

## **The complaint**

Ms H is represented by her financial adviser, who complains on her behalf, about the execution of an instruction to pay a tax-free lump sum from her Collective Retirement Account (CRA) by Quilter Life & Pensions Limited (Quilter).

Ms H's representative says Quilter didn't follow her instructions and sell a proportion of her holdings, in order to fund the lump sum proportionately from the assets in her portfolio. Instead it was paid directly from the cash held within her account.

The representative also says the information in Quilter's illustration was misleading as it indicated that the tax-free lump sum would be funded according to the instructions, which were to sell assets proportionately. So, it says Quilter gave the incorrect impression that the tax-free lump sum would be funded by selling assets across the portfolio.

Ms H's representative says as that proportion of her portfolio has remained invested at risk, instead of in cash, Ms H has suffered a loss because the value of those investments has fallen.

## **What happened**

In early October 2021 Ms H met with her financial adviser to discuss her pension portfolio with a view to taking a tax-free cash lump sum and regular income payments from her CRA. It was also decided that she would move a proportion of her invested portfolio from the funds the wealth portfolio was invested in, to cash, to reduce the level of risk.

Later in October 2021 Ms H gave instructions to Quilter, through her financial adviser, to change the asset make-up of her portfolio, so that a larger proportion of it was held in cash in order to try and reduce the level of risk overall. The instructions asked for a switch so that the proportions would be 67% invested in the wealth fund and the remaining 33% held in cash.

On around 11 and 12 October 2021 a proportion of the funds were sold in line with Ms H's switch instructions, so that approximately £45,000 was then held in cash.

At the beginning of November 2021, following an enquiry from Ms H's adviser, a personal key features illustration and information summary detailing the payment out of a tax-free lump sum was issued by Quilter.

At around that time instructions were given by Ms H's adviser, on her behalf, to pay a tax-free lump sum of approximately £36,000 and to commence a monthly income payment from the CRA. Those instructions indicated that the payments should be sourced proportionately across all assets.

Shortly after, in November 2021, Ms H was paid a tax-free lump sum from her pension, but it was sourced from the cash held within the CRA.

In August 2023 Ms H's financial adviser made a complaint on her behalf. He said that Quilter hadn't complied with Ms H's instruction to fund the payment by selling assets proportionately, which had resulted in a larger proportion of Ms H's pension portfolio remaining invested at risk, instead of in cash. He said that as a result Ms H had made losses on her portfolio.

Quilter didn't uphold Ms H's complaint. It said that it had complied with Ms H's instructions to pay a tax-free lump sum and income, in line with the terms and conditions of the account. Quilter said the terms and conditions explained that any tax-free cash lump sum payment would be made out of any cash available in the CRA and it referred to section 15 of the terms and conditions. It said if there was insufficient cash, then assets would be sold to source that payment in line with the instructions given by the account holder.

Quilter said in Ms H's case, the amount held in cash had been sufficient to fund the payment.

Quilter disagreed that it was responsible for any investment loss. It pointed out that the payment had been made nearly two years before and said this issue should have been brought to its attention much earlier, so that changes to the portfolio could have been made.

Ms H's representative disagreed and reiterated that the information Quilter had provided had been misleading. Her representative then referred the complaint to our service on her behalf.

Our investigator considered Ms H's complaint but didn't think it should be upheld. He noted that Ms H had met with her adviser, and it had been decided that she would move £45,000 to lower risk investments and take a tax-free cash lump sum. The investigator said that the £45,000 had been moved into cash in October 2021 and that the cash withdrawal had taken place at the beginning of November 2021.

The investigator took into account the personal illustration which indicated the withdrawal was to be made 'proportionately across all assets.' He was satisfied that it was Ms H's intention for the funds to be sourced in this way, however he noted that the terms and conditions set out that the tax-free cash lump sum would be sourced from available cash in the first instance.

The investigator said it wasn't always the case that a sales illustration or instruction could set out all possibilities and that it was good practice to read the terms and conditions which would explain in greater detail how the product worked.

The investigator also said it was good practice to periodically review a transaction to ensure it had been carried out in accordance with instructions and to minimise the risk of something going wrong.

Ms H's representative didn't agree with the investigator's conclusions and in summary he said:

- Any agreement to the terms and conditions had been made on the basis of misleading information.
- It was not reasonable to conclude that Ms H or her representative (her financial adviser) understood what they were agreeing to as they believed their instructions

would be carried out.

- The term on processing the tax-free cash lump sum was unfair given the misleading information.
- The information provided by Quilter had been misleading and incorrect throughout this process.
- This was an unusual set of circumstances and the representative had been told by Quilter it would process the transaction in a different way.
- The representative disagreed with the investigator as it felt that Quilter had made a mistake.
- The representative acknowledged that an illustration couldn't cover every eventuality, but said it wasn't so much the lack of a warning that was the issue, but that the information provided was misleading.
- The representative revised the claim to approximately £24,000 which included about £2,000 in costs incurred by its firm in making the claim.

As no agreement could be reached Ms H's complaint was referred to me for review.

I issued a provisional decision where I upheld the complaint in part. I concluded that the information provided by Quilter gave Ms H and the financial adviser a misleading impression that its instructions would be followed with the money being sourced proportionately and that had they not been given that impression, they would have rebalanced the portfolio by giving a switch instruction on 5 November 2021.

However, I also concluded that it would be reasonable to expect Ms H to have looked at her account statement issued on 27 November 2021 and noticed the amount held in cash was lower than expected and the amount invested in the wealth portfolio funds was higher than expected. I also noted that her financial adviser had access to the online account and was able therefore to check the position as regards Ms H's investments.

So I thought new switch instructions could reasonably have been given on 2 December 2021 and the cut-off date for any losses would therefore be 2 December 2021 plus any additional time it would have taken for those instructions to be actioned.

Both parties were then given an opportunity to respond with any further representations they wished to make.

Quilter acknowledged and accepted my provisional decision.

Ms H's representative responded on her behalf and didn't agree with parts of the decision.

In summary he said:

- The period I had outlined for compensation was too short as Ms H wasn't in the country at the time the November 2021 statement was sent. He explained that she spent a significant proportion of her time abroad.
- He said that the point where it could be said she ought reasonably to have known

about the proportions of her portfolio being incorrect, was on 23 March 2022 when her financial adviser undertook a review of her portfolio.

- The representative also said the time on the statement indicated that it had been issued as a batch run so he said it hadn't been sent on that day. The representative said from experience with clients they generally didn't receive their statements until about a month after the statement date. So, he said the statement wouldn't have arrived at Ms H's UK address until the end of 2021.
- The representative said that Ms H needed representation because Quilter had denied liability when the case was straightforward, and the initial decision of our service was that the case should not be upheld. The representative also said that Ms H spent much of her time abroad and suffered from a medical condition, so they didn't want to put her under additional strain. Although the representative noted that he would not classify Ms H as vulnerable.
- The representative said there was a second period of loss from 1 August 2023 to the date of a final decision, which he said would be on 1 August 2024. He said that during this second period Ms H lost the gains she would have made if the error had been put right by Quilter at the point of disclosure on 1 August 2023. So, he said there should also be compensation to address that second period of loss.

### **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've carefully considered the points raised on Ms H's behalf in response to my provisional decision. However, my decision remains largely the same for the reasons outlined in my provisional decision, an extract of which is set out below and forms part of this decision, save for two amendments to the period of loss to be compensated which I will set out later in this decision.

#### Provisional decision

##### ***“What I've provisionally 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 am satisfied that Ms H was seeking to reduce the overall risk posed by her pension portfolio following a consultation with her adviser. And I can see that a switch request was made and completed in October 2021, so that the proportions of her pension portfolio were amended to 67% in a specified wealth portfolio and 33% in cash.*

*I am also satisfied that Ms H was looking to access her pension benefits at around that time and to be paid a tax-free lump sum of approximately £36,000.*

*An issue arose when the instruction was made to Quilter to pay Ms H a tax-free lump sum from the pension portfolio. The expectation of Ms H and her adviser was that the money would be sourced by selling assets proportionately across her portfolio. So that the proportions invested would remain at 67% and 33% respectively. I am satisfied, having considered the instruction document provided, that those were the instructions given and I can see those instructions are mirrored in the personal illustration.*

However, Quilter has pointed out that it carried out the payment of the tax-free lump sum in line with the terms and conditions of the account, and those expressly stated that it would use available cash held in the uncrystallised sub account to make the payment where there was sufficient cash there.

I consider section 15.3 of the terms and conditions for the Collective Retirement Account sets out the way the tax-free lump sum will be administered by Quilter, and it says:

*“Where you request a one-off payment of a tax-free lump sum we will use available cash held in your uncrystallised sub account to make the payment to you. Where there is insufficient cash available to pay the whole of the tax-free lump sum requested (including any lifetime allowance excess tax charge), you can instruct us to raise the money to pay your tax-free lump sum in one of the following ways:*

*a) by selling units from funds, ETIs (including model portfolios and Managed Portfolios) and cash proportionally, based on their value at the time of sale*

*b) by selling from specific funds, ETIs (including model portfolios and Managed Portfolios) and cash.”*

*I don't think that Quilter acted unfairly to Ms H by applying that term because the portfolio could be rebalanced once the lump sum payment had been made, or alternatively additional funds could have been transferred to cash prior to the payment, in order to account for this.*

*So, I agree with Quilter that it administered the payment in line with the terms and conditions and as those terms and conditions set out the way Ms H's Collective Retirement Account operates, I don't think Quilter has acted incorrectly in administering the payment in line with those terms.*

*However, I don't think that the matter ends there because I also have to consider the information that was provided to Ms H and her financial adviser by Quilter during this process and whether that information was clear, fair and not misleading.*

*I am satisfied that the instructions given by Ms H, via her financial adviser, asked for the funds to be sourced from all assets proportionately. The instructions document said:*

*“Asset selection method: Proportionally across all assets”*

*I consider that instruction indicates that Ms H was seeking for the money to be sourced across the whole portfolio, not just from the cash within the portfolio.*

*I appreciate Quilter's point that this wasn't an instruction it could follow unless there wasn't sufficient cash available. However, it didn't respond to say that was the case and I think what Quilter did say in the personalised key feature illustration gave the impression that the sum was going to be sourced in that way.*

*The illustration said:*

***“Where your tax-free lump sum will be paid from***

***We will pay your tax-free lump sum from your assets as requested.”***

And it then went on to look at where the drawdown savings would be invested and said:

***“Where your drawdown savings will be invested***

*The total amount Invested In each asset is shown below.”*

*It then detailed the amount being moved to drawdown in the following amounts: approximately £34,000 cash, approximately £73,000 model portfolio and the total as approximately £107,000, which broadly mirrored the proportions held following the switch instruction in October 2021.*

*So I consider the information provided by Quilter gave Ms H and the financial adviser a misleading impression that its instructions would be followed with the money being sourced proportionately.*

*I have also noted that the personal illustration refers to the key features document for the CRA and says that the illustration should be read together with the key features document. I have considered the key features document for the CRA provided by Quilter, and I don't think it gave information which would correct that incorrect impression, or that would have reasonably led Ms H and her adviser to make further enquiries to check the position.*

*So, I am currently minded to conclude that the information provided by Quilter in the personal illustration was misleading, and that if it hadn't been misleading, it is more likely than not that Ms H would have, through her adviser, taken action to rebalance the portfolio in the proportions set out in the switch instruction in October 2021.*

*I understand that the payment of the tax-free lump sum was made on 4 November 2021, so I think it is more likely than not that a switch instruction would have been made on 5 November 2021. So, using the same number of days that it took for the switch instruction to be actioned in October 2021, that should be the starting point for any loss calculation.*

*However, I agree with the investigator that it would be reasonable to expect Ms H and her adviser to periodically check the position with her pension portfolio, particularly after instructions had been given for a significant proportion of the account to be paid to Ms H. And I also agree with Quilter that it wasn't reasonable to bring it to Quilter's attention nearly two years after the event, because that meant opportunities were lost to remedy the issue.*

*I can see that quarterly statements were issued to Ms H by Quilter detailing the value of her account, where the monies were invested and the transactions that had taken place during that period. One of those statements was issued on 27 November 2021. That statement gave an asset value and a cash value and clearly showed that a large proportion of her portfolio was still invested at risk and that only approximately £9,000 was held in cash.*

*So, I expect think it would be reasonable to Ms H to have looked at the statement and noticed the amount held in cash was lower than expected and the amount invested in the wealth portfolio funds was higher than expected. I also note that her financial adviser had access to the online account and was able therefore to check the position as regards Ms H's investments.*

*So, noting the day the statement was issued, I think it would have more likely than not, been received on around 29 November 2021, and allowing a couple of days for the statement to be considered and contact to be made with the adviser, I think new switch instructions could have reasonably been given on 2 December 2021. So allowing for the time it would have taken for those instructions to be actioned (as before) that would be the cut-off date for any*

losses.

*The loss should be calculated by virtue of any loss in value of the investments that would have been sold but for the misleading information, between those dates. So the investments that would have been sold shortly after the payment of the tax-free lump sum in order to re-balance the portfolio to 67% wealth portfolio and 33% cash.*

*Quilter should calculate the notional value of Ms H's CRA, as at the date of any final decision along these lines, as if that additional amount had been held in cash between 5 November 2021 (or the date when that instruction would have taken effect if later) and 2 December 2021 (or the date when that instruction would have taken effect if later) – and for that period only. As I've said above, I'm satisfied that, by 2 December 2021, the position ought reasonably to have been rectified. The notional value should then be compared with the actual value of the CRA at the same date.*

*Any loss should, if possible, be paid into Ms H's Collective Retirement Account.*

*I note that Ms H's representative has also claimed for the costs it says it has incurred in bringing this complaint on Ms H's behalf. While of course Ms H is entitled to instruct a representative to act on her behalf, that doesn't mean that it is necessary in order to pursue her complaint.*

*This is an informal resolution service which is set up in such a way as to allow consumers themselves to bring their unresolved complaints to us. I don't think there is anything particularly complex about this complaint which necessitated representation, so I am not minded to make any award for costs incurred by Ms H's representative in bringing this complaint.*

### **Putting things right**

*As set out above, the difference in value of the investments that would otherwise have been sold, should be calculated. The notional value should be compared with the current value of the CRA as at the date of any final decision.*

*If there is a loss than that amount should be paid, if possible, into Ms H's Collective Retirement Account.*

*The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.*

*If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms H as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.*

*If Ms H has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. However, as it appears Ms H used her tax-free cash entitlement when she withdrew her tax-free lump sum, then a notional reduction of 20% should be made.*

*If this doesn't reflect Ms H's position with regards to her tax-free cash entitlement or her income tax rate, she should respond to this provisional decision setting out the actual position."*

I would like to address the points raised by Ms H's representative in response to my provisional decision.

The time period outlined in my provisional decision was too limited

Ms H's representative has said that because Ms H was living abroad at the time the statement arrived, she wouldn't have been aware of its contents. Her representative says the point when it would be reasonable to say Ms H ought reasonably to have been aware that her plan was invested in incorrect proportions was at the date of the next review with her adviser, which took place on 23 March 2022.

The representative also says, even if I don't accept that time period, the statement wouldn't have arrived at her UK address in all likelihood until the end of 2021, as the statement would have been issued as part of a batch run and their experience was that those types of statements arrived with clients about a month after the date shown on the statement.

I take into account that Ms H was living abroad at the time, so she didn't see the statement. I note her representative has also pointed out that this was in the aftermath of the COVID pandemic

However, I also take into account that Quilter sent the statement to the address it held for Ms H. So it wasn't Quilter's fault that Ms H didn't receive that information.

I have therefore considered when Ms H ought reasonably to have been aware of the information in that statement. I consider that as Ms H was living abroad for a prolonged period, it was reasonable to expect her to have taken some measures to ensure she would be kept updated with important financial information such as statements, and I think there were a number of ways she might have achieved this. I also note that her adviser had online access to her account.

However, I think that those measures would, it is more likely than not, have extended the time it took for Ms H to be aware of this information. So, looking at the matter overall, I consider it would be fair and reasonable to add a further 14 days to the time period I identified in my provisional decision.

In addition we have asked Quilter about the relevant timings for the issuing of the account statement dated 27 November 2021. It has indicated that the statement was produced on Saturday 27 November 2021 at 1:25 and its mailing provider would have commenced processing it on Monday 29 November 2021. It said the statement was issued in the post on the afternoon of Monday 29 November 2021 and sent by second class post, so the latest date it would expect it to have been received would have been by Thursday 2 December 2021.

So if we add 14 days to 2 December 2021, that takes us to Thursday 16 December 2021, and allowing a few days for the statement to be considered and contact to be made with the adviser (noting the weekend), I think new switch instructions could have reasonably been given on 21 December 2021. So I think the new cut-off date for losses should be amended to 21 December 2021 plus any additional time it would have taken to implement those switch instructions (using the time frame it took when instructions were given previously).

Whether the cost of representation provided by Ms H's representative should be paid by Quilter?

Ms H's representative has said that it was necessary for Ms H to have representation during

the complaints process for several reasons. He points out that Ms H was living abroad for a significant proportion of the time, and she was suffering from a medical condition. Her representative also notes that Quilter denied liability and our initial decision at this service was that the complaint shouldn't be upheld.

I am not persuaded on balance that any of those reasons made it necessary to obtain representation and that those costs were therefore reasonably incurred. Consumers who use our service are able to do so from another country particularly as there are several methods of communication available. In addition, while a medical condition may make matters more difficult, that doesn't mean that a consumer isn't able to bring their complaint to our service and we have help and support available for consumers to enable them to access and engage with our service.

I note that Quilter didn't uphold Ms H's complaint however it did inform her of her referral rights to our service if she disagreed with the outcome. Similarly, we have a two-stage process so while an investigator may reach the view that the complaint shouldn't be upheld, the consumer is then provided with the option to refer the matter to an ombudsman, as happened here, for a review. And I don't think that representation is necessary to access either of those processes and overall I am not persuaded on balance it was necessary in this case.

### Second period of loss

I don't agree that there is a second period of loss starting at the point where this matter was raised with Quilter in August 2023, for which Quilter should compensate Ms H.

As I have said, I think there was a point, at around the end of 2021, where I consider Ms H ought reasonably to have been aware that the proportions of her portfolio were significantly different to the outcome she had sought, and I consider there was a reasonable opportunity there to mitigate the loss by taking action to remedy the matter. And if that had happened then the issue would have been resolved before August 2023, so I don't think it would be fair and reasonable to hold Quilter responsible for a loss from August 2023 onwards.

I also note that there was a second opportunity to take action to mitigate any loss in March 2022, when a review of the portfolio was carried out by the financial adviser.

In addition, I think from what has been said by Ms H's representative, that it was clear at the point Quilter was notified of a problem in August 2023, that the portfolio was not being invested in the proportions envisioned by Ms H and her adviser. So I don't think there was anything to prevent switch instructions being given to Quilter at that time to change the proportions. I don't think that Ms H and her adviser needed to wait for Quilter to agree it had done something wrong.

### Summary

I think new switch instructions could reasonably have been given on 21 December 2021. So allowing for the time it would have taken for those instructions to be actioned (as before) that would be the cut-off date for any losses.

The loss should be calculated by virtue of any loss in value of the investments that would have been sold but for the misleading information, between the dates I have identified. So the investments that would have been sold shortly after the payment of the tax-free lump sum in order to re-balance the portfolio to 67% wealth portfolio and 33% cash.

Quilter should calculate the notional value of Ms H's CRA, as at the date of this decision, as if that additional amount had been held in cash between 5 November 2021 (or the date when that instruction would have taken effect if later) and 21 December 2021 (or the date when that instruction would have taken effect if later) – and for that period only. As I've said above, I'm satisfied that, by 21 December 2021, the position ought reasonably to have been rectified. The notional value should then be compared with the actual value of the CRA at the same date.

### **Putting things right**

As set out above, the difference in value of the investments that would otherwise have been sold, should be calculated, noting the period I have set out. The notional value should be compared with the current value of the CRA as at the date of this decision.

If there is a loss then that amount should be paid, if possible, into Ms H's Collective Retirement Account.

The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms H as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Ms H has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. However, as it appears Ms H used her tax-free cash entitlement when she withdrew her tax-free lump sum, then a notional reduction of 20% should be made.

### **My final decision**

My final decision is that Ms H's complaint against Quilter Life & Pensions Limited is upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 22 October 2024.

Julia Chittenden  
**Ombudsman**