

## The complaint

Mr K has complained, through his representative, about the advice he received from Quilter Financial Services Ltd to transfer his personal pensions to a Self-Invested Personal Pension (SIPP). He considers the advice was negligent and that he suffered a financial loss as a result of it.

## What happened

I issued my provisional decision on this complaint on 20 September 2023. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. I've copied the relevant parts of it below and it forms part of this final decision.

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*Mr K's complaint was considered by one of our investigators. He issued his assessment of the complaint to both parties on 10 July 2023. The background and circumstances to the complaint were set out in that assessment and are known by both parties. However to summarise, the advice to transfer (technically known as a switch) was given in early 2018. The investigator said at the time Mr K was looking to retire in about seven years' time, and he wanted an income of around £12,000 a year in retirement.*

*The investigator said Mr K was unhappy with the service he was receiving from his existing pension provider and with the high charges and low bonus rates (he was invested in with-profits funds). He had no investment experience, and was identified as having a low attitude to risk.*

*The investigator said Mr K was advised to transfer two pensions that were invested in with-profits to a SIPP. It was invested in a 'Conservative' fund.*

*Mr K subsequently complained to Quilter about the advice he'd been given, and when his complaint wasn't upheld he referred it to us.*

*Our investigator thought that the complaint should be upheld. He said that he'd taken into account relevant law and regulations, and what he considered to be good industry practice at the time. He said this included the Regulator's Conduct of Business Sourcebook (COBS) Rules which provided under COBS 2.1.1R that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

*The investigator referred to a report published in 2009 by the regulator at the time (the Financial Services Authority) which provided a checklist for pension switching that he said was still applicable. He said the checklist identified areas of concern which included:*

- *They had been switched to a pension that was more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason.*

The investigator said that he'd considered if transferring to a SIPP was in Mr K's best interest. And based on what he'd seen, he didn't think it was. He said Mr K had limited investment experience and a low attitude to risk.

The investigator said Mr K had to pay an advice fee, SIPP fees and ongoing advice fees. He said the suitability report indicated that the SIPP Mr K was being transferred to was more expensive than his existing pensions. The investigator said Mr K was already invested in a fund that was in line with his attitude to risk. He said the SIPP was at risk from market conditions and could go up in value as well as down. Although the with-profits funds weren't paying annual bonuses they were paying a terminal bonus, and Quilter should have considered this when it advised Mr K to transfer his pension.

Overall, the investigator said he didn't think transferring from one low-risk investment to another low-risk investment that was more expensive was in Mr K's best interest. So the investigator recommended that Mr K's complaint should be upheld. He went on to set out how he thought Quilter should calculate and pay fair compensation to Mr K.

### **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.

When Mr K's representative complained to the firm it complained about two personal pensions invested in with-profits funds with one pension provider (which I will call Provider 1), and another pension, also invested in with-profits, with another pension provider (I will call Provider 2). The investigator focussed on the two pensions held with Provider 1. However I've also considered the advice to transfer the pension held with Provider 2.

The suitability report for the two pensions held with Provider 1 said that the charges for the advice included a 2.1% initial charge, 1% ongoing charge, a fund charge and platform charge. The letter said that one of the existing pensions had charges of 1.7% a year, and the other had charges of 1% a year.

I note the key facts SIPP Illustration document said the charges were:

- A Product charge - 0.35% (after the adviser discount was applied)
- Advice charges – An initial charge adviser charge of 2.7% (which I understand was ultimately reduced to 2.1%), and a 1% ongoing adviser charge
- Investment charges – 1.09% other charges.

Although the charges on one of Mr K's existing plans was 1.5% this pension only represented a small proportion of the total transferred - £2,600 of around £40,000 transferred. So I think the charges on the other plans were key.

The charges on the other two plans – with Provider 1 and 2 – were 1% a year. The suitability report said the reduction in yield on the proposed new plan was 2.7% a year. Ultimately, the overall aim was to increase the level of Mr K's benefits at retirement. He was being transferred to a conservative fund presenting lower risks. So I think the 1.7% charges' differential was significant in deciding whether the new pension would be likely to outperform the existing plans to more than offset these higher charges. It was recorded that Mr K already had concerns about the high charges on his existing pensions. Yet he appears to have been switched to a pension with significantly higher charges overall.

*The suitability letter for Provider 2 [this should have said Provider 1] set out a table showing the annual bonuses added for the higher valued pension were 2% in 2014, 3% in 2015 and 2.5% in 2016. The bonuses for the lower value pension with Provider 1 were lower, but this only made up a small proportion of the transfer value. The suitability letter for Provider 2 set out a table of annual bonuses added for that plan. It showed annual bonuses of 4% were added in 2015, 3.75% in 2016 and 3.25% in 2017. And these didn't take into account any terminal bonus that could be added at maturity. So taking charges into account, the new fund, invested conservatively, would have needed to work hard to outperform Mr K's existing with-profits funds.*

*Although Mr K may have been disappointed with the annual bonuses he was also eligible for terminal bonuses. So I think the adviser ought to have explained that the annual bonuses weren't necessarily an appropriate measure of performance; overall performance would ultimately be reflected in both annual and terminal bonuses.*

*The charges that Mr K was paying in his existing pensions were lower overall than after he had switched. Mr K's with-profits pensions with Provider 1 and 2 provided some guarantees in terms of once the annual bonuses were added that wouldn't be taken away. The with-profits fund provided a 'smoothing effect', and at his selected retirement date Mr K would have been entitled to his fair share of the profits made by the fund over the entirety of his time in it. The with-profits fund was invested in a spread of asset classes. And Mr K would receive the full value if he took the benefits at his selected retirement date.*

*Taking all the above into account, I'm not persuaded that the additional costs of transferring were justified or that its benefits outweighed the extra costs incurred. In my opinion I don't think the chances of Mr K increasing his pension at retirement were improved by transferring, and I don't think the transfers were in Mr K's best interests.*

### **Putting things right**

*My aim in awarding fair compensation is to put Mr K as far as it's possible back into the position that he would likely have been in had Quilter not given unsuitable advice. I think Mr K would have remained in the With-Profits fund for all three pensions.*

*Quilter Financial Services Ltd should determine whether Mr K has suffered a loss by obtaining the notional transfer value of the pensions from the previous pension providers as at the date of a final decision. The value should be based on the assumption Mr K would have remained in the with-profits funds with Provider 1 and Provider 2. It should then compare this notional value with the actual value of the SIPP at the same date.*

*If the total notional value is higher than the actual value, Mr K has suffered a loss and compensation is payable.*

*If the actual value is higher than the total notional value then Mr K hasn't suffered a financial loss, and compensation isn't payable.*

*Any compensation payable should if possible be paid into Mr K's pension plan. 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 Mr K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.*

*If Mr K 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%. So making a notional reduction of 15% overall from the loss adequately reflects this.*

### **My provisional decision**

*My provisional decision is that I uphold Mr K's complaint. I intend to order Quilter Financial Services Ltd to calculate and pay compensation to Mr K as I have outlined above under "Putting things right".*

I asked Mr K and Quilter Financial Services Ltd to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr K, through his representative, said he accepted the provisional decision.

Quilter Financial Services Ltd didn't provide any further evidence or arguments for consideration.

### **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 seen no reason to depart from my provisional decision to uphold Mr K's complaint.

### **My final decision**

My final decision is that I uphold Mr K's complaint. I order Quilter Financial Services Ltd to calculate and pay compensation to Mr K as I have outlined above in my provisional decision under "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 November 2023

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David Ashley  
**Ombudsman**