DRN-4024563

## The complaint

Mrs S complains Quilter Holdings Limited ('Quilter') mis-sold her a Free Standing Additional Voluntary Contribution ('FSAVC') plan and didn't tell her an alternative might have been more suitable. Mrs S is represented in this complaint, but for ease I'll refer only to Mrs S.

## What happened

In 1996, Mrs S met with an independent financial adviser ('IFA') who was an appointed representative of a firm Quilter later became responsible for. Mrs S was in her mid-forties, employed as a teacher, and a member of her occupational pension scheme. Following this meeting, Mrs S bought an FSAVC plan to increase her retirement benefits, and she says she increased her FSAVC contributions over the years. Mrs S retired in 2008 and took her FSAVC benefits in 2009.

In July 2022 Mrs S complained to Quilter that in 1996, it hadn't told her contributing to her in-scheme Additional Voluntary Contribution ('AVC') arrangement was a better option for her, as the lower charges meant more of her contribution would go towards her retirement benefits.

Quilter said Mrs S had complained too late, as it was more than six years since the 1996 sale, and more than three years since Mrs S ought reasonably to have been aware she had cause for complaint about the sale. Because in 1996, Quilter discussed AVCs with Mrs S and set out the details of her FSAVC. And when Mrs S retired, she'd have known if her benefits were less than she was expecting. And in 1997, Quilter sent Mrs S updated FSAVC policy documents after updating her FSAVC terms and conditions. And Mrs S would have been sent annual statements over the years. Quilter said all these things set out the basis of Mrs S's FSAVC, and if she was in any way unhappy with it, she could have complained. Quilter went on to say that in the 1996 sale and over the lifetime of her FSAVC, it had given Mrs S the necessary information to make informed decisions, and an FSAVC would have met her objective of a flexible income at retirement.

Mrs S came to our Service and was able to provide some of the letters she'd received from Quilter over the years. Quilter didn't change its position, and said the time passed meant it no longer held any sale documents.

Our Investigator thought Mrs S had complained in time. He said the evidence didn't show Quilter had compared the benefits of an AVC with an FSAVC. And while Mrs S might've received less FSAVC retirement benefits than she expected, she likely thought that was due to general market conditions rather than any issue with the 1996 advice. Our Investigator thought the first time Mrs S ought reasonably to have been aware she had cause for complaint was when ex-colleagues told her in 2020 that they'd had better returns with their AVC.

Quilter disagreed. It said the rules didn't require Mrs S to know exactly what was wrong, just that there might be something wrong. It said Mrs S was told at the time of the sale what FSAVC benefits to expect. And at retirement, she'd have been told what she'd actually receive. So Mrs S ought to have realised there was an issue when her expectations weren't

met at retirement. Quilter said comparisons between an AVC and FSAVC didn't matter, only what income was provided. And most of Mrs S's complaint was about charges, but the charges and why an FSAVC was recommended were made clear in 1996.

Our Investigator didn't change their view. As agreement couldn't be reached, this complaint was passed to me to decide. On 28 February 2023, I issued my provisional decision, in which I explained why I thought this complaint had been brought in time, and went on to explain why I thought it should be upheld.

Mrs S received my provisional decision but didn't provide any further comments or evidence for me to consider.

For its part, Quilter did provide further comments for me to consider. In summary, Quilter said I should have separately considered the time limits issue before considering the complaint's merits and still thought this complaint had been made too late. It disagreed with all my reasoning about when Mrs S ought reasonably to have been aware she had cause for complaint. In particular, Quilter still thought Mrs S ought to have realised this when she received much less than she was told to expect on retirement - while I'd said Mrs S would've thought this was because of the 2008 financial crisis, Mrs S could have deferred taking her benefits until the markets had recovered. And as I'd said simply seeing FSAVC information wasn't enough for Mrs S to have reasonably been aware she had cause for complaint here, Quilter was unsure of my understanding of the 'disclosure rules' at that time.

Quilter also thought the 1996 advice was suitable, and pointed out the suitability letter noted AVCs had been discussed and discounted for various reasons. Quilter said I seemed to be applying current regulations and guidance to a sale that happened in 1996. And that Mrs S wouldn't have got higher returns from an AVC than an FSAVC, especially as she took her benefits early. Quilter thought the redress I'd set out didn't represent the return available from an AVC, and the FTSE income indices and fixed rate bonds were more appropriate than a growth index.

I'm now in a position to make my decision.

**What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I know Quilter says I may be applying current regulations and guidance to a sale that happened in 1996, but it's not specified where it thinks this is the case. Regardless, I'd like to reassure both parties that in considering this complaint, I've taken into account the relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time of the sale. And I've carefully considered everything that Mrs S and Quilter have provided to our Service. Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Quilter is also concerned I've not considered the issue of time limits separately, before considering the merits. But I'd like to reassure both parties that my first consideration here is whether this complaint is within our Service's jurisdiction, including the relevant time limit rules – this is what the Dispute Resolution (DISP): Complaints rules set out by the regulator, the Financial Conduct Authority, require me to do. And having reconsidered all the evidence

and comments that have been provided to me, I still think this complaint has been brought within the time limits for the reasons I explained in my provisional findings.

I know Quilter doesn't agree with this and thinks Mrs S should reasonably have been aware she had cause for complaint earlier, and certainly when she received less on retirement from her FSAVC than she was told to expect. Ultimately, Mrs S's complaint is essentially that Quilter should have advised her to buy an AVC instead of an FSAVC, as the lower charges made an AVC more suitable for her. And I've not seen anything to persuade me that Mrs S ought reasonable to have been aware she had cause for complaint about this until meeting her ex-colleagues in 2020. So I'm satisfied this complaint has been brought within the time limits.

Given this, I've gone on to consider the merits of Mrs S's complaint against Quilter, to hasten certainty and finality for the benefit of both parties. And having reconsidered all the evidence and comments that have been provided to me, I still think this is a complaint that should be upheld. I'll explain why.

The FSAVC was sold by an IFA. So at the time of the September 1996 sale, Quilter was required to follow the Financial Intermediaries, Managers and Brokers Regulatory Association ('FIMBRA') rules. And the Personal Investment Authority ('PIA') adopted the FIMBRA rules when it took over. These rules said that an adviser should:

- Not make a recommendation unless it believed, having carried out reasonable care in forming its belief, that no transaction in any other such investment (of which it ought reasonably to be aware) would be likely to secure the objectives of the consumer more advantageously, and
- Take reasonable care to include in any recommendation to a person, other than a professional investor, sufficient information to provide that person with an adequate and reasonable basis for deciding whether to accept the recommendation.

And in May 1996 the PIA issued a regulatory update ('RU20') which set out the procedures it expected product providers to follow. It reiterated what FIMBRA already expected, that the IFA should establish what in-house alternatives to the FSAVC were available and discuss the specific differences between them when making their recommendation. It said this discussion should include:

- The difference in charges and expenses between the FSAVC and AVC.
- The choice of investments.
- The availability of added years and the number of years that could be purchased.
- The degree of personal control and privacy.
- The age at which benefits could be taken.
- The degree of portability on changing jobs or becoming self-employed.

RU20 also referred to the lower charges under an in-house AVC, saying *"Charges under in-scheme AVCs will usually be lower than those under FSAVCs, reflecting economies of scale, rebated commission or a contribution to administration expenses by the employer. Of all the differences between the two routes, this is likely to exert the greatest impact on which route would offer the greater benefits to the client.""*

As I say, Quilter has told us it no longer holds any records about the 1996 sale. But Mrs S has been able to provide some limited information. This includes a copy of Quilter's suitability letter dated 17 September 1996, the post-sale FSAVC information document, the update letter it sent her in 1997, and the covering letter for an FSAVC statement it sent her in 2001.

The suitability letter says Mrs S's objectives were to 1) maximise her income in retirement; 2) protect her income in the event of ill health; and 3) protect her mortgage in the event of her death. The letter went on to say that Mrs S was checking whether she already had cover for objectives 2) and 3). So at the time of the 1996 sale, Mrs S's key and unmet objective was maximising her retirement income. The suitability letter said the options of FSAVCs, added years and AVCs had been discussed with Mrs S, but she preferred FSAVCs because of the flexibility, portability, investment choice, performance and lump sum death benefits.

So, from the suitability letter, I'm satisfied that Quilter mentioned AVCs and added years to Mrs S. Quilter says AVCs must have been discussed and discounted for various reasons, as the suitability letter says so. But the suitability letter doesn't give any details of what Quilter told Mrs S about either added years or AVCs, nor does it say that Quilter discussed the differences between FSAVCs and AVCs with Mrs S, or that it told her about the number of added years that could be purchased. And I've not been provided with any other evidence to suggest that Quilter did these things.

Therefore, while I know Quilter thinks the advice was suitable, I'm not persuaded that Quilter did enough at the time of the sale in 1996 to comply with the regulator's requirements. In particular, I'm not persuaded it did enough to discuss the specific differences between an FSAVC and in-house alternatives with Mrs S, or include enough information for her to decide whether to accept the recommendation. And I've not been provided with anything to make me think Quilter did these things at a later point, for example, when Mrs S increased her FSAVC contributions as she says she did.

Given this, I've thought about whether Mrs S would most likely have opted for one of the in-house options rather than the FSAVC, if Quilter had complied with the regulator's requirements. And if the advice given to Mrs S in September 1996 had been compliant and she'd been provided with the information she should have been about alternative options, then I think it's more likely than not she wouldn't have opted to take out an FSAVC.

I say that because, given what I know of Mrs S's circumstances at the 1996 sale, an in-scheme AVC seems to have been a better option for her. Her main, unmet, objective was to maximise her retirement income. I know Quilter argues Mrs S wouldn't have got higher returns from an AVC than an FSAVC, especially as she took her benefits early. But it's still the case that as RU20 highlighted, AVCs usually had lower charges than FSAVCs, meaning more of Mrs S's contribution would have been invested into her pension fund for retirement. And while the suitability letter suggests Mrs S liked the idea of flexibility and portability, it doesn't explain why, so I've not seen enough evidence to make me think these were important considerations for Mrs S. Given all this, I can't see any reason why Mrs S would have opted for an FSAVC that cost more and meant less of her contributions went towards her pension fund.

Some occupational pension schemes offered an alternative to AVCs known as added years, where additional contributions could be used to purchase additional years of service in the occupational scheme. The complaint that Mrs S has brought to our Service is about not being provided with information about the in-house AVC scheme, not added years. But for completeness, I've also thought about whether Mrs S would most likely have opted for added years rather than FSAVCs or AVCs, if Quilter had complied with the regulator's requirements.

As I say, the evidence is limited here. But from what I can see, I think that at the time of the 1996 advice, Mrs S had about 20 years of service in her occupational pension scheme. And I don't think the amount Mrs S was contributing to her FSAVC plan would have been enough to buy the added years she'd need to reach the maximum number of years' service in her

occupational pension scheme. Further, the cost of buying added years is determined by government actuaries, and is based on a set of conservative assumptions. This means added years would have seemed expensive when compared with the potential benefits available from a money purchase options like the FSAVC or AVC. And at the time it would've been expected that the AVC scheme would produce greater benefits on retirement as investment returns were expected to be high. So I think it's more likely Mrs S would've opted to invest in the in-house AVC option, as opposed to buying added years.

Taking everything into account, I'm satisfied that if Mrs S been given all the relevant information during the sale, she would more likely than not have opted for the in-house AVC option, as opposed to purchasing an FSAVC plan or added years.

I understand Quilter thinks the redress I set out in my provisional findings didn't represent the return available from an AVC, and that the FTSE income indices and fixed rate bonds were more appropriate than a growth index. But for clarity, I'm not asking Quilter to compare the returns from the FSAVC with those from an AVC. I'm asking it to complete a calculation comparing the charges between the FSAVC and an AVC. The redress methodology I set out in my provisional findings is in line with that used in the FSAVC review and with what our Service recommends in these situations.

**Putting things right**

I think that if Quilter had provided Mrs S with the information it should have done in 1996, she would have most likely started making contributions to her employer's AVC scheme rather than taking a FSAVC plan.

Quilter should undertake a redress calculation in accordance with the regulator's FSAVC review guidance, incorporating the amendment below to take into account that data for the CAPS 'mixed with property' index isn't available for periods after 1 January 2005.

The FSAVC review guidance wasn't intended to compensate consumers for losses arising solely from poor investment returns in the FSAVC funds, which is why a benchmark index is used to calculate the difference in charges and (if applicable) any loss of employer matching contributions or subsidised benefits.

In our view the FTSE UK Private Investor Growth Total Return Index provides the closest correlation to the CAPS 'mixed with property' index. So where the calculation requires ongoing charges in an investment-based FSAVC and AVC to be compared after 1 January 2005, Quilter should use the CAPS 'mixed with property' index up to 1 January 2005 and the FTSE UK Private Investor Growth Total Return Index thereafter.

If the calculation demonstrates a loss, the compensation amount should if possible be paid into Mrs S's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs S as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid in retirement. 25% of the loss would be tax free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 40%. So making a notional deduction of 30% overall from the loss adequately reflects this.

## My final decision

For the reasons set out above, I'm satisfied this complaint was made in time. And having considered all the evidence provided to me, I uphold it. Quilter Holdings Limited should pay Mrs S the compensation amount as set out in the steps above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 13 April 2023.

Ailsa Wiltshire
**Ombudsman**