

<b>Final decision</b>	
<b>Complaint by:</b>	Mr S Carne
<b>Referred to as:</b>	Mr C
<b>Complaint about:</b>	Quilter Life & Pensions Limited
<b>Complaint reference:</b>	██████████
<b>Date of decision:</b>	23 August 2023

## The complaint

Mr C complains that Quilter Life and Pensions Limited (Quilter) delayed the transfer of the cash part of his pension funds to his new pension provider (provider V), causing him financial detriment. He feels that Quilter's practice of not transferring cash until all other funds have transferred is unfair.

Quilter upheld Mr C's complaint and carried out a loss calculation which it said showed he'd suffered no loss as a result of the delays it caused. Mr C feels that Quilter's loss calculation was unfair. He says it didn't cover the actual loss to his funds, and that it wasn't the calculation that Quilter had promised to use.

## What happened

Mr C held a pension fund with Quilter. It was invested in five separate funds, with a further £██████████ held in cash.

Mr C said that he asked Quilter to transfer his pension fund to provider V on 2 September 2022. He said the receiving fund asked Quilter to transfer four of his five holdings in-specie and to liquidate the fifth holding into cash and transfer that as cash. The timeline shows that this request took place on 12 September 2022.

Mr C said that Quilter completed the request to transfer four of the holdings in-specie. He said that three of the four holdings were transferred in a timely manner. But the transfer of the fourth holding was delayed until late November 2022. As this delay was the result of an administrative problem with a third-party intermediary, Mr C doesn't hold Quilter responsible.

Mr C said that Quilter converted the fifth holding to cash in a timely manner. He said it was realised as cash with Quilter on 16 September 2022. And that the total amount of cash he then held with Quilter was £██████████. But that instead of transferring the cash to the provider V within a few days, Quilter held on to it for more than two months.

On 23 November 2022, Quilter transferred £██████████ [95% of the cash] to provider V but retained £██████████ [5%] for a further six days, at which point it was transferred.

Mr C said that between September and November 2022, he asked Quilter on several occasions to transfer the cash as soon as possible. But that it told him that it was its normal practice to transfer the cash last, once all the in-specie transfers had been made.

Mr C felt that he'd made a financial loss because of the delayed transfer. He said that he would've been able to purchase additional units if the cash transfer had taken place in a timely manner. He calculated that he'd lost more than £██████████. Mr C complained to Quilter on 22 September 2022.

Quilter issued its first final response to the complaint on 27 October 2022. It said that while it had received confirmation that three of the four in-specie funds had been moved to provider V on 12 September 2022, it was still waiting for the fourth in-specie fund to transfer. It said it had chased the fund manager to action the fourth transfer, but that it couldn't speed up the process.

Quilter said it wasn't delaying the cash transfer, as it was waiting for the fund manager. And that when funds were re-registered, it always moved the funds first. And that cash would only be

transferred once the re-registrations had completed. But it acknowledged that it did cause a slight delay as it'd authorised the outstanding stock transfer form later than the other three. Quilter said it would carry out a loss calculation once the funds had all been transferred to see if Mr C had been disadvantaged by the switch to cash.

Quilter said that as Mr C had requested the switch to cash, it wouldn't be able to complete the calculations from 2 September 2022. But that it would calculate any loss based on the date the transfer request was received and the date it would've switched if its normal process had been followed. It also offered Mr C £100 for the trouble and upset it had caused him.

Mr C still had concerns after receiving Quilter's response. He felt that his cash should've been transferred in September 2022. And that the fact that it hadn't been transferred until November 2022 had led to a loss.

Quilter replied to Mr C's points in its 2 December 2022 response letter. It said that £[REDACTED] [95%] of the cash holding had been released to provider V on 29 November 2022 and the remaining £[REDACTED] [5%] transferred on 6 December 2022. It said that the only asset that it had sold had been done so on the instruction of provider V. And that it had processed the sale in line with the instructions received. But it said it should've released the cash within its normal timescale of three working days, so by 23 November 2022.

To put things right, Quilter said it would ask provider V to assess Mr C's account position if provider V had received the cash by 30 November 2022 – five working days from when it felt it should've released the cash on 23 November 2022. And if that assessment showed that Mr C had incurred a loss due to the delay in issuing the cash payment, Quilter would put Mr C's pension fund with provider V back to the position it would've been in but for the delay.

Quilter also apologised to Mr C for having previously given him incorrect information. And said that it was its standard practice to act on an encashment request when received. And to transfer any cash holdings last, after all re-registrations had been completed. It also offered to increase its compensation for trouble and upset to £200.

Mr C was still unhappy with Quilter's response. So he wrote to it again on 12 December 2022. He still felt that Quilter should carry out the loss calculation he had suggested, rather than the one it had offered to do. He felt that he would've been able to buy additional units worth around £[REDACTED] if his cash transfer had taken place in September 2022.

Mr C also felt that Quilter's previous explanation that it didn't release cash to a receiving scheme until all assets had been confirmed as re-registered because it needed to deduct accrued fees and charges up until the point of closure before releasing the cash was unfair. He said that his cash was more than £[REDACTED]. And that it was unnecessary for Quilter to keep that amount of money out of the marked from mid-September to late-November 2022 on account of potential fees and charges. He also said that there had in fact been no fees or charges.

Quilter replied to Mr C on 16 December 2022. It said it hadn't instructed the sale to cash – provider V had. And that when it received such an instruction, it completed the sale as soon as possible. It said this meant that the price comparison it had offered in its previous response was invalid, because it had sold the fund at the correct time based on the instructions it had received.

Quilter also said that it couldn't know how long a re-registration transfer would take. So it couldn't know what fees and charges would be due by the time the transfer was finalised. It said this was why its procedure was to release the cash last. It said that the only delay it was responsible for was the delay between 23 and 29 November 2022, which it would address through the loss calculation.

Still unhappy, Mr C wrote to Quilter with further aspects of his complaint. He still felt that Quilter should've transferred the cash as soon as it had been realised. And that if it had been, he would've been around £[REDACTED] better off.

Quilter issued its last final response letter on 5 January 2023. It said that it had carried out a loss calculation based on the units remaining invested until ten working days before the transfer was finalised on 29 November 2022. And that this showed that if the encashed funds had remained invested up to 16 November 2022 the fund value would've been lower than the actual value. So it felt Mr C hadn't lost out financially. But Quilter increased its compensation offer for the trouble and upset caused to £400.

Quilter acknowledged that it hadn't handled Mr C's complaint to the standard it aimed to provide. And offered to increase the compensation to £400. It said this was in recognition of the incorrect information contained in its 27 October 2022 response. And the delay in completing the correct price comparison to address what had happened.

Unhappy with Quilter's final response, Mr C brought his complaint to this service. He didn't agree with Quilter's rationale for transferring the cash at the end of the process. And felt it was absurd to withhold over £[REDACTED] for more than two months in case there might be costs. He felt this also breached the Terms and Conditions of his policy, as he felt they required payments of cash to be made within ten working days of the instruction from the policyholder.

Mr C also provided this service with his own loss calculation. He said he'd adopted this calculation because Quilter had told him in its 2 December 2022 response that this was how the calculation should be carried out. He didn't agree with the loss calculation Quilter had actually carried out. He said this was the wrong calculation because it wasn't the calculation that Quilter itself had said should be made. And because Quilter's calculation was based on the hypothesis that it should've delayed liquidating the fund, despite its position that it must liquidate funds immediately on being asked to do so and that it would be a breach of the Terms and Conditions of the policy to do anything else.

Mr C felt that Quilter should make a compensatory payment into his pension account with provider V to put him back into the position he would've been in if the cash had been transferred in September 2022.

Quilter initially objected to this service investigating the complaint on the basis that it should've been referred to The Pensions Ombudsman (TPO) instead.

Our investigator didn't consider that this was a complaint that would be more suitable for determination by TPO. He noted that as there was an overlap between our jurisdiction and the TPO's, ultimately it was down to the consumer which one he brought his complaint to. And as Mr C had brought his complaint to this service, we would look into it.

Our investigator felt that Quilter had offered a reasonable amount of compensation for the trouble and upset it had caused. But considered that Quilter should carry out a different loss calculation from the one it had proposed. He felt that once Quilter had received notification from provider V that the final re-registration had completed on 18 November 2022, it should've transferred the entire remaining cash amount in ten working days, in line with the Terms and Conditions.

Quilter agreed with our investigator.

Mr C didn't agree with our investigator. He still felt that the Terms and Conditions of the policy required payments of cash to be made within ten working days of the instruction from the policyholder. And that our investigator had misinterpreted the second sentence of Clause 20.9 of the Terms and Conditions in support of his conclusion. He felt our investigator had taken this to mean that all the in-specie transfers had to be completed before the cash could be paid. But in his view the sentence didn't say that.

As agreement couldn't be reached, the complaint has come to me for a review.

## 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 agree with our investigator that Quilter should carry out a loss calculation based on all of Mr C's cash being transferred to provider V in ten working days. I know my decision will be disappointing to Mr C. I'll explain the reasons for it.

Before I start, I want to acknowledge that, in trying to resolve Mr C's complaint, Quilter has made two different and conflicting loss calculation offers. One of these isn't Quilter's standard approach in cases like these. This has understandably caused Mr C some concern. In my decision, I've considered when the cash should've been transferred, if there'd been no unnecessary delays.

I need to consider whether Quilter acted fairly and reasonably when it encashed over £ [REDACTED] of Mr C's funds and then retained them for two months. Mr C considers that Quilter should've followed Clause 20.9 of the Terms and Conditions, which he takes to mean require Quilter to transfer the encashed proceeds within ten days. He felt that the second sentence in Clause 20.9 clearly refers only to ETIs that are to be encashed, not those that are to be transferred in-specie.

Our investigator had a different interpretation of the Terms and Conditions. He felt that Clause 20.9 stated that Quilter would only transfer the cash after all funds had been transferred.

### *Meaning of the Terms and Conditions*

Clause 20.9 states the following:

*"Payment of a cash transfer will be made to the receiving pension scheme within ten working days of when we accept your instruction. We will pay the transfer proceeds as one amount once we receive them from the fund managers for all of the funds and ETI proceeds being transferred".*

I acknowledge that Mr C feels strongly that Clause 20.9 of the Terms and Conditions doesn't mean what our investigator felt it meant. He's provided this service with a detailed explanation of why he feels the Terms and Conditions require Quilter to transfer the encashed proceeds within ten days. But I don't agree.

I say this because Clause 20.9 is clear that the entire transfer proceeds will be paid as one amount. Other clauses within section 20 of the Terms and Conditions cover other aspects of transferring away from Quilter. Clause 20.3 states:

*"You can transfer funds and ETIs in your account by re-registration or as a cash transfer to another pension scheme".*

Although the wording in this clause could be taken to mean there are only two options – transferring all funds by re-registration, or transferring everything as cash – all parties know that the option to transfer some funds by re-registration and others as cash is available.

So I'm satisfied that when clause 20.9 states that a cash transfer will be paid within ten working days of an instruction, the fact that it also goes on to state that the transfer proceeds will be paid as one amount can only be the case if the entire transfer is for cash. As this wasn't the case here, the second part of clause 20.9 becomes relevant. And the one-off transfer would only become payable once all funds and ETIs had been transferred.

I acknowledge that Mr C considers that the second sentence in Clause 20.9 only referred to ETI proceeds, rather than "funds and ETI proceeds", but I can't reasonably agree.

I understand why Mr C considers it was unreasonable for Quilter to hold on to so much cash until

the end of the process, especially in this situation where no charges were actually levied at the end of the transfer process. But I also agree with our investigator that transferring the cash at the end of the process is standard industry practice, which allows any final charges that may be incurred as part of the transfer process to be deducted. As these charges can't be known until the end of the process, and as the Terms and Conditions allow for any outstanding charges to be deducted, I'm satisfied that it was reasonable for Quilter to transfer the cash last.

Mr C has told this service that when he took out his policy with Quilter in 2018, Clause 19.6 of the Terms and Conditions clearly stated that in the event of a transfer:

*"Payment will be made to the receiving pension scheme within ten working days of when we accept your instruction."*

He said that after the regulator introduced a requirement that platforms should make transfers in-specie where possible, Quilter changed its Terms and Conditions. And as part of the change, the former Clause 19.6 became Clause 20.9.

Mr C said that although he accepted Quilter was permitted to change the Terms and Conditions, they also required it to notify policyholders if any changes would be to the policyholders' disadvantage. He felt that our investigator's interpretation of the revised clause 20.9 plainly showed that policyholders had been disadvantaged by the change. And that as Quilter hadn't notified him of such a change, if our investigator's view was correct, it had breached the Terms and Conditions.

From what I've seen, Mr C hasn't raised this complaint point with Quilter. So it hasn't had the chance to consider this part of his complaint. And I haven't been provided with sufficient evidence to look into this point. So I can't consider this point any further here.

As I'm satisfied that the Terms and Conditions allow Quilter to defer any cash transfer until after all other funds have been transferred, I next considered whether Quilter should've encashed Mr C's fund when it did.

*Should Quilter have encashed Mr C's fund at the start of the process?*

Mr C doesn't consider that Quilter acted fairly or reasonably when it waited until the in-specie transfers had taken place before sending the cash to provider V. He's also questioned whether it's standard industry practice to realise the cash right at the start of the transfer process, and then retain it while the in-specie transfers go ahead.

The evidence shows that provider V asked Quilter to encash Mr C's fund on 12 September 2022. Quilter carried out this action on 16 September 2022.

Under the Terms and Conditions, Quilter is required to carry out instructions within specified time limits. The encashment instruction was a valid one, received from Mr C's new provider. So Quilter was obliged to follow it. From what I've seen, Quilter did what it was supposed to do within the required time limits. It wasn't within its power to decline or modify the instruction.

Given the evidence, I can't reasonably conclude that Quilter acted unfairly when it followed the instruction from provider V in a timely fashion, and in line with the Terms and Conditions.

I acknowledge that Mr C feels that Quilter shouldn't have encashed over £[REDACTED] of assets so early in the transfer process. He doesn't agree that it could possibly need to hold on to such a large amount of funds for so long. I understand why he feels this way, especially as no charges were levied in the end, but I've found no evidence that Quilter did anything wrong.

I next considered when the cash should've been transferred.

*When should the cash have been transferred?*

The fourth in-specie transfer completed on 4 November 2022, but Quilter were only informed about this by provider V on 18 November 2022. Provider V was responsible for confirming this to Quilter, so the earliest date it could've started the process to transfer the cash would've been 18 November 2022.

Once Quilter was aware that the final re-registration had been completed, it was required under the Terms and Conditions to transfer the cash within ten working days.

Quilter transferred most of the cash on 23 November 2022. As this is within the ten working days specified in the Terms and Conditions, I consider this was reasonable. But I agree with our investigator that the remaining cash should've also be transferred at this time. Instead, the remaining cash wasn't transferred until 6 December 2022, 12 working days later. And therefore outside of the time limits specified in the Terms and Conditions.

I agree with our investigator that Quilter should've transferred all of the cash on 23 November 2022.

I finally considered whether Quilter's offer of £400 for the trouble and upset it had caused Mr C was fair and reasonable under the circumstances.

#### *Distress and Inconvenience*

Quilter's final offer of compensation for the trouble and upset it caused Mr C was £400, for the delay and poor customer service he received. Mr C has clearly been inconvenienced during the transfer process.

From what I've seen, I consider this is a reasonable offer. Quilter did cause a short delay to the transfer of the final amount of cash. And I consider that it also provided Mr C with poor customer service and communication over the course of the transfer and his complaint. However, the £400 Quilter has offered is in line with what I would've otherwise recommended. So I can't reasonably ask it to increase its offer.

#### **Putting things right**

I require Quilter to undertake a calculation to compare what units Mr C could've purchased had all of the funds been transferred on 23 November 2022. Mr C has provided evidence to show that he was able to invest into his chosen fund with the initial cash amount transferred, with a pricing date of 1 December 2022. So, the redress should be assessed using this date and fund.

#### *Fair compensation*

My aim is that Mr C should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr C would've invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

#### *What must Quilter do?*

To compensate Mr C fairly, Quilter must:

- Compare the actual value at the date of my final decision of Mr C's pension plan with provider V with the fair value at the same date on the basis that all cash funds had been invested in the provider V [name of fund] using Friday 1 December 2022 price. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

- Quilter should also add any interest to the compensation payable of 8% simple per year from the date of my final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance).
- Quilter should pay into Mr C's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Quilter is unable to pay the total amount into Mr C'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 total amount 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 C won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr C is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr C would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Mr C £400 for the trouble and upset caused by the delay and the poor customer service.

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

*Why is this remedy suitable?*

I've decided on this method of compensation because Mr C wanted Capital growth and was willing to accept some investment risk.

### **My final decision**

I uphold the complaint. My decision is that Quilter Life & Pensions Limited should pay the amount calculated as set out above.

Quilter Life & Pensions Limited should provide details of its calculation to Mr C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 September 2023.

[Name]

**Ombudsman**