free cash upon the transfer completing (in reality she did attempt to do so).

The adviser ought to have made sure Miss I understood the implications of transferring uncrystallised. Especially as she said she didn't need any ongoing service as once the transfer had completed, they wouldn't require future services.

It appears from the evidence, although this seems to be now disputed by the adviser, that he thought Miss I would be able to take the tax-free cash with ease and without his involvement or further processes. The suitability report reads like this is the case and when Miss I's partner made him aware in email exchanges between them and the provider that they were having issues withdrawing funds, the adviser responded to say:

*'the plan is already set up for Drawdown and doesn't need any alteration to its current state. Embarrassing as it is, you're going to have to explain their own product to **redacted** (the provider).'*

This was in response to the copied and pasted response from the provider in the email exchange referred to above. Miss I's partner then said he'd spoken to the provider and they'd said it was not set up for drawdown as the funds were 'uncrystallised'.

'your adviser will need to key in "drawdown pro or lite" request online and we can action that in 11 working days.'

The adviser responded to say:

*'Yes, it appears your funds are still completely uncrystallised. With **redacted's** (SIPP provider's) statement quoting the adviser needs to carry out drawdown lite, at this current time you opted for a reactive service and so do not have an ongoing adviser charge on your policy which subsequently means we cannot carry out any drawdown on the plan. You are in a plan which can facilitate flexible access drawdown, however, as **redacted** have stated, you will require an adviser to carry this out, it is not something you can do yourself.'*

The adviser then went on to explain that the terms Miss I had been provided with set out the cost of this administration.

However, I think it's clear that the adviser was at the time of transfer unaware that Miss I wouldn't be able to withdraw funds seamlessly. It seems he didn't know the funds were uncrystallised and at this point I think acting fairly he ought to have arranged for the tax-free cash to be withdrawn with no further charge to Miss I. I say this because as set out earlier, he'd ought to have been aware Miss I intended to take tax-free cash from the plan.

I don't think the adviser acted fairly here. Quilter has made the point that it shouldn't be held responsible for the nearly seven months it took for the tax-free cash to be withdrawn by Miss I due to mistakes made by her in this process. However, had it acted in Miss I's best interests initially and provided her with a product in line with her requirements this wouldn't have occurred. So, I think it's fair and reasonable to hold Quilter responsible for any losses that did occur.

Quilter had a responsibility as the expert and after being paid for financial advice to understand the product that Miss I required. Had it done so, I think it ought to have made sure that Miss I's funds were crystallised prior to the end of their working relationship. I think it's clear Miss I believed that she would be able to withdraw funds without the further involvement of Quilter and that her funds were already in position to use as flexi-access drawdown. I think this belief was fair and reasonable based on what the adviser had told her, and the subsequent issues were caused by the adviser's errors in the advice and transfer process.

So, I am upholding the complaint. The investigator set out how to redress matters on a simplified basis. But I think this represents a fair and reasonable method to put things right, as set out below.

Putting things right

Quilter should refund the difference between the actual value of the 25% tax-free cash Miss I withdrew compared to what she would've been able to withdraw on 3 January 2022 – which is when she first requested tax-free cash from the provider.

If there is a loss, Quilter should also calculate 8% simple interest on this sum. This should start from 3 January 2022 until the date it is notified of The Estate's acceptance of my decision. This should be the calculation date.

Any charge paid by Miss I in relation to accessing the funds should also be refunded from the date it was paid with 8% simple interest added to the date it is notified of The Estate's acceptance of my decision.

Once Quilter has been notified of The Estate's acceptance of my decision it has 28 days from that date to make payment. If payment is not made in that time, 8% simple interest should be added to the loss established on the calculation date until payment is made.

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

Quilter may require the Estate's authority to access the information to carry out these calculations. The Estate should provide this in a timely manner or if accepted by Quilter provide the evidence itself to Quilter.

My final decision

I uphold The estate of Miss I's complaint against Quilter Financial Services Ltd and require it to put things right as set out above, upon notification of the acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss I to accept or reject my decision before 19 February 2024.

Simon Hollingshead
Ombudsman