

## The complaint

Mr S complains that Quilter Financial Services Ltd delayed in providing him advice on purchasing an annuity which led to him missing out on a preferential annuity income.

## What happened

Mr S was a client of Quilter's who managed several of his investments including those held in pension and investment accounts.

On 10 May 2021 Mr S met with his adviser from Quilter - who I will refer to as Adviser L – for a financial review meeting. A fact-find was completed at that time which, amongst other things, noted Mr S had a personal pension with Aegon (which had a guaranteed annuity rate) and an AVC with Prudential.

Mr S says that as he was approaching his 60th Birthday later that year, he'd asked Adviser L for his advice on what he should do with his Aegon and Prudential pensions.

Quilter sent Mr S an email on 11 May 2021 asking him to sign a letter of authority (LOA) so that Quilter could access information about his Aegon policy.

Mr S says he signed and returned the Aegon LOA on 26 May 2021. He says he also provided a second copy on 17 June 2021 which was then forwarded on to Aegon by Quilter.

Aegon wrote to Mr S on 29 June 2021 providing illustrations of what his fund could be worth, and the annuity it could buy, at ages 65 and 70.

Aegon wrote to Quilter on 30 June 2021. It gave a fund value of £36,424.92 and suggested that if the guaranteed annuity option was taken at age 60 it would provide Mr S an income of £3,314.67 per year.

Mr S said that over the following months he chased Adviser L for advice regarding the Aegon pension, but he never received any advice. Mr S sent us several emails which he sent to Adviser L in 2021. I've summarised a timeline below;

- 6 Jul 2021 – Mr S asked Adviser L if he'd received information on the Aegon and Prudential plans and if he had *'any ideas on what to do with these funds'*.
- 27 August 2021 – Mr S asked if there was *'any news on my AVCS & Aegon pots'*
- 1 September 2021 – Quilter responded to Mr S saying they'd received the information from Aegon and Prudential. However, Adviser L had been away in meetings and was away the following week. They said Adviser L would *'be in touch once he has a moment to look at it'*.
- 22 September 2021 – Mr S emailed Adviser L to ask if there was *'any news?'*
- 5 October 2021 – Mr S emailed Adviser L to ask *'are you ok? Not heard anything'*

*from you?'*. Adviser L replied saying he'd review what was received from the pension providers and call *'tomorrow'*. Mr S said he was unavailable that day.

- 2 November 2021 – replying to the earlier email thread Mr S asked Adviser L *'Did you get time or date to call?'*

Adviser L later resigned from Quilter and Mr S was passed on to a new Adviser – Adviser C – in late 2021.

Mr S says he met with Adviser C in early 2022 and asked about his Aegon pension. He said Adviser C suggested the guaranteed annuity rates meant it was a clear choice to accept the annuity. So, Mr S contacted Aegon to proceed with the annuity purchase.

Mr S says Aegon sent a new illustration showing his fund had dropped significantly to around £26,000 and the annuity he could have received was only £2,426.74.

Mr S complained to Quilter in May 2022 as he was unhappy it took them so long to provide any information on his Aegon plan and their lack of action once the information was received. He said he'd started discussing the pension long before his 60th birthday but because of the delays he'd missed out on annuity payments and his fund had lost value and was unable to provide him that same annuity.

In response, Quilter said they'd spoken to Adviser L and got his testimony. He said he'd had a discussion with Mr S about taking an annuity after the information was received from Aegon. But Mr S hadn't expressed any interest in taking out an annuity and was, in fact, against the idea.

Quilter went on to say, when Mr S met with Adviser C in January 2022, he raised the issue of getting an annuity through Aegon again. When Adviser C looked into this, a revised illustration was sent on 13 May 2022 with the reduced fund value leading to Mr S's complaint.

Quilter said they weren't Mr S's servicing agent on his Aegon plan – they'd only been given authority to receive information about it. And Mr S wasn't prevented from contacting Aegon directly to obtain details of his benefits.

They said their adviser's testimony demonstrated Mr S wasn't intending on taking an annuity at the time, but the guaranteed rates are available until Mr S reaches the age of 75, so it hadn't been lost. However, they acknowledged there was a delay in providing the information they received from Aegon to Mr S. So, they offered £300 for the trouble and upset that caused.

Mr S remained unhappy with Quilter's response and so brought his complaint to our Service. Our investigator upheld the complaint and concluded that Quilter should have provided Mr S with a recommendation to set up his annuity by his 60th Birthday. To put things right, as Mr S is yet to purchase the available annuity, he suggested allowing Mr S 30 days to purchase the annuity. He then asked that Quilter assess Mr S's past losses and set up an annuity for him to compensate him for any future losses.

Quilter disagreed with our investigator. In summary they said Mr S lived abroad and they could only provide him advice while he was in the country, so they weren't certain advice could have been given by his 60th birthday. They went on to say there was no clear evidence that Mr S wanted an annuity or reason why our investigator should prefer Mr S's testimony over that of their adviser. There was also no fee agreement in place to offer any advice on the Aegon plan and Mr S still hadn't taken the annuity.

As Quilter disagreed, the complaint was passed to me. I sent Quilter and Mr S my provisional decision. I've copied the relevant part of my provisional findings below.

### **My Provisional decision**

In my provisional decision I said:

*"I wasn't present at the meetings between Mr S and Quilter in 2021. So, in reaching a decision I have to consider the evidence available, the rules and any industry best practice in place at the time. There are times, as is the case here, where evidence is conflicting. In such cases I have to weigh the evidence that is available and decide, on a balance of probabilities, what I think happened.*

*Quilter say that no fee agreement had been reached to provide advice on the Aegon pension and they weren't the servicing agent on the Aegon policy. However, following the meeting in May 2021 Quilter asked for an LOA from Mr S and requested information about the Aegon policy. I see no reason to request this information if Adviser L hadn't agreed to look into what options were available to Mr S with his Aegon pension during the meeting the previous day.*

*I appreciate Quilter's comments that no fee agreement had been reached for this advice and they weren't the servicing agent on the Aegon policy. However, I don't find that surprising at the information gathering stage of the advice process. As Mr S points out, Quilter were managing a large number of his other investments for which he was paying for on-going advice from Quilter. So, I think it was understandable that Mr S thought his adviser would be able to give him an indication on what was the best course of action for his Aegon plan.*

*If Adviser L was unwilling or unable to provide any advice on the Aegon plan, I would have expected to see him clearly say that to Mr S. And he didn't. I think, on balance, if Adviser L received the information from Aegon and thought it best for Mr S to transfer his Aegon pension into his Quilter investments, then an agreement over fees would have been agreed at that point.*

*I've also seen that Mr S sent Adviser L an email on 25 May 2021. He said "Just wondering if you have had any more info on my Aegon & Prudential AVC regarding what to do with them? Take 25% tax free? Move them? I look forward to your advice". This email adds weight to Mr S's testimony that, as a result of his meeting, he was expecting advice from Adviser L on his Aegon pension.*

*Considering the communications I've seen and the circumstances of the case, I'm satisfied that, on balance, it's likely Adviser L agreed to advise Mr S on what to do with his Aegon pension despite there being no written fee agreement at that point. I think the evidence also supports that at that time Mr S hadn't made up his mind what to do with the Aegon pension and was waiting for an input from Adviser L before making a decision.*

*Quilter say their adviser spoke to Mr S about buying an annuity with his Aegon plan, and they say that happened after information was received in June 2021. But Quilter say Mr S was unwilling to purchase an annuity at that time.*

*Mr S's testimony directly conflicts with Quilter as he says he was constantly chasing Adviser L for advice which he never received.*

*The evidence I've seen demonstrates Mr S chased Adviser L on several occasions between July and November to talk about the Aegon plan. I think it's unlikely he would have done that had he already told Aegon's adviser that he didn't want to take the benefits from the Aegon plan. The emails are consistent with Mr S's testimony.*

*I've then considered what evidence there is to add weight to Adviser L's testimony. He says, "I certainly remember two Zoom meetings and a meeting at a house". There's evidence on the file from March 2021 of an 'appointment co-ordinator' from Quilter emailing Mr S details of the meeting on 10 May 2021 including details on how to access the online video call.*

*I've seen no such evidence of any meetings between Quilter and Mr S following the May 2021 meeting. I also haven't seen any call notes or other written record that adds any additional weight to Adviser L's testimony that these meetings occurred. Had the meeting occurred I would have expected to see a written record of it, or at least a record of the invitation to an online call similar to the email I've seen from March 2021.*

*As I've said, where testimonies conflict, I base my decision on the available evidence. And in this case the evidence I've seen adds more weight to Mr S's testimony that he was chasing Adviser L to discuss his Aegon plan. Therefore, on balance, I'm not satisfied Mr S told Adviser L after May 2021 that he didn't want an annuity from Aegon. I'm more persuaded that during that time Mr S received no advice or opinion from Adviser L. But he was waiting, and chasing, for him to do so.*

*I've considered what Adviser L would have likely said to Mr S if he had given his view on the Aegon plan.*

*In his testimony Adviser L says Mr S was adamant he didn't want an annuity so if he'd been able to complete the advice it would have been to transfer his Aegon plan to Quilter. However, it isn't the adviser's role to simply enact what he thinks his client wants. He needed to act in his clients' best interests and recommend what he thought was the most suitable option.*

*In his testimony Adviser L went on to say, 'I would have preferred the client to have taken the annuity, as I believe in such circumstances clients should take guaranteed incomes, when available, to cover essential expenditure.' I therefore think it's likely, if Adviser L was acting in Mr S's best interest, he would have suggested taking the annuity offered. And as I've already explained, I'm satisfied Mr S was seeking Adviser L's opinion and was likely to accept his recommendation.*

*Quilter questioned why Mr S would have wanted an income. But the evidence also supports his requirement for additional income. The fact-find conducted by Adviser L in May 2021 recorded that, due to Covid, Mr S and his wife's income had reduced by around £50,000 to £60,000. And Mr S had taken on some consultancy work one day a week to try and make up some of the loss. It also recorded that if things didn't improve, they may have to look at renting out one of their other properties to mitigate their losses. So, I think there is some evidence that supports Mr S's need for additional income at the time.*

*The evidence shows that when Mr S eventually spoke to an adviser from Quilter in January 2022, he decided to take the annuity. I therefore think a reasonable conclusion is that had he spoken to an adviser from Quilter earlier, he would have taken the same course of action. But it was Adviser L's lack of communication that meant Mr S delayed in purchasing his annuity. And so, a fair outcome would be for Quilter to compensate Mr S for any losses he's suffered for their delay in speaking to him about his Aegon plan.*

*I then need to consider when it's likely Mr S would have purchased his annuity. It's Mr S's testimony that he wanted to take the benefits on his 60th birthday in late July 2021. The evidence shows it's likely Mr S started to ask Quilter about his Aegon pension in May 2021. And Quilter were sent the illustration – using a retirement age of 60 – on 30 June. Mr S also chased Quilter on 6 July before his birthday. So, I think it's reasonable to conclude Quilter could have spoken to Mr S about his Aegon pension prior to his 60th birthday later that*

month.

*Quilter have questioned whether Mr S would have been in the country for Adviser L to have provided advice before his birthday. However, in all of the correspondence I've seen from Adviser L where he says he will call Mr S, he didn't ever ask Mr S whether he was in the country or not. I don't see why Quilter would have asked Mr S for a LOA to obtain information from Aegon if it didn't think it would be able to provide him with a recommendation for some reason. So, I think it's likely that had Mr S been given the chance to receive advice from Quilter prior to his 60th birthday that could have been achieved.*

### **The responses to my provisional decision**

Mr S accepted my provisional decision and made no further submissions for me to consider.

Quilter responded to my provisional decision raising several points. In summary they said:

- Mr S's annuity was payable annually in arrears, so the first payment would have been due in 2022.
- There was no formal agreement in place to provide advice on the Aegon plan or any servicing rights.
- If advice had been given, a fee would have been charged by Quilter which has not been taken into account in the redress.
- Mr S still hasn't taken his annuity. The investigators view of the complaint required Mr S to take the annuity within 30 days of acceptance of the view. As my provisional decision had no such covenant, it could lead to Mr S receiving compensation without having taken out the annuity – which wouldn't be fair to both sides.

### **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.

As neither side have provided any new evidence in this complaint, I have no reason to depart from the findings that I've already reached in my provisional decision. However, for completeness I'll address Quilter's concerns.

Quilter are correct in their assertion that Mr S's annuity was payable annually in arrears. The compensation calculation I'm directing takes that into account. When calculating A) below Quilter must use the notional payments Mr S would have received – which would have started in July 2022. As the payments are made in arrears, I haven't directed that 8% interest be paid on the pro rata part of the calculation for part years owed.

Quilter argue that no formal agreement was made to provide advice on the Aegon pension. But, as I've said in my provisional decision, I think it's likely Adviser L agreed to look into the Aegon plan during his meeting with Mr S in May 2021. While no written agreement was made, that doesn't mean I can't look into Quilter's actions, and it doesn't preclude them from having to act within the principles for businesses.

Mr S was Quilter's client, and as I've said, it's likely Adviser L agreed to look into his pension. The complaint Mr S has brought is about Quilter's failure to provide a financial service that they'd agreed to do. So, I think it's fair to assess Quilter's failure to provide that service and direct them to pay fair compensation for that failure.

I've considered whether it would be fair to take into account any notional fee Quilter may have charged had Adviser L given advice. But I don't think it would be fair to. I'll explain why.

When Mr S eventually met with his new adviser in January 2022, he again asked for his Aegon and AVC to be reviewed with a view to 'potentially moving to the platform'. Following the meeting Adviser C requested information from Aegon regarding the policy. Adviser C confirmed with Aegon when the plan would start payment. And when Mr S chased Adviser C on 4 May 2022, she confirmed she'd been in contact with Aegon about the GAR that would apply. Adviser C arranged for the paperwork to claim the annuity to be sent directly to Mr S and chased Aegon when it wasn't received.

I've seen no evidence that Adviser C charged Mr S any additional fees for this work. Therefore, I conclude that, on balance, it's unlikely Adviser L would have charged Mr S any additional fees either. So, I don't think it would be fair to apply any notional fees to the calculation.

I appreciate why Quilter feel Mr S should be compelled to purchase the annuity before any compensation is paid. They say Mr S *could* receive compensation without actually taking the annuity. However, for the reasons I've given in this and my provisional decision, the position Mr S finds himself in now has only arisen because of Quilter's failure to act much earlier than it did. Quilter's failure put Mr S on a path that cannot be undone. I say that as I think it's unlikely Aegon will now be willing to backdate an annuity to Mr S's 60th birthday due to Quilter's error. And that's not something I can compel Aegon to do in this complaint.

As Mr S now finds himself in a different position to what he would have been in but for Quilter's failings, I've set out what I consider to be fair compensation for the losses Mr S has suffered.

### **Putting things right**

My aim in awarding fair compensation is to put Mr S back into the position he would have been in, had it not been for Quilter's failings. I think that would have meant Mr S would have set up his annuity from Aegon on his 60th birthday. Using the fund size and annuity rates available on that date.

Any loss Mr S has suffered should be determined by calculating his past and future losses as I've set out below.

#### Past loss

To calculate Mr S's past loss Quilter should calculate:

- **A) Total of all the notional payments** which Mr S should have received from his pension, net of his marginal rate of tax, from the date of his 60th birthday up to the date of my final decision. This should include a pro rata payment for any part-years owed.

In working out the net payments, Quilter should assume that Mr S was a 20% rate taxpayer.

Quilter should pay the total of **A)** with the addition of 8% simple interest from the date the payments should have been paid to the date of my final decision. No additional interest is required on the pro rata part of the calculation.

#### Future loss

To work out if Mr S will suffer a future loss Quilter should calculate:

- **B) The notional gross pension per year** which Mr S should have been receiving from the date of my final decision onwards. Being the annuity he would have had in place at his 60th birthday.
- **C) The actual gross pension per year** Mr S currently will receive from the date of my final decision onwards. As Mr S currently still has a pension fund, the gross pension per year he could receive from it is determined by applying the applicable guaranteed annuity rate to the fund value on the date of my final decision.
- **D) Future Gross Loss per year = B – C.** If the answer is negative, there's a future gain and no redress is payable.
- **E) Quilter must then work out** what it would cost to replace any lost income in (D) by buying an annuity on the open market with these features. It will need to refer to published annuity rate tables and get a quote from a competitive provider.
- **F) The purchase price of the annuity found in E) is Mr S's gross future loss.** This should be paid directly to him as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at his likely rate on the income in D – presumed to be 20%.

If payment of compensation is not made within 90 days of Quilter receiving Mr S's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Where interest is being added at 8% simple per annum, this is likely to be subject to tax applied by HM Revenue & Customs. If Quilter deducts tax, it should tell Mr S how much it has taken off. It should also give Mr S a certificate showing this, if requested by Mr S so he may reclaim the tax from HM Revenue & Customs, if appropriate.

Quilter have already offered Mr S £300 for the trouble and upset their delay caused. I think that fairly reflects the inconvenience caused to Mr S having to repeatedly chase Adviser L. And the upset that caused. If they haven't done so already, Quilter must now pay Mr S £300.

### **My final decision**

My final decision is that I uphold this complaint. I direct Quilter Financial Services Ltd to compensate Mr S as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 July 2023.

Timothy Wilkes  
**Ombudsman**