DRN-5244379

The complaint

Mr W complains that Quilter Financial Services Ltd mis-managed his Self-Invested Personal Pension (SIPP) by allowing over £50,000 of cash to build up within the SIPP cash account. He also complains that he paid ongoing advice charges for a period where no service, or an incorrect service, was provided.

What happened

Mr W's complaint was considered by one of our investigators. She issued her assessment of the complaint to both parties on 1 November 2024. The background and circumstances to the complaint were set out in that assessment, so I won't repeat them all again here. But in brief, Mr W had a SIPP largely invested in a portfolio managed by an investment management company. He signed a client agreement with Quilter in August 2019. Quilter was to act as his financial adviser and in exchange for ongoing charges it would provide a review service.

An annual review report was sent to Mr W in June 2020 (following a meeting held in March 2020) which said the value of the SIPP was £506,339. Quilter confirmed that Mr W's current level of income (£3,500 gross per month) was satisfactory to meet his needs and the SIPP remained suitable.

Mr W was abroad between September 2020 and December 2021. During this period Quilter said it was unable to offer Mr W advice on his SIPP. No annual review took place in 2021. Quilter completed an annual review of Mr W's SIPP in January 2022. Again, it said that the SIPP remained suitable for Mr W. Quilter completed another annual review meeting in January 2023.

Mr W ended his agreement with Quilter in March 2023, and the ongoing advice charges were cancelled. Mr W subsequently complained to Quilter. Quilter offered to refund some of the ongoing advice charges that Mr W had paid. Mr W didn't accept Quilter's offer and referred the matter to us.

Our investigator noted that Quilter had offered to refund fees paid after Mr W's review in March 2020 up until December 2020. The investigator thought this was reasonable given no review had been provided. The investigator also noted that Mr W discontinued the on-going advice service after his January 2023 review. Quilter had offered to refund fees paid in January, February and March 2023. The investigator also thought this was fair given charges were paid in advance, and Mr W wouldn't receive a review in 2024. Quilter had also calculated what growth Mr W may have lost out on had the fees that were charged remained within his investment portfolio, which again the investigator thought was fair.

In respect of the build-up of cash, the investigator noted that the portfolio's investment management company had said it had received a formal instruction from the SIPP provider in May 2018 asking that it disinvest £3,000 per month plus an annual disinvestment of £1,000. This was to commence from October 2018 and March 2019 respectively.

Mr W had provided an e-mail from May 2018 sent from his adviser at that time to the SIPP provider confirming the regular disinvestment of £3,000 per month and £1,000 per annum to cover ongoing advice charges and income. The investigator said that whilst the instruction was from Mr W's previous adviser, it was her understanding that Quilter had agreed to take on the responsibility for reviewing the arrangements according to the mandate in place. The SIPP provider had confirmed to Mr W that the regular disinvestment could be cancelled, with an instruction received by his financial adviser. The investigator thought this was consistent with it being Quilter's responsibility to make sure that the amounts being disinvested remained appropriate for Mr W – particularly given the changes in the level of income he received.

The investigator said that the 2020 report confirmed that Mr W required an income of £3,500 per month from the SIPP. Between January 2021 and April 2021 (whilst Mr W was abroad) Mr W contacted the SIPP provider directly to make changes to his income – on a non-advised basis. Following the repayment of his mortgage in April 2021, Mr W reduced his regular income in May 2021 from £3,500 to around £1,818. This was subsequently reduced to £1,000 per month from May 2022.

The investigator said she hadn't seen any evidence that the changes to Mr W's income had been discussed in the January 2022 annual review. She thought this was something that Quilter should have been aware of, and that it should have discussed whether it was appropriate to continue building up the level of cash in the cash account and whether it was already sufficient to cover Mr W's income needs and fees for the next 12 months – until his next review. The investigator said there was again no evidence of these types of discussion in the January 2023 review, when a significant amount of cash had built up.

The investigator thought this was the kind of thing that would typically be discussed during an annual review. But she said she had seen no persuasive evidence that Quilter had discussed whether the regular disinvestments remained suitable for Mr W given he'd reduced the level of income he was withdrawing. The investigator didn't think Quilter had appropriately discussed the matter in the January 2022 annual review. She thought it should have been discussed and appropriate adjustments made to the disinvestments at that time.

Quilter didn't agree with the investigator's findings. It said, in summary, that although it understood our inquisitorial remit, it felt the complaint had become one of suitability and what should have been done using the benefit of hindsight.

It said the income itself was set up by another advice firm, and it wasn't responsible for that. When Mr W was abroad it couldn't advise him on withdrawals, and Mr W had set them up on his own without advice. It said it wasn't responsible for his decision.

Quilter said the cash as a percentage of the client's portfolio wasn't raised as a concern at the time due to the amount of income being paid and fees payable. And it thought that the accumulation of cash was in itself a hedge against the fluctuations in Mr W's portfolio. It didn't think it was an issue given the mechanics of drawdown and selling funds to ensure the income and fees were paid. Quilter said it wouldn't have known that the cash account would rise to the level it achieved in Oct 2023 at the time of the January 2022 review.

Mr W also made some further comments. In summary, his key points were that he thought the refund of charges should be for a twelve-month period rather than the nine months that Quilter had offered for its failure to provide the 2021 annual review. He also thought further charges should be refunded because of Quilter's failure to provide appropriate advice in the

January 2022 and January 2023 annual reviews. He said as these services weren't delivered properly he was justified in reclaiming the fees paid for them.

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 come to the same conclusions as the investigator, and largely for the same reasons.

Quilter has said it thinks the nature of the complaint has been changed towards suitability. However it's clear that Mr W raised concerns about the cash position as outlined in his complaint letters to Quilter, and then on the complaint form that he completed for this service and a copy of which was sent to Quilter.

Mr W was paying ongoing charges for Quilter to provide reviews. The Annual Review Letter dated 22 June 2020 said, amongst other things:

As part of our review we discussed several areas of your financial planning, from your current investments to Estate planning, and whilst not all of these areas were relevant to you it is important that we take a holistic view of your financial planning. This helps me to ensure that any policies that you hold are relevant for your ongoing financial needs and objectives.

The adviser went onto discuss Mr W's income requirements and withdrawals from his SIPP in that letter.

The January 2022 report included:

As part of our ongoing service we offer reviews in line with your chosen service level, to ensure that you are kept informed on performance, legislation and to ensure that your plans are maintained in line with your circumstances and objectives. This document has been produced to aid these discussions. and

We are committed to helping you achieve your financial objectives via an ongoing service that we hope you truly value. Part of that service is to inform you of the progress of your plans towards achieving your goals.

The January 2023 'Your Financial Planning Review' included:

Like any journey, achieving your long-term financial goals can be impacted by many things along the way. These can be things like changes to your personal or financial circumstances, objectives and wishes, investment preferences, or wider UK Government fiscal announcements around legislation and taxation.

As a key part of your ongoing advice service, your Financial Planning Review meeting provides an opportunity to discuss all these things with your financial planner, ensure the policies you have in place remain suitable, and where needed, explore changes to keep them on track.

In conducting its business with Mr W Quilter was bound to act in his best interests. It's clear that the reviews were to ensure that his investments remained aligned to his circumstances and objectives. In my experience this would involve a review of any changes in circumstances including changes to income requirements. This appears to be consistent with what was said in the annual review documents and with what actually happened in the

2020 review. But it doesn't appear to have been considered in the 2022 or 2023 reviews.

Mr W made his own decisions to reduce the level of income he was withdrawing. At the same time the existing disinvestment instruction to the investment manager remained in place. So the level of disinvestments from the portfolio resulting in cash paid into the SIPP cash account was significantly higher than was necessary. I recognise that Quilter wouldn't have been aware of this at the time that Mr W reduced the income withdrawals through his own instructions. But I think this ought to have become apparent during discussions about Mr W's financial circumstances and objectives during the 2022 review.

I do think it would have been apparent that without changing that disinvestment instruction there would be a significant build-up of cash over time – the level of disinvestment was a lot higher than that required to provide income and pay fees. I accept that a strategy to have a higher amount of cash in a portfolio might act as a hedge against fluctuations in the value of a portfolio. But that wasn't an agreed strategy here – it was a result of an oversight. I think it's more likely than not that Mr W would have chosen to reduce the level of disinvestment if the mismatch to the income and fees required had been identified and the corresponding build-up of cash.

I've thought carefully about what Mr W has said about the appropriate amount of fees that should be refunded. I don't think it's appropriate to refund the fees associated to the 2022 and 2023 reviews – those reviews were provided – albeit I accept that there were failings in those reviews. However the remedy for those failings is to put Mr W back into the position that he would have been in but for those failings. He would ordinarily have paid for the reviews. And he would, in my opinion, have reduced the level of disinvestment if it had been identified and discussed in the reviews. So working out Mr W's position and Quilter paying Mr W compensation if his financial position had worsened because of the amount of additional cash built up is the appropriate remedy for those failings. So I don't think Quilter need to refund fees associated with the 2022 and 2023 reviews.

Mr W has said he thinks he should have a refund of 12 months' worth of fees for the non-provision of the 2021 review. On the one hand I understand why Mr W thinks a refund of 12 month's fees are appropriate given he was abroad for a period and there was a failure to provide an 'annual' review. However on the other, Quilter has said that charges for reviews are paid for in advance and that a review was carried out in March 2020. Quilter tried to contact Mr W to arrange a review in January 2021, so I think it's likely that's when a review would likely have been completed and was nine months from March 2020.

Mr W signed his client agreement with Quilter in August 2019. The initial meeting for the 2020 review was in March 2020 – so well before Mr W had been with Quilter for 12 months, albeit further letters were sent at a later date, And the reviews for 2022 and 2023 were in January. So the reviews weren't necessarily aligned exactly with a twelve-month period. As I've said, Mr W signed the client agreement in August 2019. So he would have expected at least three reviews during his time with Quilter. Mr W did receive three reviews, but he was with Quilter and paid charges to it for several months longer than a three-year period.

I think there are reasonable arguments either way. However my role is to decide what's fair and reasonable in all the circumstances. Quilter has offered to refund the nine months' worth of fees plus the fees paid from January 2023. Having carefully considered the matter, I don't think that's an unreasonable offer in the particular circumstances.

Taking all the above into account, for the reasons outlined above and by the investigator, I think Mr W's complaint should be upheld.

Putting things right

My aim in awarding fair compensation is to put Mr W as far as possible back into the position that he would otherwise have been in had Quilter Financial Services Ltd acted appropriately.

In order to pay Mr W fair compensation Quilter Financial Services Ltd should:

- Determine the notional overall value of the SIPP assuming the disinvestment mandates had been correctly adjusted to reflect Mr W's income changes as from January 2022 and January 2023. The assumed reduction in the disinvestment from time to time should reflect the reductions in income as at the time of each review (i.e not future reductions in income). The notional value of the SIPP should be compared to the actual value of the SIPP, and if the notional value is higher than the actual value then there is a loss and compensation is payable.

- If there is a loss, Quilter Financial Services Ltd should pay such amount into Mr W's pension plan to increase its value by the amount of the compensation and any interest. Quilter should allow for the effect of charges and any available tax relief. Quilter shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If Quilter is unable to pay the compensation into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided 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 W won't be able to reclaim any of the reduction after compensation is paid.

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

- Quilter should provide details of the calculation to Mr W in a clear, simple format.

- Quilter Financial Services Ltd has offered to refund fees paid after Mr W's review in March 2020 to December 2020 inclusive; the fees Mr W paid in January, February and March 2023, plus increases in line with a benchmark which I 'm satisfied is appropriate. I think this is fair in the circumstances. Quilter Financial Services Ltd should therefore refund those fees in line with its offer.

- Quilter Financial Services Ltd should also pay Mr W the £300 it offered for the distress and inconvenience caused by the matter.

- Interest at the rate of 8% simple per annum should be added to the compensation from the date of decision to the date of settlement if settlement isn't completed within 28 days of this service notifying Quilter of Mr W's acceptance of this final decision.

My final decision

My final decision is that I uphold Mr W's complaint.

I order Quilter Financial Services Ltd to calculate and pay any compensation due to Mr W as set out above under ‘Putting things right.’

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 14 March 2025.

David Ashley
Ombudsman