DRN-5023382

Financial Ombudsman Service

The complaint

Mr D complained Quilter Holdings Limited (Quilter) gave him unsuitable advice to invest in a Free Standing Additional Voluntary Contribution pension plan (FSAVC).

He would like to be compensated for any financial loss he has suffered.

Mr D is being assisted in his complaint by a complaint management company. For the purposes of simplicity, I shall refer to all correspondence as being between Quilter and Mr D himself.

What happened

In January 2003, Mr D was a member of the National Health Service occupational pension scheme. He was advised to invest in a FSAVC by an appointed representative of a financial services firm that was ultimately acquired by Quilter, who consequently are now responsible for this complaint.

Mr D accepted Quilter's advice and began paying into the FSAVC in May 2003. Mr D subsequently ceased contributions into the plan as he became concerned that he may exceed the pensions lifetime allowance. These contributions stopped in either 2006 or 2008– the evidence is contradictory on this point.

In 2016 Mr D transferred the FSAVC to another provider, taking financial advice from a third party advisor while doing so.

In April 2023 Mr D complained that the advice he had received to invest in the FSAVC wasn't suitable for him because the adviser had failed to

- point out to him that he had the option to make additional voluntary contributions through his occupational pension scheme that may well have had lower charges than the FSAVC

- examine the options to purchase 'added years' in his occupational pension scheme

- provide Mr D with a full or descriptive comparison of benefits and risks between the in-house options and the FSAVC.

Quilter responded to Mr D's complaint on 1 September 2023. It concluded that he had made his complaint too late for it to be considered. I reviewed the circumstances of the complaint in May 2024 and concluded that it had been made in time and consequently it was within the jurisdiction of this service to consider the merits of the complaint.

Following this decision, this complaint was passed back to our investigator to review the evidence and form a view about whether Quilter had treated Mr D unfairly, as he alleged. Following this review, the investigator formed the view that Mr D had been treated unfairly in some respects. Quilter disagreed, and so the complaint has been passed to me to make a final decision.

To do so, I have also reviewed the available evidence. The key points from this I consider to be as follows.

Mr D originally took out a FSAVC in November 1999, acting on advice from a firm that has not been identified. He was also a member of his OPS, which he had joined in August 1999, when he was 23 years old.

Mr D was subsequently informed by this FSAVC provider that it was going to withdraw from providing personal pensions In January 2003, Quilter advised him to transfer his FSAVC to a different provider, which he did in May 2003. At this time he was 25 years old and had indicated that he wanted to retire at age 55.

He also stated that he wished to keep his monthly payments constant at £200 per calendar month. If he remained within his OPS, he could expect to have c38 years' service at the scheme retirement age of 60, around three less than the maximum of 40 years.

Quilter discussed purchasing added years in the OPS with Mr D as an alternative to continuing the FSAVC, but this was discounted as it would require increasing premiums and could not be accessed at age 55 unless Mr D was to take early retirement with his whole OPS benefits at that time.

It also did not recommend that Mr D invest in an AVC through his OPS. The reasons for this were that an FSAVC had more flexibility than an AVC through the OPS, particularly in respect of it being able to be taken independently of his main OPS benefits, which the AVC did not allow. It also allowed him to transfer in his existing FSAVC benefits.

Consequently, Quilter's recommendation to Mr D was that he switch his existing FSAVC benefits to a new provider rather than leave them invested with the original provider and that he make additional contributions into a FSAVC rather than take out an AVC or added years plan with his OPS.

Mr D subsequently suspended contributions into the FSAVC in either 2006 or 2008 (the evidence here is contradictory). He has stated that the reason he did this was because he became concerned at media coverage suggesting that colleagues in his OPS may be in danger of exceeding the pension lifetime allowance (PLA) rather than receiving any individual advice. In 2016, he transferred his FSAVC benefits to a new provider, which had provided him with financial advice.

On 4 April 2023 Mr D complained that the advice he had received to invest in an FSAVC rather than an AVC through his OPS was unsuitable, for the reasons outlined earlier. Quilter responded in September 2023 to state it believed that Mr D had brought his complaint too late for it to have been considered

On 6 December 2023, Quilter wrote again to reiterate its belief that the complaint had been made too late, but also to comment on the circumstances of Mr D's complaint and explain its reasons for believing that the complaint was without merit. Essentially, these were:

- Mr D had expressed a desire to retire at 55, five years before he could take unreduced benefits from his OPS

- The option of added years had been discussed and discounted owing to the likely future cost increases and the inflexibility as regards his desired retirement age of 55.

- Mr D and Quilter had discussed the relative merits of the FSAVC and the OPS AVC at the time and had decided on the FSAVC as having greater flexibility.

Unhappy with this response, Mr D brought his complaint to this service. As already noted, I decided that the complaint did fall within our jurisdiction and our investigator subsequently reviewed the evidence and formed the view that Mr D's complaint be upheld.

Quilter was unhappy with this and so the complaint has been passed to me to make a final 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.

Having done so, I agree with our investigator and uphold this complaint. I shall now explain my reasoning.

In making my decision, I have to be mindful that these events occurred some time ago and the documentary evidence was, as a result, incomplete. Owing to this, I have had to make what I believe are reasonable assumptions about what should have and actually happened.

There were several elements to the advice, which I shall look at in turn.

The first of these was the advice to transfer the FSAVC to a new provider. I can see from the evidence that Mr D had expressed concerns about staying with the original provider as it had informed him that it intended to exit the pensions market. Mr D was concerned that it may not manage his investment as carefully as an active provider and so was looking to switch. I can also see that there was no evidence to suggest that his OPS would accept a transfer of these benefits to an associated AVC, so suggesting a transfer to a third party provider seems reasonable to me. The decision to select the particular provider which Quilter recommended also seems reasonable, as the rationale selection appears well justified. Given this, I can't see that Quilter has done anything wrong in the transfer of the existing FSAVC benefits to a new FSAVC provider.

Turning now to look at the recommendation to make further investments into the FSAVC, I need to determine is whether the advice Mr D received from Quilter was suitable for his circumstances, or whether it should instead have to have recommended another course of action, such as investing more into his OPS through buying an entitlement to additional years or investing into an AVC scheme associated with his OPS.

Looking first at the issue of added years, I can see that Mr D had expressed a wish to retire at the age of 55, five years earlier than his OPS retirement date. He also wished his contributions to stay at £200 pcm, rather than to increase over time. Owing to when he joined the scheme, by age 55, Mr D would have not have accrued sufficient benefits within the OPS to receive a full pension. The costs of purchasing added years would also have increased over time and would have to be taken contemporaneously with his main OPS scheme benefits. For these reasons, I do not feel that purchasing added years would have been suitable for Mr D and find that Quilter did nothing wrong in this respect either.

The recommendation to invest future contributions into the FSAVC rather than his OPS AVC is more finely balanced. I have considered Mr D's articulated desire to retire at the age of 55, and how the FDSAVC would have provided more flexibility to take some of his benefits at age 55. I note, however, that Mr D was many years from retirement at that time and had not given any particular reason for wanting to take his retirement benefits earlier than his OPS benefits. I also consider that the projected value of his FSAVC funds at age 55 would have provided a low income relative to his salary if he had continued to make payments up to that time – this is true of his salary at the time and the likely significant increase he could reasonably expect to achieve by the time of his retirement. On balance, I find it unlikely that the FSAVC alone would have provided him with enough income to retire at age 55.

In most other respects, there was little difference between the features of the FSAVC and AVC, as both provided a range of investment options that were appropriate for Mr D's attitude to risk and the ability to change fund choices if he desired.

A key issue for me to consider, however, is the effect of charges between the two products. I can see that although Quilter's FSAVC checklist set out the differences between the charge of 0.6% pa for the OPS AVC and 1% for the FSAVC, the recommendation report did not provide this level of clarity or illustrate how the higher charges for the FSAVC may affect the growth of Mr D's funds. The report said:

We discussed the charges of the In-House AVC's, in relation to the 1% reduction in yield which [FSAVC provider] charge, [FSAVC provider] being my chosen provider for this contract.

Given that the report did not directly confirm the charges on the OPS AVC or provide an illustration based on the differences in charges, I agree with our investigator that I don't think Quilter adequately explained the effect of the higher charges on the FSAVC to Mr D. For this reason, I think it's reasonable to conclude that Quilter ought to have recommended that Mr D should have invested in his OPS AVC rather than the FSAVC.

Putting things right

It is my intention and the aim of this service that any compensation for financial loss should seek to put Mr D back into the position he would have been in were it not for Quilter's error.

To compensate Mr D fairly, Quilter must uundertake 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 Mr D's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr Das 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 his 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 given above, I uphold Mr D's complaint.

Quilter Holdings Limited should pay Mr D the sums calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 29 November 2024.

Bill Catchpole
Ombudsman