

## The complaint

Mr R's complaint is that Contractor Wealth, an appointed representative of Quilter Financial Services Ltd (Quilter), didn't give him best advice, failed to provide information he'd requested and didn't make him aware that one of his existing pensions was invested at risk. Mr R also says that Contractor Wealth failed to ensure his annuity was implemented correctly and there was a delay in the tax free cash being paid. Further, Quilter didn't handle his complaint fairly.

## What happened

I've considered Mr R's complaint before. I issued a provisional decision on 14 January 2022. I set out the background, Mr R's complaint and our investigation. I've repeated that below. I mentioned a telephone discussion on 3 January 2020. Later on I referred to that call having taken place on 2 January 2020. I've corrected that to 3 January 2020.

*'Mr R had an initial discussion with Contractor Wealth on 9 December 2019. He explained that he wanted advice on taking an income from his three personal pension plans held with the same provider. He expected to take 25% tax free cash, leaving around £120,000 to generate an income. He'd undertaken his own research and thought there were two options: buy an annuity or arrange a drawdown plan. He wanted to understand which would be best for him.'*

*Contractor Wealth provided their terms of business and explained that they'd obtain information from Mr R's existing provider, ask Mr R to complete a form detailing his circumstances and arrange a further call which was to take place in the new year.*

*Mr R signed and returned Contractor Wealth's terms of business under cover of an email dated 10 December 2019. In the email Mr R said he'd signed the authority to proceed but not the section about initial advice and ongoing service fees as he was unsure what services he'd require – for example, if he chose an annuity, he wouldn't need ongoing advice. Mr R also completed and returned Contractor Wealth's data capture form.*

*There was a discussion on 3 January 2020. It was identified that Mr R was looking for an income to meet an expenditure shortfall of about £6,000 pa. The adviser said there were two ways to do that – to guarantee that income by buying an annuity or setting up a flexi access drawdown (FAD) arrangement. There was a discussion about annuity benefits and risks versus FAD. The adviser said he didn't think the main benefits of FAD (flexible income and inheritance considerations) applied in Mr R's circumstances. And that an annuity would be best, if it generated a sufficient level of income. Mr R also completed a risk questionnaire. His answers indicated his attitude to risk was moderate.*

*The adviser called again on 20 January 2020 requesting some more information about one of Mr R's existing pension plans which the provider hadn't supplied.*

*The recommendation report was generated on 6 February 2020 and was based on an enhanced annuity quotation from Mr R's existing provider produced the day before with a guarantee period expiring on 5 March 2020. The report was sent to Mr R on 18 February*

2020.

*On 19 February 2020 Mr R emailed the adviser. Mr R said he thought income drawdown might give him a higher income (£8,000 pa rather than £6,400 pa) over twenty years. Although he'd need to re evaluate at age 85, he'd expect to have the value of his property to use then. A call to discuss the recommendation was arranged for 21 February 2020.*

*In that call Mr R indicated that he wasn't convinced the annuity would be the best course of action for him. He thought a similar level of income could be generated from drawdown without any investment returns over a 20 year period. Part of his rationale for considering the drawdown route was that he'd expect car and health care expenses to cease by 85, so if the pension did run out over 20 years, it wouldn't be a substantial issue. Mr R wanted to have a better understanding of what drawdown, using low risk funds, would look like. The adviser said that could be looked into. During the call Mr R said he'd moved his existing pension plans into cash approximately 18 months previously.*

*I've seen that an illustration was generated on 28 February 2020 for a pension with a different provider, flexibly drawing an income. But, as far as I'm aware, Contractor Wealth didn't provide any further advice or recommendations to Mr R by 1 March 2020 when he emailed Contractor Wealth.*

*There was a telephone call on 2 March 2020. Mr R referred to recent stock market falls and said that he didn't think income drawdown was a good idea at the present time and an annuity was his only option. He was concerned that if he didn't accept the (enhanced) annuity offered, a new quote could be lower. The adviser said he'd been about to send Mr R a report about drawdown. He commented that the FTSE was back up and he thought it would be a 'relatively short term blip'. There was a discussion about Mr R's money being held in cash. Mr R said he'd checked online and there hadn't been any real change. The adviser commented that he was 'sure' from the research he'd done initially that Mr R's funds were in cash. He went on to discuss the risk that annuity rates might fall (which he didn't think was likely). He went on to say, about drawdown, that investing in risk based funds or in cash were both problematic. He said he'd get back to Mr R.*

*The adviser called again the following day. He said his advice was still to go for the annuity, especially given recent market volatility. Mr R needed to bridge an income gap and the annuity would do that. Mr R said he agreed but his only concern was that the income wouldn't increase. The adviser said, although the annuity wouldn't increase with inflation, lifestyle costs in retirement tended to decrease. The adviser asked if Mr R was happy to go ahead with the annuity and Mr R confirmed he was. The adviser said he'd get the paperwork sorted out as quickly as possible, given that the quote was about to run out (although the adviser added that he didn't think things would change much anyway).*

*Mr R completed the annuity application form on 4 March 2020 and returned it to Contractor Wealth for onward transmission to the provider. Mr R didn't hear further by 9 March 2020 and emailed Contractor Wealth for confirmation the documentation had been received and submitted. Contractor Wealth emailed Mr R on 9 March 2020 and again on 11 March 2020 to confirm that the provider had received the application documents and was processing the transfers from his three existing policies.*

*I think Mr R then received information from the provider about the surrender of his three pension plans. It seemed that one of the plans had fallen in value by some £8,300. Mr R queried things with the adviser on 19 March 2020. But I don't think he heard back until 3 April 2020 when a new adviser called him. I think that may have been because the original adviser had left Contractor Wealth.*

The new adviser told Mr R that his overall fund value had gone down and instead of getting the income shown on the quotation - £6,412.08 pa – he'd now only get £6,162.96 (some £249.12 pa less). The adviser asked Mr R to confirm if he was still comfortable with going ahead with the annuity purchase. Mr R said he'd instructed the provider to switch all his funds to cash and he didn't want to accept the reduced annuity if that meant he wouldn't be able to complain about the failure to do that. The new adviser pointed out that Mr R's overall position might be better notwithstanding the recent fall in value, because he'd have benefited from earlier fund growth during the period when he'd remained invested.

Amongst other things, Mr R said he hadn't gone ahead with the annuity when he got the original recommendation report as it hadn't said anything about drawdown. Mr R said that was what he'd originally asked for and when it wasn't included in the report he'd asked again. The new adviser said he could revisit the advice to see if he could say that a drawdown arrangement would be in Mr R's best interests. Mr R said he wanted to compare FAD with the annuity option. But, when the new adviser said he'd tell the provider that Mr R was declining the annuity offered, Mr R expressed concern that, if he decided he did want an annuity, he might get less than the £6,162.96 pa currently on the table. The adviser said he'd check with the provider if the quotation was valid for a period.

During a second call drawdown was discussed, including the possibility of having a cash based fund. Mr R indicated that drawdown had always been his preferred option. The adviser said he could look at things again for Mr R. The adviser also said there'd been errors on Contractor Wealth's part (for which he apologised) and by the provider. The new adviser also told Mr R:

'I've spoken to my compliance director and spoken about the journey you've been on and what he has said is basically we've done what we set out to do, however, I think there has been obviously some wires crossed somewhere along the line in terms of understanding the full requirements so I mean really technically we don't have to provide anything but as a gesture of goodwill what we are going to do is provide you with a payment of 50% of what you've paid us.'

The new adviser emailed Mr R on 7 April 2020 with some further information about FAD, including the likely costs and risks. The information the new adviser provided enabled Mr R to carry out his own analysis of the annuity versus FAD. In his email of 8 April 2020 Mr R said he'd thought drawdown might be an option but he hadn't factored in management charges but, having now done so, there was no advantage with drawdown over the annuity offered. Mr R said he'd decided to take the maximum tax free cash and the enhanced annuity providing an income of £6,162 pa.

Mr R emailed Contractor Wealth on 20 April 2020 to say he hadn't heard further about the annuity. The new adviser forwarded what he'd received from the provider. Mr R received an annuity income payment in April 2020. But there was a delay in paying the tax free cash which Mr R had to contact the provider to resolve.

#### Mr R's complaint and our investigation

Mr R complained about the service he'd received from Contractor Wealth in May 2020. Quilter looked into the complaint but didn't uphold it. Mr R didn't accept what Quilter had said in its final response letter dated 27 May 2020. Mr R commented further by letter dated 13 July 2020. Quilter replied on 29 July 2020. But it didn't agree with Mr R's comments.

Mr R referred his complaint to us. Our investigator didn't uphold the complaint. In summary he said:

- *Mr R had pointed to what Contractor Wealth's terms of business said in support of his complaint that his existing pensions were invested at risk and, during the advice process, fund values had fallen. But that term related to the need have enough cash to cover short term expenditure and which had been discussed with Mr R.*
- *Mr R had said expected information about income drawdown wasn't provided in the recommendation report. But the adviser had explained (verbally) that, after obtaining relevant information about Mr R's circumstances and objectives, a recommendation would be provided. The relevant term said:  
'Investment Advice and Recommendations Scope  
Any investment advice your adviser provides will be based on your personal financial circumstances and objectives. We will confirm these and the reasons for any recommendation in a Suitability Advice Report.'*
- *Mr R had looked into both annuities and drawdown prior to his discussions with Contractor Wealth. The adviser had collated information and had made a recommendation. That was in line with industry practice – to provide a recommendation and say what other options had been considered and discounted. Different firms would provide varying amounts of information about the other considerations.*
- *In the call on [3] January 2020, the adviser explained he didn't think FAD was appropriate and, if enough income could be obtained from an annuity, he'd be likely to recommend that. The recommendation report had a brief comment that, due to the risks associated with drawdown, it wasn't suitable for Mr R. The explanation could've been expanded upon. But that didn't mean the recommendation was unsuitable.*
- *The adviser could've commented on what Mr R had said during one of the calls about longevity risk and explained that, even in a near cash fund, there'd be charges and likely earlier exhaustion of the funds. But the adviser did say he'd provide further information about the drawdown option as it seemed Mr R wasn't persuaded that an annuity was the best option for him.*
- *It appeared that the falls in fund values in late February 2020 had prompted Mr R, after discussion with the adviser, to accept the recommendation for an annuity.*
- *Mr R was concerned the adviser hadn't recommended switching the existing funds to cash. Mr R had been passing on to the adviser information about his existing pension plans. If that included details of the underlying funds, then both Mr R and the adviser ought to have been aware they weren't all in cash. In the call on 21 February 2020 Mr R had said he'd asked the provider to switch his funds to cash about 18 months earlier. If that hadn't happened, that was something to raise with the provider. The investigator didn't think an adviser would include a fund switch recommendation when the advice was to arrange an annuity.*
- *Any delay in paying Mr R's tax free cash – the cancellation of the cheque and the delay in arranging a bank transfer – was matter for the provider.*
- *Quilter had acted fairly and reasonably during the complaints process.*

*Mr R didn't accept the investigator's view. Mr R was concerned that we hadn't asked him if he had any further evidence to be considered and he wasn't sure if we'd taken into account all the information he'd provided. In particular, the investigator hadn't referred to Mr R's telephone calls with the new adviser who'd taken over after the original adviser had left, including the call where the new adviser said, having spoken with his compliance director, the advice and service Mr R had received wasn't up to standard.*

*Mr R reiterated his complaints. I've summarised his comments.*

- *Contractor Wealth didn't inform him of the risk of holding one of his funds in a highrisk vehicle or discuss that with him. Quilter's letter of 27 May 2020 said the adviser's due diligence had revealed that one of Mr R's pensions was still invested in*

*a high risk fund. But that hadn't been communicated to Mr R. And Quilter had rejected FAD because it seemed Mr R had no appetite for any potential investment loss and wasn't willing to accept the risk that his pension fund could fall in value.*

- He'd had discussions with Contractor Wealth's adviser in December 2019 and January 2020 about annuities and drawdown. The adviser confirmed he was able to advise about both. He agreed relevant information would be sent as part of the suitability report to enable Mr R to make an informed decision.*
- The adviser hadn't discounted all income drawdown products. Two non annuity products from two different providers were identified as suitable for Mr R's consideration. But detailed information wasn't provided and the reasons for discounting these two acceptable products hadn't been explained. Mr R hadn't been in a position to make an informed decision whether to reject those products.*
- In a telephone call on 18 February 2020 Mr R asked for the missing information to be made available for the scheduled conversation on 21 February 2020. During that call Mr R said, as the product information hadn't been made available, he couldn't make an informed decision.*
- When, on 25 February 2020 the financial markets fell (and the fund value for the pension which remained invested dropped by some £8,300), Mr R felt he had no option but to accept the enhanced annuity, even though he was unsure if it was the best financial option for him.*
- Mr R telephoned the adviser on 2 March 2020 to say he still hadn't received the information. Mr R felt he'd been 'backed into a corner'. The enhanced annuity quotation was only valid until 5 March 2020. Mr R says the adviser then processed the annuity application knowing he hadn't provided promised information. Mr R was sent annuity application forms on 4 March 2020 which he completed and returned the same day.*
- Mr R received correspondence from the provider saying the transfer value of one of his plans was £52,837.59. Contractor Wealth's recommendations had been based on a value of £61,144.16. On 20 March 2020 the adviser emailed Mr R to say, having looked through the information about the plan that had fallen in value, he'd seen that Mr R remained invested (in a managed fund and an equities based fund), hence the drop in the fund value.*
- It wasn't until April 2020 that Contractor Wealth told Mr R that his actual annuity would be £6,162.96 pa gross, as compared to the £6,412.08 indicated in the suitability report. The outstanding product information still hadn't been provided.*
- Contractor Wealth hadn't fulfilled its contractual obligations to Mr R as regards timeliness and quality of advice. The adviser hadn't complied with the regulator's conduct rules and Contractor Wealth had failed to oversee the adviser properly.*
- There'd also been a delay in the payment of Mr R's tax free cash. The suitability report said that the adviser would monitor the process to help ensure payments were made as quickly as possible. And in his email of 19 February 2020 the adviser said Contractor Wealth would 'do all the administration for [Mr R], that is part of the advice ...' The terms of business said the investment would be made in a timely manner and in accordance with Contractor Wealth's best execution policy.*
- Mr R requested sight of the two drawdown quotations, without which the appropriate remedy for financial loss and distress couldn't be determined and it had become clear which retirement product Mr R should've chosen based on his circumstances at the time.*

*The investigator considered the points made by Mr R. The investigator explained that, although Mr R's dealings had been with Contractor Wealth and not Quilter, Contractor Wealth was an appointed representative and its principal Quilter was responsible and had dealt with the complaint. Any requests for information were made to Quilter not Contractor Wealth. Mr R and Contractor Wealth had had the opportunity to submit information and the*

*investigator had to decide if he had all the information he needed to say how he thought the complaint should be resolved. That didn't necessarily mean he had to see a copy of every item of Mr R's correspondence with Contractor Wealth. The investigator had obtained and listened to the recordings of Mr R's calls with the new adviser. But he hadn't changed his view. The investigator's main points were:*

- The (new) adviser had explained that ordinarily options for a customer wouldn't be listed but advice would be given. In the call where a refund of half Contractor Wealth's fees was offered, Contractor Wealth hadn't said it wasn't satisfied with the advice given. The comments were about a misunderstanding between Mr R and the adviser as the service that would be provided.*
- The term Mr R had referred to wasn't about pension holdings but about having cash to meet emergency costs.*
- The suitability report said drawdown had been discounted as Mr R didn't want to accept investment risk. The adviser didn't consider drawdown was suitable. As the adviser had made clear in a telephone call, information on all options wouldn't be provided but a recommendation would be made, which the adviser had done. Additional comments could've been included to explain that the risks of drawdown weren't just investment risk. But the recommendation for an annuity was suitable,*
- The provider had failed to carry out Mr R's instructions to move the funds into cash. As discussed, that might not have caused a loss but the investment growth which contributed to the higher value when the advice process begun might have been lost.*
- Mr R expected to get a comparison of various options. But the terms of business said the adviser would advise and make a recommendation. Which he did, after assessing Mr R's needs. There was no commitment to provide a detailed breakdown of each of Mr R's options.*
- The advice process had taken longer than expected. But that was due to Mr R's requirement for an analysis of a drawdown option. An illustration for a drawdown plan had been generated but that was typical practice when exploring options.*
- It would be unusual for drawdown funds to be held at no investment risk – there'd be an increased risk of inflation and charges eroding the fund. Typically drawdown is an option where an element of investment risk was accepted. With that in mind, the recommendation to purchase an annuity was suitable.*
- Contractor Wealth had accepted that they could've explained more clearly from the outset that they'd provide advice and not a range of options for Mr R to select from. The goodwill offer to refund half of their fee (which was over £400) was generous.*

*Mr R replied substantively on 12 August 2021. He enclosed a letter to Contractor Wealth dated 6 May 2020, a letter to Quilter dated 13 July 2020, an email to dated 10 December 2019 and drawdown notes. I've read and considered Mr R's comments in their entirety but what follows is a summary of some of his main points.*

- The suitability report included a recommendation that, as he was about to purchase an annuity, he consider switching his funds into low risk cash based funds to protect against falls in the stock market while his annuity application was being processed. And, if he wanted to do that, he should let the adviser know. He'd completed a letter of authority for each of his three pension plans to allow the adviser to obtain information. Had he been made aware there was a potential problem, he could've called the provider to resolve it immediately. Instead, when the financial markets fell, one of his pension plans sustained an avoidable substantial loss.*
- Contractor Wealth hadn't provided him, on a timely basis, with the agreed information about drawdown and which he'd contracted the adviser to provide on 9 December 2019. Having undertaken his own research, believed he had two options – an annuity or income drawdown. His experience in the pensions industry gave him a*

*detailed understanding of the process. He'd specified on numerous occasions, the specific advice he required – to decide between an annuity and income drawdown.*

- He'd queried the suitability report on the basis that drawdown might provide him with an income of about £8,000 for 20 years, until he was 85 by which time he'd have the value of his property to use. In the telephone call on 21 February 2020 he'd said, on that basis and without the information he'd previously requested, he was unable to accept the annuity proposal. The adviser said he'd see what he could do.*
- The risk profiler he'd completed said he'd consider risk, provided he understood that risk. Saying that he wanted to take no risk at all wasn't in accordance with the documentary evidence.*
- The adviser understood Mr R had detailed investment knowledge, but not detailed product knowledge and assured Mr R he was qualified to advice on both annuities and FAD. That was the reason Mr R had appointed him.*
- Mr R had researched FAD and (based on historic low annuity rates and his possibly shortened life expectancy) thought it was suitable for him. The adviser confirmed he'd provide relevant details so that Mr R could make an informed choice. As no analysis of the drawdown process was ever provided, it can't have been the reason for any delay. And the recommendation was unsuitable due to historically low annuity rates and because of Mr R's health conditions and the fact that the annuity would cease on his death and his estate wouldn't benefit.*
- The single recommendation ignored his specific circumstances and the adviser's agreed contractual obligation to provide the product information he agreed to provide in order that Mr R could make an informed decision.*
- The adviser said he'd do all the administration and monitor the payment of the tax free cash and the setting up of the annuity.'*

I went on to set out what I'd provisionally decided and why. I've repeated that here. Again I've corrected my reference to the call on 2 January 2020 to 3 January 2020.

### ***'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 can see that Mr R feels very strongly about what's happened. I understand it has caused him considerable stress. I'm sorry if he feels our involvement has added to that. I've read and considered everything he's said. And I've examined Mr R's dealings with Contractor Wealth, including his emails and telephone conversations with both advisers, in detail. I may not have mentioned each and every exchange but I've referred to what I consider to be key.*

*Having done so, my views aren't exactly the same as the investigator's. I do agree with some of the points made by Mr R. But, given the offer made by Contractor Wealth, I don't think it needs to do anything more to resolve Mr R's complaint. I don't expect Mr R to agree. I've explained below my reasoning. I've first made some more general comments about how we work.*

*Mr R has referred to what we say on our website about how we handle complaints about pensions and annuities. We do look at the facts and circumstances and listen to what the complainant and the business have to say before reaching what we consider to be a fair and reasonable outcome in the particular circumstances of the complaint. But the fact that we might not uphold a complaint or might only uphold it in part doesn't mean that we haven't been impartial or that we haven't considered what a party has said and all the supporting information and evidence. It's the nature of our work that one party is likely to be disappointed with the outcome.*

*The complaint has been correctly set up against Quilter for the reasons the investigator has explained. Contractor Wealth isn't directly authorised but is an appointed representative of Quilter. It is responsible for what its appointed representative did (or didn't do).*

*Mr R has suggested he might want to pursue a complaint against the adviser personally. Our compulsory jurisdiction (in so far as is relevant here) covers firms. A firm is a financial business that is authorised by the Financial Conduct Authority or the Prudential Regulation Authority to carry on one or more regulated activities. Contractor Wealth isn't directly authorised but is an appointed representative of Quilter, who is authorised and regulated and, as I've said, ultimately responsible for Contractor Wealth. We've looked into Mr R's complaint as against Contractor Wealth/Quilter, not the adviser personally.*

*Mr R has queried Quilter's independence. But Quilter isn't independent. It's the respondent to the complaint. Generally speaking, we can only consider a complaint that's been referred to the business concerned and a final response received. It's only fair, if something has gone wrong, to allow the business an opportunity to put things right before we get involved. And it's to be expected that a business will seek defend its position if it doesn't consider it has done anything, or much, wrong. Quilter looked into Mr R's concerns. Quilter agreed (as I've discussed further below) there'd been some confusion and made an offer to Mr R. I don't think there's anything wrong with how Quilter dealt with Mr R's complaint. Mr R remained unhappy and so referred it to us for an independent assessment and one of our investigators looked into what had happened.*

*The investigator explained his reasons for his view by reference to the written and verbal evidence he'd seen. We won't refer to each and every document or other piece of evidence. We'll consider everything but we'll focus on what we see as the central issues and the key evidence relating to those.*

*When an investigator sends a view they specifically ask if there's further information either party thinks we should see. In response to the investigator's view Mr R said that we should consider the phone calls he'd had with the new adviser. The investigator did that but he didn't change his view.*

*I'm issuing a provisional decision so that both parties, and in particular Mr R, are aware as to how I see the complaint and to give both parties an opportunity to provide further evidence and/or say why they don't agree with what I've said. In reaching my (provisional) findings I've read and considered everything. I've also listened to Mr R's calls with the original and the new adviser.*

*I don't disagree that the adviser had contractual and other (for example, regulatory) obligations to Mr R. Or that any failure to provide an acceptable level of service might amount to negligence on the adviser's part. But there's considerable overlap and I don't think it's necessary to consider each of those allegations separately and when the adviser's central duty was to provide suitable advice to Mr R.*

*Mr R says, having done his own research, he wanted detailed advice about two options – annuity purchase and FAD – so that he could make an informed decision. And that he'd engaged Contractor Wealth to provide detailed advice about each option. I note that, during his initial call with Contractor Wealth, Mr R said he thought his options were, after taking tax free cash, to use the residual fund to buy an annuity or set up an income drawdown plan. And that's where he was really looking for advice, unless there was anything he'd missed. But I don't think that translates into a specific contractual obligation to provide detailed advice about each option.*



What Mr R said set the background to the advice. But in my view Contractor Wealth's contractual obligations were somewhat broader. Mr R's contract with Contractor Wealth was set out in the terms of business. They said, about investment advice, that the adviser would make a recommendation after assessing Mr R's needs. The advice was restricted to suitable investment and pension products from a panel of leading insurance companies. Contractor Wealth agreed to look into Mr R's circumstances and objectives and then make a recommendation which, in accordance with Contractor Wealth's regulatory obligations, had to be suitable for Mr R.

During the call on [3] January 2020 it was identified that Mr R was looking for an income to meet an expenditure shortfall of about £6,000 pa. The adviser said there were two ways to do that – to guarantee that income by buying an annuity or setting up a FAD arrangement. There was a discussion about annuity benefits and risks versus FAD. The adviser said he didn't think the main benefits of FAD (flexible income and inheritance considerations) applied in Mr R's circumstances and he thought an annuity would be best, if it generated a sufficient level of income. Towards the end of the call the adviser repeated that an annuity would be 'the way to go' as it would generate sufficient income.

I don't think that's unreasonable. And Mr R didn't disagree. He said the annuity should be on a single life basis, potentially increasing in line with inflation. The adviser agreed that there was no need for a joint life annuity but pointed out that inflation linked or other increases were relatively expensive. So it seemed, at that stage at least, there was largely consensus and Mr R was in agreement with the annuity route. At the very least he didn't stress the need for detailed consideration of both options. Against that background, I think it's perhaps unsurprising that the recommendation letter focused on annuity purchase. It said, because Mr R had indicated he didn't want to take any investment risk, having a guaranteed income was the right option.

Mr R has challenged that, saying that the risk profiler he completed indicated that he might be prepared to take some degree of risk. I note too what he's said about his investment experience. A questionnaire is a commonly used tool in assessing attitude to investment risk. But we'd expect to see that the answers given and outcome generated are discussed. That can result in the outcome being modified. If it was clear from conversations that Mr R wasn't really prepared to take any investment risk with these particular pension plans, then I don't think the adviser was wrong to proceed accordingly. And I don't think the fact that one of Mr R's existing pension funds remained invested demonstrates that Mr R was willing to accept investment risk when it seems he'd instructed a switch to cash some time earlier.

I don't think Contractor Wealth was obliged to provide detailed information about something which had been discussed with Mr R, even if somewhat briefly, and which the adviser had fairly quickly ruled out as not being suitable for Mr R. I agree with the investigator that drawdown carries other risks, such as fund erosion, which could've been explained to Mr R to support the conclusion that a drawdown arrangement wasn't suitable for him and he didn't need the benefits it carried. But an annuity was, on the face of it, suitable for Mr R.

I note Mr R's concerns about health conditions and the impact on life expectancy which might make FAD more attractive. An annuity, in the absence of any guarantee period or provision for a dependent, ceases on death and there's no residual payment to the annuitant's estate. But it's clear that Mr R was aware of that. Those issues (and the risk of inflation) had been discussed during the earlier telephone call. And Mr R's health conditions were taken into account as he was buying an enhanced annuity. I think there's also something in the new adviser's comment about not providing a list of options. There's a distinction between giving information and providing advice. The latter usually involves a recommendation or an opinion expressed as to what a client, given their particular circumstances, objectives etc, should do. Simply giving information can cause confusion and

*leave a client unsure as to what is being recommended.*

*Contractor Wealth's overriding duty, whether analysed in contract terms or looking at the adviser's obligations under the COBS (Conduct of Business Sourcebook) rules (for example, under COBS 9.2.1R) was to provide suitable advice to Mr R. I think Contractor Wealth's recommendation report did that, based on what Contractor Wealth understood Mr R's objectives were and what had been discussed. I think the recommendation - to buy an annuity to secure a guaranteed income for life to meet the income shortfall identified - was suitable for Mr R.*

*But I think things changed somewhat after Mr R's email of 19 February 2020 and the follow up telephone call on 21 February 2020. During that call Mr R said that most of what the adviser had said was in line with what he'd been expecting from his own research. But from what he went on to say it seems he didn't feel the option of FAD had been fully explored. And he wanted to know if he could set up a drawdown arrangement which paid him a fixed income each year and invested in low risk funds. I think Mr R made it clear he wasn't convinced that an annuity would be best for him and he needed further information. Although the adviser maintained that, as Mr R was looking to meet an income shortfall, an annuity providing a guaranteed income was the best way of doing that, the adviser said he'd look into things further and he was happy to 'redo the paperwork' and look at a drawdown facility for Mr R.*

*But, from what I've seen the adviser didn't get back to Mr R. Or not promptly at least. Instead Mr R was left to contact the adviser in early March 2020 when the guarantee period for the enhanced annuity quotation was about to expire. It seems the adviser had been working on a drawdown report and was about to send it to Mr R. The adviser may have thought things wouldn't change much (because annuity rates were unlikely to fall and Mr R's existing pensions were in cash). But I think the adviser should've known there was some urgency given the guarantee period and that, if Mr R was going to be confident about accepting the enhanced annuity quotation, he needed the further information and the FAD analysis he'd requested and which the adviser had said he'd look into.*

*I've considered very carefully the call on 3 March 2020. Mr R says he was 'forced' into a decision. I can sort of understand why he might say that. The information about drawdown hadn't been provided. And the financial markets had fallen on 25 February 2020 (although it seems a week or so later had recovered somewhat). Things were uncertain and Mr R felt he needed to act quickly to secure the enhanced annuity by the guarantee date to ensure he wasn't adversely affected by a reduction in annuity rates and/or further market volatility. But I think he did have a meaningful discussion with the adviser about whether he'd be doing the right thing by going for the annuity and agreed that was what he should do.*

*It seems, given the discussion about his existing pensions being held in cash, Mr R didn't know then about the fall in value of one of his funds. I think he only found that out later. And it wasn't until the new adviser telephoned him on 3 April 2020 that Mr R became aware that his annuity would be less - instead of the £6,412.08 pa he'd been expecting, he'd only be getting £6,162.96.*

*Mr R didn't have to accept the new, lower, amount. During the call the new adviser confirmed that the drawdown option remained open to Mr R. And the new adviser was, fairly quickly, able to provide the FAD information that Mr R had been seeking. That allowed Mr R to undertake his own analysis and to confirm, in his email of 8 April 2020, that there was no advantage with drawdown over the annuity offered and he'd decided to take the maximum tax free cash and the enhanced annuity providing an income of £6,162 pa.*

*I'd only be able to consider compensation for financial loss if I thought Mr R had acted to his*

financial detriment by accepting the annuity quotation. I think the annuity recommendation was suitable for him. I don't think he's suffered financially as a result of accepting the annuity quotation even though the circumstances in which that happened weren't ideal. In the end he did get the information he'd requested and he came to his own conclusion that the annuity, even though he was going to get less than the amount originally quoted, was best for him.

I note Mr R's request for sight of the drawdown quotations. I think that's on the basis that, if either of those would've been suitable for him, they'd need to be taken into account in determining what redress was payable to him. But that presupposes a finding that Contractor Wealth didn't give Mr R suitable advice. I don't think Contractor Wealth's recommendation that Mr R buy an enhanced annuity was unsuitable. So, any comparison between what his position would've been if he'd gone down the drawdown route falls away and I don't think the quotations are relevant.

I recognise that Mr R has suffered distress and inconvenience as a result of Contractor Wealth's delay in providing the further details about FAD that Mr R made clear he wanted after he got the suitability report. And that Mr R had to chase things up. I think there may also have been a further delay between 19 March 2020, Mr R having contacted the adviser to find out what was happening, and 3 April 2020 when the new adviser got back to Mr R. As I've said, that might have been because the original adviser had by then left. I also note that the original recommendation report was issued on 18 February 2020 which meant time was already somewhat short, given that the enhanced annuity quotation had been issued on 6 February 2020 and was only guaranteed until 5 March 2020. I've borne those delays in mind in thinking about if further compensation, over and above the refund offered, should be paid.

Mr R is also unhappy that one of his existing pension plans fell in value during the advice process. He's pointed to Contractor Wealth's terms and conditions which included the following:

As with most investments there is a risk of loss, especially in the short-term (over periods of less than five years). **If you need access to your money in the very short-term**, then holding it in a risk-free bank account could be the right course of action. **We will discuss these options with you.....**" (Mr R's emphasis)

Mr R has taken that term largely in isolation. I don't think it applies directly to the situation he's concerned about. I think it's more to do with, and as the investigator suggested, the need to bear in mind that a need for cash might arise. The possibility that Mr R might need to access funds in the short term was discussed with him. The suitability report confirms what was discussed over the telephone – about retaining three to six months' expenditure in cash to cover unexpected short term expenditure – and that Mr R's savings and other investments meant he had adequate, readily available funds in the event of an emergency.

The investigator said he wouldn't normally expect an adviser, where the advice was to arrange an annuity, to recommend fund switches. I'm not sure I agree, at least in terms of considering switching to cash. I think, where annuity purchase is contemplated, an adviser should point out that, during the purchase process, fund values could rise but might fall and that, if an investor wants to protect against market falls and 'lock in' the accumulated fund value, switching to cash would be prudent. An investor may decide against as, in doing so, they'll lose out on any market gains. But, generally, I think an adviser should point out the risks of remaining invested. And it seems the adviser did that – the suitability report says 'As you are shortly going to purchase your annuity with your pension funds, I recommend that you consider switching your fund(s) into low-risk cash-based funds in the interim. This will help preserve the value of your funds from falls in the stock market while your annuity application is being processed. Should you wish to do so please let me know.'

*I haven't seen that Mr R gave the adviser any instruction to switch to cash. I assume that was because he thought that his three existing pension funds had already been switched to cash some time ago – as indeed two of them had been. But for some reason the provider hadn't done that for one of the plans. I think Mr R should've checked that his instruction had been acted on for all three plans. I assume he'd have got annual statements which would've shown that one plan remained invested – in a managed fund and an equities based fund. He also had online access too. He'd have seen fund growth which he wouldn't have expected if the fund was held in cash. I think Mr R would or should've known that his instruction to switch to cash hadn't been acted on for one of his pensions.*

*Quilter says the adviser did see that one of Mr R's pension funds was still invested but didn't have the authority to request a switch to a cash fund. If that was the case then, given Mr R had told the adviser that he'd switched everything to cash previously, I can see the argument that the adviser should've pointed out to Mr R that didn't seem to have happened. But, from the telephone conversation on 2 March 2020, it seems the adviser thought Mr R's funds were all in cash so it's somewhat unclear what the adviser knew.*

*In any event, I maintain that Mr R should've checked that his instruction had been carried out and/or seen that one fund remained invested. And it looks the information (or some of it at least) that Contractor Wealth's adviser wanted about Mr R's existing plans came to Mr R and he passed it on to the adviser. Mr R would've had an opportunity to review it, including checking that his all three funds were held in cash. And, as I've said, it seems he had online access too and that he was monitoring his funds. All in all, I don't think the adviser is responsible for the fall in the value of the fund that hadn't been switched to cash.*

*Mr R has indicated that he might want to complain to the provider about its failure to act on his instruction to switch all three plans to cash. As has been point out, it may be that Mr R won't have suffered any financial loss but he may say that he's still been inconvenienced and that finding out what had (or rather hadn't) happened caused stress. I'm only considering here Mr R's complaint about Contractor Wealth. I'm not making any findings about any other party. If Mr R wants to complain about the provider, he'll need to raise a formal complaint to that business. If it can't be resolved he may wish to ask us to consider it. Any complaint will be subject to a separate investigation.*

*Lastly, Mr R has said there was a delay in the payment of his tax free cash. I note what Mr R says about the onus (and contractual obligation) being on Contractor Wealth to ensure the smooth crystallisation of Mr R's retirement funds, including the payment of his tax free cash, in a timely and efficient way. But I agree with Contractor Wealth that, once a request for payment of tax free cash and an annuity application are made, paying the benefits is largely down to the provider. I think an adviser can, and as Contractor Wealth agreed to do, monitor the process and, if necessary, try and chase things up. It seems that the new adviser did that. He liaised with the provider to ascertain where Mr R's funds were and whether the annuity rate in the original quotation would be honoured. I think any delay in payment is a something that Mr R may wish to consider pursuing with the provider.*

*To sum up, although I think the annuity recommendation was suitable and I don't think Contractor Wealth is responsible for the fall in the value of one of Mr R's plans, I've identified some shortcomings on Contractor Wealth's part. It accepts that its service could've been better. I note here what the new adviser told Mr R about his conversation with Contractor Wealth's compliance director. I also think it's clear, from the new adviser's other comments in telephone calls with Mr R, that the new adviser felt that there'd been a failure to provide information which Mr R had made clear he wanted (at least from 19 February 2020) and which was wasn't difficult to supply. But, as I've said, the new adviser was able to resolve that.*

*Although I don't think Mr R has suffered any financial loss, I recognise he's suffered distress and inconvenience. But I think Contractor Wealth's offer to refund half of the fee he paid. I think Mr R paid £947 in fees to Contractor Wealth. So the offer represents a refund of £473.50. I think that's fair and reasonable and at least as much as I'd award for the trouble and upset caused by Contractor Wealth's delays and any other failings.'*

## **Responses to my provisional decision**

Quilter said it had nothing to add. Mr R responded in detail. He said I hadn't referred to three pieces of key evidence: page 1 of the suitability report; an information request; and emails in December 2019 about fees. I confirm I've seen and considered all of those.

Mr R said his overall complaint was that the standard of service he'd received was so poor that the adviser had failed to meet the regulatory and professional standards, including the FCA's (Financial Conduct Authority) Principles for Businesses (PRIN), its fair treatment of customers provisions and the six consumer outcomes. Mr R also said the adviser had acted in breach of his legal (contractual and common law, including fiduciary) duties and he'd been negligent. I've set out below Mr R's five complaints, with a summary of his main points. I've read and considered everything, even if I haven't referred to each and every comment Mr R has made.

Mr R also referred to what he'd said earlier as to how things should be resolved. He said he'd asked for sight of two documents – the illustrations from LV and Old Mutual Wealth – so it was clear which product he should've chosen and his financial loss could be determined. We've now provided Mr R with a copy of the Old Mutual Wealth illustration. And we've explained that no illustration from LV was obtained. We've also provided a copy of a fund sheet which we hadn't earlier supplied.

And, as mentioned further below in connection with complaint 1, we told Mr R that I'd reconsidered what I'd said in my provisional decision about that aspect of the matter, Mr R having said that I'd misunderstood the facts. We gave Mr R an opportunity to comment on my further thoughts and he did comment further. Again I've considered all he said, even if I haven't referred to everything.

### **Complaint 1: Contractor Wealth didn't make him aware that one of his existing pensions was invested at risk**

Mr R says the adviser acted in breach of contract and/or his fiduciary duty and his statutory obligations under FSMA (Financial Services and Markets Act 2000, as amended) by failing to perform his work with reasonable skill and care evidenced by:

- The information request shows that Contractor Wealth was collating information to review his existing pension plans.
- Quilter had said that the adviser did see that one of them was invested.
- The suitability report contained a non specific recommendation or generic statement (which is probably included in all reports) about switching to a cash fund. But it didn't say that one of Mr R's funds was still invested, nor was that mentioned during the discussion on 21 February 2020.
- The specific risk wasn't discussed with Mr R - even though he'd said he required more information before he could make an informed decision and so he'd be further increasing his exposure to the collapse of the markets on 25 February 2020.
- Contractor Wealth asked for the forms to transfer the pension to another provider but Mr R wasn't asked to make an interim transfer to a cash fund to mitigate the risk of

his fund falling in value.

Mr R said that Contractor Wealth's adviser failed in his statutory duty to perform his work with reasonable skill and care. I'd said it was somewhat unclear what the adviser knew. Mr R said that he felt that, throughout our investigation, we'd failed to challenge what Quilter had said. Contractor Wealth had information which should've been shared or specifically drawn to Mr R's attention. That evidence helped Mr R but we'd dismissed it. He'd suffered actual financial loss: £2,060.71 tax free cash and £249.12 pa on his annuity.

Some of what I'd said was factually incorrect. I'd said that information (or some of it at least) that the adviser wanted about his existing plans had come to Mr R and he'd passed it on to the adviser. Mr R said that hadn't included any information about the pension that remained invested. And, contrary to what I'd said, Mr R didn't have online access.

Mr R went on to explain what had happened. In April 2018 he'd instructed Scottish Widows to transfer all three of his pension funds to cash. That was done for two of them. But no '*full cash*' option was available for the stakeholder pension plan so Mr R agreed it could be transferred into a fund with underlying cash assets. After the changes had been made his portfolio was held 65.1% cash and 34.9% cash-based assets. When the recommendation report was prepared (6 February 2020), the cash assets had decreased by £785.84, and the cash based assets had increased by £4,493.67. He'd instructed an independent financial adviser to provide contractually agreed pensions advice. He couldn't have transferred the funds to his bank account and I hadn't explained how anyone who wasn't an expert in pensions could make a short term transfer, whereas an adviser would make such transfers on a daily basis.

As I've said above, I considered this aspect of the matter again and we shared with Mr R my further thoughts. I apologised that I'd misunderstood what had happened. I accepted that information about the pension in question, the stakeholder plan, hadn't been routed through Mr R and that he hadn't had on line access. I'd thought that Scottish Widows had failed to carry out his fund switch instruction. But it seemed that wasn't the case. Scottish Widows only offered, for its stakeholder pension, a cash based fund which carried some risk to capital. To access another cash fund, Mr R would've needed to transfer to another product which he couldn't have done without assistance from the adviser and who, Mr R had suggested, would've been used to undertaking that type of interim transfer regularly.

I'd considered that very carefully. But I didn't agree that a transfer should've been recommended and implemented. A transfer is different from a fund switch which is usually easy and quick to arrange. Mr R had already switched to the cash based fund and there was no other cash or deposit fund available. We wouldn't normally expect a recommendation to transfer to a different product where an annuity purchase appears likely and fairly imminent.

Mr R had said there was going to be some delay as he wanted further information about other options. Which is understandable – an annuity purchase is a one off decision and so he needed to be comfortable he was making the right choice. But, even so, an annuity purchase might only have been a few weeks away. There'd be limited point in transferring to a different product.

Unfortunately the markets fell and some of the gains Mr R had made were lost. But market movements can't be predicted. And, regardless of what forms the adviser had, and even if either of Mr R's other Scottish Widows plans could've accepted a transfer, the adviser wouldn't have been able to have undertaken a transfer without making a recommendation and getting Mr R's instructions. And a further fee might have been payable. My view was that a transfer wasn't justified.

In response, Mr R said that no independent financial adviser would've recommended a transfer as the costs would normally be prohibitive for a short term investment. But he wanted evidence that Contractor Wealth's adviser had investigated his specific investment circumstances before advising (in the suitability report) that Mr R consider switching to low risk cash based funds in the interim. If there was no evidence, then the advice given didn't fulfil the adviser's legal, contractual or professional obligations or his duty of client care.

Mr R also wanted evidence that Contractor Wealth had investigated that investment advice, given the adviser's due diligence had identified that one of Mr R's pensions was in a high risk fund. And whether the adviser had complied with his duty of care by not pointing out (other than the non specific advice in the suitability report) the risks of remaining invested, especially given that Mr R wanted clarification of the LV non annuity option and which he needed to make a timely and informed decision.

#### Complaint 2: Contractor Wealth didn't give him best advice and failed to provide information he'd requested

Mr R said Contractor Wealth's adviser had acted in breach of contract and had failed to communicate in a way which was clear, fair and not misleading. The suitability report recommended two retirement options: an annuity and a '*blended*' retirement solution from LV. The report concluded by saying Mr R should make sure he understood the content which would be discussed in detail but, if he was unsure about anything, he should contact the adviser. No details of the non annuity option were provided to allow him to make a timely, informed decision. And an illustration for another, non annuity, option from Old Mutual Wealth was also obtained but hadn't been disclosed to him. Until he'd seen the information about the other options, he couldn't verify if what he termed his '*enforced investment*' (the annuity he bought) was right for him or if he'd suffered additional financial loss.

He referred to his telephone call on 18 February 2020 and his email on 19 February 2020. He'd asked for details of the LV Retirement Account in advance of discussion scheduled for 21 February 2020. But that information - the advice Mr R was missing to understand the options proposed - wasn't provided. He wasn't told that his request for that information was outside the scope of his contract with Contractor Wealth or that he needed to pay a further fee - he referred to the emails about fees. He said he was unable to make an informed decision and the adviser was fully aware of that. I wasn't correct to say he needed the FAD analysis. What he actually wanted was information about the blended solution.

Mr R telephoned the adviser on 2 March 2020 because he hadn't received the further information and he felt he was '*backed into a corner*' with the annuity quotation only valid until 5 March 2020. By then the markets had slumped. Because of that and the uncertainty of the situation, Mr R felt he had no choice but to accept the annuity, even though he was still unsure if it was the best option for him.

Contractor Wealth proceeded to process the annuity application, despite knowingly not having provided the promised information or revised annuity figures. Mr R said he'd asked the investigator to confirm the situation - where a client had been forced into a decision despite an adviser not delivering sufficient information in a timely way and in accordance with the contract - had been raised internally as part of Quilter's internal control procedures. As he hadn't had any reply about that, Mr R was unsure if we'd fully investigated it as part of our investigation into Contractor Wealth's conduct.

Mr R describes himself as being from then onwards in '*loss mitigation mode*' to minimise his exposure to future falls in his pension. It wasn't possible for me to say he hadn't suffered financially as a result of accepting the annuity quotation. His adviser hadn't discounted all income drawdown products and had in fact identified two non annuity pension products as

suitable. But detailed information wasn't provided and the reasons for discounting those two acceptable products hadn't been explained. Without evidence of those options he couldn't know if the annuity was the correct decision.

Mr R said the adviser had a contractual obligation to provide detailed advice about both of the options he'd recommended. Mr R's contract with Contractor Wealth (set out in the terms of business) provided that said that the adviser would make a recommendation after assessing Mr R's needs. The advice was restricted to suitable investment and pension products from a panel of leading insurance companies. Two suitable products from leading insurance companies had been recommended. He hadn't been given full details of the second recommendation and he didn't have sufficient information to make an informed decision on 21 February 2020. The adviser knew that and refused to provide details of the second recommendation. What I'd said about the non annuity option being having been ruled out was wrong – in fact the adviser had specifically recommended it. But had then failed to provide details.

Mr R's view was that the adviser had acted in breach of the FCA's rules. The recommendation offered two suitable options. Full details of the annuity were provided but not for the LV Retirement Account. That meant the adviser had recommended an investment knowing he was unable to justify its suitability. And he'd failed to communicate in a way which was clear fair and not misleading. Either the adviser was negligent by making the non annuity recommendation or he failed to provide an acceptable level of service by not fully explaining both options in time for Mr R to make an informed decision on 21 February 2020.

Overall Mr R said he hadn't received the holistic advice he'd expected and which was contractually agreed. Or the level of service he'd expected from a professionally qualified independent financial adviser and for which he'd paid. The areas he'd wanted help with hadn't been addressed. He'd asked for clarification on a limited number of points to make sure he understood the advice he was being given and so he could make a one off, lifetime, decision about his personal pension. He'd been forced to make an avoidable uninformed decision, because of the collapse of the financial markets on the 25 February 2020.

As I've said above, we've since clarified that no illustration was obtained from LV. Mr R says he assumed that a simple mistake had been made by not enclosing the relevant quotation but it now appears that the adviser made a recommendation without first obtaining a specific personal quotation in support. Mr R said, based on what I'd said the adviser's obligations were, there'd been numerous breaches and failures to take into account Mr R's specific and timely needs. And, after suffering financial detriment on 25 February 2020, Contractor Wealth accepted his uninformed pension investment decision without further advice.

### Complaint 3: The adviser failed to act with the due skill, care and diligence required by the regulator's conduct rules

Mr R says this complaint is based on the evidence he's provided for complaints 1 and 2.

### Complaint 4: Contractor Wealth had failed to ensure his annuity was implemented correctly and there'd been a delay in payment of the tax free cash

Mr R pointed to what the suitability report said (about monitoring the process to help ensure that payments are made as quickly as possible); the adviser's email of 19 February 2020 (which says all the administration will be done for Mr R); and the terms of business (which said the investment will be made in a timely manner in accordance with Contractor Wealth's best execution policy). The onus was on Contractor Wealth to ensure the smooth crystallisation of his retirement funds, including the payment of his tax free cash. Mr R



referred to what he'd said in the appendix to his letter of 13 July 2020 to Contractor Wealth about this aspect of the matter.

#### Complaint 5: Quilter hadn't handled his complaint fairly

Quilter had said that, in assessing complaints, equal consideration is given to information provided by the adviser and the consumer. But we'd said Quilter accepted responsibility for acts or omissions of Contractor Wealth and so Quilter can't be truly independent. Mr R referred to his previous letters dated 6 May 2020 and 13 July 2020 which he felt showed that Quilter had failed to uphold the FCA's rules on impartiality.

#### **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.

Much of what Mr R has said focuses on whether the adviser met his regulatory obligations and professional standards. Mr R has asked for clarification as to which statutory or regulatory authority he can, as an individual, refer to for an investigation into a named independent financial adviser's conduct. He's also asked for information to assist him in a potential referral to the adviser's professional body. And he's mentioned legal proceedings, including a claim for professional negligence.

The relevant regulatory body is the FCA. Mr R can contact the FCA, about Contractor Wealth and/or Quilter and/or the adviser. But my understanding is that the FCA doesn't investigate individual complaints or reports of breaches of FSMA, the FCA's regulations or other provisions (such as PRIN), or concerns that the FCA's fair outcomes for consumers aren't being met. The FCA may decide to look into any information it receives. But it won't provide details of any investigation or other action taken. It's a matter for Mr R if he wants to take the steps he's mentioned, including legal proceedings. It isn't for us to advise him how he might go about that or provide evidence in support.

I've decided Mr R's complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. As I'm required to, I've taken into account, amongst other things, relevant law and regulations and regulators' rules, guidance and standards. I recognise the adviser also had common law (including fiduciary) duties – for example to act with reasonable skill and care - as well as statutory and contractual (express and implied) obligations. But I maintain the regulatory provisions reflect that and impose further (and higher) duties and standards. Hence I've concentrated on those. But I've referred, in places, to the specific contractual or other duties that Mr R has cited. I've addressed each of Mr R's complaints in turn. In the main, the provisional findings I've set out above form part of my decision. But, as I've explained below, my views about complaint 1 have been modified.

#### Complaint 1: Contractor Wealth didn't make him aware that one of his existing pensions was invested at risk

Mr R has referred to us being Scottish Widows' regulator. But that's the FCA. And, as far as any evidence to support a complaint to Scottish Widows is concerned, I'm only considering a complaint against Contractor Wealth. Any complaint about Scottish Widows would be a separate matter. But, in any event and based on what Mr R has more recently told us, it seems the situation wasn't that Scottish Widows failed to act on his instructions. As I've mentioned, Mr R says that some of what I'd said about this aspect of the matter was factually incorrect. I've apologised and I'm also sorry if I appeared to imply that any blame attached to Mr R for delay in not transferring his funds earlier. That wasn't my intention. As I've set out below, I think Mr R did all he could to protect his fund values.

The investigator had said that it was clear from the telephone call with the new adviser that Scottish Widows had previously failed to carry out Mr R's instruction to move the fund into cash. That was my impression too when I listened to the call and the discussion about whether Mr R had suffered any loss, given that he'd benefitted from investment growth. The investigator referred to a fund factsheet showing historic fund performance, a copy of which we omitted to enclosed but we've now, for completeness, provided (although I don't think anything turns on it).

In response to the investigator's view, Mr R referred to what Quilter had said – that the adviser had identified, when carrying out due diligence on Mr R's existing pensions, that one of them was still invested in a 'high risk' fund and was therefore more susceptible to any investment volatility. Although the suitability report mentioned, as Mr R was shortly going to buy an annuity, switching into low risk cash based funds in the interim, there was no specific warning that applied to him as one of his funds remained invested. The fund had increased in value. But some of that gain was then lost when the markets fell on 25 February 2020. And Mr R lost the opportunity to 'lock in' the gains he'd made.

Mr R had said that a phone call to Scottish Widows would've immediately resolved any problem. But, based on what he's since told us, I don't think it would've been as straightforward as making a simple fund switch. Mr R has said he found out in April 2018 (when he switched his two other funds to cash) that Scottish Widows only offered a cash based fund for its stakeholder plan.

Looking at the funds offered by Scottish Widows for stakeholder plans, the Cash Fund, identified as cautious, was described as:

*'The fund aims to provide long-term growth consistent with high levels of capital security by investing mainly in short-term securities. Specific risk: • The fund can invest in high-quality, mostly short-term debt instruments such as fixed deposits, certificates of deposit, commercial paper and floating rate notes. It carries a relatively modest risk to capital.'*

I don't think the fund was high risk. But there was some risk to capital. In the absence of what Mr R terms a pure cash fund (or a deposit fund), he'd have needed to transfer to another product on an interim basis which he says he couldn't have done without assistance from his adviser.

But I don't think a transfer ought to have been recommended. It's one thing to say that consideration should be given to a fund switch, but another to recommend a transfer to a different product and where an annuity purchase appears imminent.

In my view, a transfer (and which would probably involve further fees) wouldn't normally be undertaken. And, regardless of what forms the adviser held, I don't think he could've undertaken a transfer without making a recommendation and getting Mr R's instructions. I note that Mr R had two other pension arrangements with Scottish Widow. Even if either of those plans could've accepted a transfer, I think any interim transfer (and whether to Scottish Widows or another provider) would've been discounted as unnecessary given it seemed an annuity purchase was imminent. And, at the time, there was no perceived urgency. As I've said below, what happened on 25 February 2020 couldn't have been foreseen. And time was too short to have achieved a transfer before the markets fell on 25 February 2020.

I think to some extent at least Mr R accepts that. He's said the costs of transferring would likely have been prohibitive. But he's concerned as to whether the adviser investigated his specific circumstances before saying, in the suitability report, that Mr R should consider switching into cash. I think it's likely (and as Mr R has suggested) that comment was a

standard warning which was routinely included. And it's somewhat at odds with the fact that Mr R had already switched two of his funds into cash and his stakeholder plan into the nearest to a cash fund that was offered.

But I don't think further investigation into exactly what the adviser knew is warranted. Mr R may see it as evidence of a failure on the adviser's part to meet his obligations – by not looking into Mr R's specific investments and providing specific advice. But the point is that Mr R's options were limited. He'd already switched two of his pension plans to cash and his stakeholder plan to the cash based fund. Transferring to another product wasn't feasible. Regardless of what the adviser knew or said, I can't see that any changes to how Mr R's three pensions were invested would've been made. Even if the risks of remaining invested had been pointed out (and by reference to the fact that the cash based fund that Mr R's stakeholder plan was invested in could lose value), I don't see that Mr R would've or could've taken any steps to mitigate his position. So no loss would flow from any failure to consider Mr R's specific circumstances and provide tailored advice. Mr R may not agree with my approach. But before awarding compensation for financial loss we need to consider not just if there was a failing but if any financial loss resulted.

#### Complaint 2: Contractor Wealth didn't give him best advice and failed to provide information he'd requested

Much of what Mr R has said rests on the adviser having made two recommendations in the report dated 18 February 2020 – an annuity and the blended solution. But I don't see that anything other than an annuity was recommended. The report said:

#### **'Recommendation**

*I recommend that you take out an annuity, on the basis described below with Scottish Widows. I have selected Scottish Widows on the basis that they currently offer the most competitive annuity rate on the open market on the following basis: Level, paid monthly in advance, no Guaranteed period, no dependants income.'*

The LV Retirement Account was mentioned on the first page of the report and in setting out the scope of the review and the types of products the adviser could offer. But the adviser's clear recommendation was that Mr R take out an annuity on the basis set out with Scottish Widows. The adviser said alternatives had been considered but discounted for the reasons given. The LV Retirement Account included an element of both a fixed term annuity and drawdown, both of which the report said had been discounted as Mr R wasn't willing to take the risk that his pension fund could fall in value.

Against that background, much of what Mr R has said about the adviser failing to meet his obligations falls away. In my view, the report was fair, clear and not misleading. It doesn't follow that the adviser was negligent, either by making a recommendation which wasn't suitable or that he failed in his duty to provide an acceptable level of service by not fully explaining both recommendations and providing full details of both in time for Mr R to make an informed decision on 21 February 2021. In my view the adviser's (single) recommendation was clear – that Mr R should buy the annuity. I consider that, for the reasons I've previously explained, was a suitable recommendation for Mr R.

The report concluded by saying that it would be discussed in detail. And that Mr R should contact the adviser if anything was unclear. Mr R did that – he requested (by telephone and email) details of the LV Retirement Account and said he wanted to see that information before the scheduled discussion. Quilter has confirmed that the adviser didn't obtain an illustration for that option. We've seen and shared with Mr R an illustration from Old Mutual

Wealth. It's dated 28 February 2020 so it was obtained after the discussion on 21 February 2020 during which Mr R said he was undecided and requested more information.

Mr R says it was information about the blended solution (the LV Retirement Account) that he needed, whereas I'd consistently referred to him requesting information about FAD. But, regardless of exactly what further details Mr R wanted, the position is that he'd asked for more information. I entirely accept that was his prerogative and that he wanted to be sure that buying an annuity was the right choice for him.

I don't see that the adviser refused to provide further information. Or that Mr R would have had to enter into a new contract with Contractor Wealth or pay another fee. The adviser said during the call on 21 February 2020 he'd look into things further and he'd be happy to '*redo the paperwork*'. And in the telephone call on 2 March 2020 the adviser said he'd been working on a new report which he'd been about to send to Mr R. It seems that was the case – the Old Mutual Wealth illustration evidences that the adviser had been undertaking further research.

Mr R draws a distinction between what happened before 25 February 2020 and after when, as he puts it, he went into loss mitigation mode. In my provisional decision I noted that the adviser hadn't got back to Mr R promptly or by the time Mr R called in early March 2020. I said the adviser should've realised there was some urgency, given the expiry of the annuity quotation. But I don't think it was imperative (and without the benefit of hindsight) that Mr R was able to make a firm decision on 21 February 2020. As I've said, I understand that Mr R wanted to be sure that buying an annuity – a one off, irreversible decision – was right for him and so he asked the adviser to look into other options. Unfortunately the markets then experienced volatility. That couldn't have been foreseen. And, even if Mr R had been able to make a firm decision on 21 February 2020, I don't think that would have changed things – I can't see how a fall in the value of his fund could've been avoided.

But it appears that what happened with the markets did change Mr R's perception and his priorities. It seems, from the conversation on 2 March 2020, that Mr R had been thinking about things again and had concluded that an annuity was his only option and his priority was to secure the annuity quotation he'd received. I don't see that he was forced into that decision by any failures on the adviser's part. So I haven't followed up on Mr R's enquiry as to whether Quilter's investigation extended into why a client had been forced into making a decision when the adviser had failed to provide all necessary information in a timely manner. I don't agree that was the situation here.

Nor have I ignored the evidence of the new adviser who noted there may have been some wires crossed in terms of understanding Mr R's full enquiries. I don't agree that the (original) adviser failed to do what was agreed and was negligent in not providing details of the non annuity option recommendation. As I've said, the adviser only recommended the annuity. But he did then fail to follow up promptly on the queries Mr R had raised.

### Complaint 3: The adviser failed to act with the due skill, care and diligence required by the regulator's conduct rules

Complaint 3 follows on from complaints 1 and 2. I haven't upheld those complaints and I'm not upholding complaint 3 either. Overall I maintain that Contractor Wealth's adviser made a suitable recommendation to Mr R that he should purchase an annuity.

As I've said, although Mr R was initially unsure – he thought he might get a higher income from a drawdown or other type of arrangement – his perception changed when the markets fell and he then decided he'd be better off with an annuity. The further information the new

adviser provided confirmed that – in particular that charges would erode the value of an income drawdown arrangement. And Mr R's own calculations confirmed that.

I don't agree that Mr R suffered any financial loss, either in terms of getting less tax free cash and/or a lower annuity, as a result of anything that Contractor Wealth's adviser did wrong (or didn't do). I think the annuity recommendation was suitable for Mr R. So I'm not making any award for financial loss. I've considered distress and inconvenience but, as I've explained below, I think the offer that Quilter made is fair and reasonable.

Complaint 4: Contractor Wealth had failed to ensure his annuity was implemented correctly and there'd been a delay in payment of the tax free cash

It's still my view that Contractor Wealth isn't responsible for these issues. I agree that Contractor Wealth said it would undertake the administration and monitor the process of the annuity purchase. But, from the difficulties that Mr R outlined in the appendix to his letter of 13 July 2020, it seems there were problems at Scottish Widows' end. I'm not making any findings about that. I'm just deciding, based on what Mr R has said, if there's anything which suggests that Contractor Wealth was at fault in the setting up of Mr R's annuity and getting payments, including the tax free cash, made.

Mr R had completed the annuity application form on 4 March 2020 and it was forwarded by Contractor Wealth to Scottish Widows promptly. Although Scottish Widows didn't confirm to Mr R until early May (and there may have been a delay in him receiving Scottish Widow's April 2020 letter confirming the annuity details), payments were made in April 2020 to cover March and April annuity instalments. The main issue seems to be the payment of the tax free cash, which wasn't made at the same time. The delay seems to have been due to confusion on Scottish Widow's part. And human error – the person who'd been dealing with the matter had moved to undertake a different role. It seems he overlooked, the cheque having been cancelled, making a new request for a BACS payment.

I can't see that the delay is down to Contractor Wealth or that it could've or should've taken steps to prevent or mitigate the delay. I wouldn't normally expect an advisory firm, having completed all the necessary paperwork to enable the annuity to be set up with a major provider, to check that it had been done. It was open to Mr R to have queried with Contractor Wealth what had happened but instead he chased it up direct with Scottish Widows which I think was the obvious and sensible thing to do and it seems got the problem rectified.

Complaint 5: Quilter hasn't handled the complaint fairly

I don't agree with Mr R's comments about this aspect of the matter. I don't think there's any suggestion that Quilter is independent. Contractor Wealth isn't directly authorised. It's an appointed representative of Quilter and so Quilter, as principal, is legally responsible for what Contractor Wealth did (or didn't do).

There's no requirement for complaints to be independently investigated in terms of appointing a third party to undertake that function. But firms are required to have in place a process for handling and investigating complaints which complies with the DISP (Dispute Resolution) rules. Amongst other things complaints must be investigated competently, diligently and impartially. I think Quilter was trying to reassure clients who'd had cause to complain and show impartiality by saying that equal weight is given to what the adviser and the consumer says. I don't think, although Quilter didn't uphold all of Mr R's complaints, that must mean that the issues he'd raised weren't properly investigated.

Mr R didn't agree with what I'd said about Quilter having made an offer which was fair and reasonable. He said it hadn't been formally offered and in its correspondence with him

Quilter had denied liability. I don't see there's any dispute about Quilter having made an offer which it remains prepared to pay. Mr R may not think it's sufficient and I understand his strength of feeling. But, for the reasons I explained in my provisional decision and this decision, in the main I'm unable to uphold his complaint or say that he's suffered any financial loss because of shortcomings on Contractor Wealth's part. And I think the offer Quilter has made is fair and reasonable compensation for distress and inconvenience arising from any service failings.

In summary I realise that Mr R is unlikely to agree with my findings. But I hope I've explained why I've reached the views that I have. As I've said above, it's a matter for Mr R whether he accepts my decision or if he chooses to pursue his concerns by some other route.

### **My final decision**

Quilter Financial Services Ltd has already made an offer to settle the complaint by refunding half of the fee Mr R paid. I think that offer is fair and reasonable in all the circumstances. So my decision is that Quilter Financial Services Ltd (if it hasn't done so already) should make that payment to Mr R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 May 2022.

Lesley Stead  
**Ombudsman**