

The complaint

Mr J says Clear Financial Service (UK) Limited (CFS) was negligent in the services provided and the arrangements made when he tried to access benefits from his personal pension. He says this happened at a very difficult time for him personally, adding to his stress and worry. He says CFS's failings have also caused him financial detriment.

At the relevant time CFS was an Appointed Representative of Quilter Financial Services Ltd (QFS). As the principal firm, QFS is responsible for any acts and omissions of its agent. So, to keep things simple I'll just refer to it in this decision.

What happened

Mr J contacted QFS on 10 March 2022. He'd recently separated from his wife and needed money for accommodation, legal fees, and furniture. He wanted to access benefits from his Prudential Retirement Account. QFS says its adviser discussed his options for taking benefits from his pension and the most tax-efficient way to do this was to access tax-free cash (TFC). Mr J says he wasn't informed about any other options for taking his pension benefits or the different tax implications of these. It is a matter of fact Mr J ended up taking £10,000 TFC from his pension pot following this initial engagement.

After receiving the £10,000, Mr J realised he needed further funds and requested QFS to action a further withdrawal of TFC of £20,000 on 16 March 2022. There's agreement he put the request on pause while he firmed up how much money he required. QFS says that despite several calls he couldn't make up his mind what to do. Mr J says that the pause was for a couple of days after which he instructed it to proceed, but after chasing progress was informed by his adviser he'd forgotten to execute the transaction.

It's agreed that the request for a second tranche of TFC was progressed on 1 April 2022. QFS also accepts that it was at this point its advisor made a mistake, which is at the heart of much of Mr J's complaint. Instead of applying for TFC, QFS keyed a request to his pension provider to access an uncrystallised funds pension lump sum (UFPLS) of £80,000. This error had the effect of Mr J receiving £54,725 – the £20,000 TFC and the balance in taxable income.

Mr J says the first time he realised there was a problem was when he reviewed his bank account and found the unexpectedly large credit. He can't recall the exact date but says it would've been on or shortly after 7 April 2022. He contacted QFS upon discovery, which he says was unable to explain what had happened. He asked about reversing the transaction and says it told him this would entail returning all the cash, including the £10,000 he'd received earlier in March 2022. He also says the adviser maintained the payment was tax-free.

QFS says as soon as Mr J made contact about what had happened, its adviser realised the error and visited Mr J to explain in detail what had gone wrong and the implications, including on taxation. It says it didn't tell Mr J the whole payment was tax-free. It says it had made contact with Prudential immediately as soon as it found out about the payment and received confirmation the transaction could be reversed and the tax impact unwound if the

payment of £54,725 was returned. Prudential made clear that the process could take up to ten working days to complete. It says it made all this clear to Mr J.

Shortly after receiving the UFPLS, Mr J was placed on an emergency tax code by HM Revenue & Customs (HMRC). He says this was the first time he realised the payment of £54,725 hadn't been tax-free. He says he contacted Prudential and it confirmed he could return the recent payment if it had been made in error.

Mr J says he contacted QFS again and the adviser visited him at home. He thinks this was around 25 April 2022. He says he was told the payment couldn't be reversed in isolation and that the sum had been tax-free. Mr J says he called HMRC at the time so the adviser could hear HMRC confirm the payment was taxable.

Mr J says around this time he lost faith in QFS. With the help of his sister who was a solicitor, he sought the advice of Money Helper. It suggested he sought written confirmation from Prudential that the UFPLS could be reversed and that he should seek advice from an accountant.

QFS says that the involvement of Mr J's sister and the proposal to approach an accountant had the potential to complicate and delay matters with Prudential. Its adviser denies Mr J's assertion that in communicating its view here that its tone was aggressive.

On 26 April 2022, Mr J wrote to his adviser to request he inform Prudential the £54,725 had been withdrawn in error and request it to confirm in writing it would reverse the withdrawal. On 27 April 2022, QFS followed his instructions. The payment and associated tax was repaid to his retirement account on 19 May 2022.

Mr J raised a complaint with QFS on 28 May 2022 about what had happened. He summarised his position in the following terms:

"...There has been a catalogue of errors, negligence, and unprofessional behaviour from [your adviser]. In summary:

- his advice was negligent right from the beginning;*
- his management of the withdrawals was negligent;*
- his advice after the erroneous withdrawal had been made was negligent;*
- he failed to proactively seek to resolve matters and when I sought to do so gave further negligent advice;*
- he failed to provide me with the documents I requested;*
- he acted unprofessionally in seeking to deter me from seeking further help and advice which might bring to light what he had done;*
- he failed to explain to me directly what he had done, and I had to discover this myself;*
- he failed to apologise to me; and*
- he gave further negligent advice after the reversal was made."*

Mr J wanted redress to include a refund of fees for the period March-May 2022; reimbursement of the CHAPS fee for UFPLS transaction; compensation for his time and costs in getting things sorted out; and £5,000 in recognition of the trouble and upset he'd been caused.

QFS responded to Mr J's complaint, partially upholding his case in the following terms:

“We would again like to unreservedly apologise for the concern and inconvenience, which this matter has caused you. We do fully appreciate and understand that the error exacerbated what was already an extremely stressful time for you and rather than alleviate the stress, it compounded the issue.”

“Whilst we do believe that [our adviser] acted in good faith, did his best to assist you and took ownership of the error, we do acknowledge that you incurred added stress and unforeseen financial costs as a result of it. As such, we are upholding this part of your complaint.”

“In respect of the financial loss, you believe that you have incurred, we have contacted Prudential directly to ask for confirmation of this. This loss is currently being calculated by their Actuary Team and due to the complexity of the calculation, they have been unable to complete it prior to us issuing this "Final Decision Letter".

“As such, once in receipt of this information, we will contact you again and confirm whether or not you have in fact been financially disadvantaged as a result of the error and pay any redress due to you. This will ensure that you are placed back into the position you would have been in had the error not occurred.”

“For clarity, we have asked for Prudential to carry out this calculation between the date the incorrect transaction was processed and the date the funds, both the net lump sum and reclaimed tax, were received back in your account.”

“In respect of the ongoing adviser charges [our adviser] has been paid between March to May 2022, we do not believe that it would be fair or appropriate for these to be returned. These fees cover the ongoing servicing and reviews you receive from him and so whilst we accept that he made an error, we do not believe that they should be returned.”

“Regarding the CHAPS payment you incurred as a result of returning the funds, thank you for providing us with evidence of this. We can confirm that we intend to return the £20.00. We also wish to offer £500.00 for the trouble and upset, which this matter may have caused you...”

Mr J wasn't satisfied with QFS's response. He brought his case to this Service and reiterated the detail of his complaint points.

An Investigator considered Mr J's complaint and upheld it. He noted the difficulty of drawing conclusions from contested testimony with limited evidence available from the time of the advice. But he concluded QFS needed to do more to put things right. He recommended an increased award for distress and inconvenience. He also proposed an alternative method for calculating financial loss to that used by the firm.

QFS disagree with the Investigator. For example, it didn't think the communication from Prudential to its adviser on 2 April 2022 should've put him on notice that there'd been an error. And it disagreed with the proposed approach to assessing Mr J's loss on investment related to the incorrect UFPLS transaction.

As both parties couldn't agree with the Investigator's findings and conclusions, Mr J's complaint has been passed to me to review afresh and to provide a decision.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr J's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by QFS for Mr J. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr J's complaint.

I should note at this point the difference between the parties about what happened during their period of engagement between March 2022 and May 2022 is significant. Unfortunately the contemporaneous evidence provided to this Service about the events complained about is rather thin. I am sure both Mr J and QFS are as frustrated about this as I am.

That said, given the nature of the transactions taking place, I'm surprised that QFS has been unable to provide a better record of the information and guidance it was providing to Mr J. For example, its adviser says he informed him about all the options for and associated implications of taking benefits from his pension. It hasn't produced any documentation to support its position. This is a weakness.

There's little value in my rehearsing every difference between Mr J and QFS concerning events in 2022, where all I have is diametrically opposed versions of events, I can't know what was actually said and done. Nevertheless, there is sufficient agreement about the key issue – QFS's error in handling Mr J's second request to access benefits from his pension - and enough evidence from the time of the events to enable me to arrive at what I think is a fair and reasonable consideration.

Regarding Mr J's complaint that at no point during the period March 2022 – May 2022 did QFS inform him about the different options and implications of taking benefits from his pension, given what we know about his circumstances and objectives, I agree in broad terms with what the Investigator found:

“Accessing tax-free cash is the most tax-efficient way of withdrawing money from a pension and this is in line with what Mr J requested when he first approached [QFS]. I therefore believe Mr J would've made a tax-free cash withdrawal regardless of whether he was presented with all his options. I can't say Mr J has been disadvantaged, as the £10,000 tax-free cash withdrawal was the most appropriate option for him at the time.”

QFS accepts its adviser made an error in executing the second request from Mr J to access his pension benefits. While there was to and from between the parties prior to this which caused some delay to the transaction, and dispute about who was responsible for the bulk of this, the Investigator concluded:

“The evidence does show Prudential sent Mr J’s adviser an email on 2 April 2022 informing him the request for £80,000 had been processed. This means [QFS’s adviser] should’ve been aware of his error at this point and he has confirmed he was aware of this issue when he spoke with Mr J shortly after the funds were received.”

“[QFS’s adviser] didn’t meet with Mr J for three weeks after the funds had been paid and didn’t begin attempting to rectify the issue until he emailed Prudential on 27 April 2022. I believe this is a long time to wait before trying to reverse the withdrawal and, given Mr J’s personal and financial circumstances at the time, should’ve been completed as a matter of urgency.”

“Instead, it appears Mr J had to gather information himself from various sources about how to reverse the transaction. The emails dated 26 April 2022 suggest Mr J was providing [QFS’s adviser] with all the information about what he needed to do to reverse the transaction. I don’t think it is reasonable to expect Mr J to rectify [QFS’s] mistake.

QFS responded to the Investigator saying:

“We do not agree with this assessment. Whilst Prudential sent an email confirming the request for £80,000 had been processed, it is logical that [our adviser] would have understood this to mean that the crystallisation event (i.e. crystallising £80k in order to received £20k of TFC) had been processed. We therefore remain of the view that [our adviser] only became aware of his error once the client was in receipt of the funds.”

I disagree with QFS here. The message its adviser received from Prudential on 2 April 2022 said (bolding is my emphasis):

“We just wanted to update you on your recent submission for this client.”

*“We’ve now processed your money out request - Money Out Single **UFPLS** - £80000.00.”*

*“We know it’s important for your client to know when to expect this money in their bank account. We’ll always pay this as soon as possible but please refer to the information below, which outlines **the latest date your client will have to wait before they receive this payment** in their account.”*

*“**Single UFPLS: 14/4/2022**”*

This was clearly an opportunity for QFS’s adviser to have identified he’d executed an uncrystallised funds pension lump sum (UFPLS) and not just access to further TFC. It’s reasonable to have expected a qualified professional to have picked up on this. Instead there’s no evidence of his engagement to put things right until 26 April 2022.

We know the incorrect transaction was ultimately reversed. And Mr J later took out a further £10,000 TFC on 27 May 2022, after he’d parted ways with QFS. I think this shows he’d wanted to access more money from his pension, but the problems experienced with the incorrect UFPLS instruction meant there was a delay in him accessing the funds he required. So, I think it’s reasonable for redress to reflect this matter.

In carrying out an investment loss calculation for QFS, Prudential identified the period of 4 April until 19 May as being the period when Mr J’s funds were out of the market due to the incorrect UFPLS transaction. And it based the calculation on the £80,000 withdrawal.

So, because I've concluded Mr J should've had access to his second chunk of TFC for £10,000 from 4 April, it follows the investment loss calculation originally performed by Prudential isn't quite right, through no fault of its own of course. And that's as the Investigator provided for in his view.

Putting things right

I'm upholding Mr J's complaint. Quilter Financial Services Ltd needs to put him back into the position he'd have been in now, or as close as reasonably possible, had it not been for the things it got wrong.

So, I require Quilter Financial Services Ltd compensate Mr J for:

- The loss of use of the second tranche of his TFC of £10,000. It should pay him 8% simple annual interest on this sum for the period between 4 April 2022 when he should've received the funds, and 27 May 2022 when he did.
- The investment loss on the residual £70,000 that was moved from his pension fund in error and was out of the market between 4 April 2022 and 19 May 2022.
- The £20 CHAPS fee as already related to the UPFLS as already agreed.

When I'm considering a complaint like Mr J's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Mr J was going through difficult times when he engaged Quilter Financial Services Ltd. It made a serious error when trying to help him access benefits from his pension. This compounded the stress he was experiencing. And I note that the ramifications, for example in relation to sorting out his tax position with HMRC have been ongoing. It should therefore pay him £750 for the distress and inconvenience it has caused him.

Mr J requested a refund of adviser fees between March 2022 and May 2022. Since our approach is to return him to the position he'd have been in had there been no failings by Quilter Financial Services Ltd, I'm satisfied my other provisions do this. I also recognise that while the adviser made a serious error, he did nonetheless still provide a service for Mr J.

Mr J also requested that his costs for phone calls and professional advice be met. As the Investigator noted, he hasn't evidenced these costs above and beyond what he was already paying for. And since he didn't need to engage legal or accountancy services to resolve his complaint through this Service, which is provided for free, these are not expenses I will be asking Quilter Financial Services Ltd to reimburse.

My final decision

For the reasons I've already set out, I'm upholding Mr J's complaint. I now require Quilter Financial Services Ltd to put matters right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 5 May 2023.

Kevin Williamson
Ombudsman