DRN-5235724

The complaint

Mr and Mrs S complain they were given inaccurate or inadequate advice or information by an adviser employed by an appointed representative ("AR") of Quilter Financial Services Ltd ("Quilter") in connection with investments taken to repay their mortgage.

They say they were relying on Quilter's advice to make sure they could repay their mortgage in November 2025. They say Quilter's failings meant they had to make significant revisions to their financial plans and extend their mortgage and pay more than they would otherwise have had to pay into the investments they had taken out to repay the mortgage.

In this decision I've used "Quilter" to refer to both Quilter and the appointed representative of Quilter for which Quilter has accepted responsibility.

Background

My provisional decision of 27 November 2024 set out the complaint circumstances in the following terms:

What happened

Mr and Mrs S took out an interest only mortgage loan in 2001 and took out investments intended to repay the capital. Their adviser wasn't connected to Quilter at the time.

In April 2015 they met with Quilter. Quilter says by that time Mr and Mrs S's 2001 mortgage loan had been replaced with a staff rate mortgage loan from Mrs S's employer.

According to Quilter's July 2015 *"fact find"* notes and May 2015 advice letter:

- Mr and Mrs S had three investment ISAs worth £11,600 in total and bank deposits of £24,680 (£18680 of which was from an *"investment maturity")*.
- Quilter advised them to invest £30,280, from their existing ISAs and the bank deposits, into new ISAs invested in a balanced manged fund run by Quilter. This left bank deposits of £6000 as an emergency fund.
- The old ISAs were changed due to high charges. Payments to the ISAs had stopped.
- Mr and Mrs S had credit card debt of £9000 and would use spare income to reduce this.
- Mr and Mrs S's mortgage was £120,000 on a 3% fixed rate until April 2016 (implying interest of £300 which wasn't recorded). This was a "*special rate"* Mr and Mrs S wished to preserve. It was a staff mortgage.
- The ISAs were taken originally to repay the mortgage. The mortgage repayment vehicle was "ISA". The monthly payment for this was £250 - matching the joint monthly outgoings figure of £250 recorded for the mortgage.

- Mr and Mrs S had asked specifically for advice on investments and had decided not to review *“Mortgages and other Liabilities”*

According to Quilter in 2021, the actual investment maturity amount in 2015 had been £21680, £3000 more than the sum in the fact find. Mr and Mrs S in a September 2015 email said they *“drew £3k from the overperforming investment…”* which explains this difference.

A note in the fact find dated 8 July 2015, said: *“Interest only mortgage covered by ISA’s – clients aware of need to probably “up” contributions in order to pay off mortgage in 10 years – they do have the option to extend the mortgage.”*

In September 2015 Mr and Mrs S wrote to Quilter saying *“…on the last visit you talked about us not necessarily having to pay back the mortgage at the end of the 25 year term. I’m sure I’ve always made it clear that the whole point of our investments was to clear our mortgage at the end of the term – 10 years from now… please have it in mind that we are aiming to have £120k paid off in 10 years… we would like to get on and start paying our investment* [the ISAs] *again.”*

Quilter replied that day saying: “*The next step is to work out how much you need to be saving each month to pay the mortgage off in 10 years Will have a look at that when I get back from holiday”.*

Mr and Mrs S chased in November 2015 and Quilter replied *“Just getting hold of the software I need to crunch the numbers for the regular contributions. Will come back soon.”*

On 5 January 2016 Quilter sent Mr and Mrs S an email, titled *“Savings”*, that said:

“…well I’ve run the calculation – obviously its full of assumptions. If we take the total value of the ISA’s… as about £30,000 we need to get this up to the mortgage amount – which I think you said is £120,000 – in 10 years’ time. Depending on the assumptions you use the monthly savings required comes out between £250 and £300 per month. It would be best to split it down the middle i.e. £150 each if you decided to go for the £300. The alternative would be to transfer some of the mortgage to repayment over 10 years – but this would probably be very expensive – your lender could give you a quote…might be quite high!”

Mr and Mrs S subsequently started to pay £250 in total into the ISAs each month.

Illustrations from May 2015 for the reinvested lump sum show lump sums of £22,440 and £7840 (£30280 in total) growing to £36,100 and £12,600 at the high growth rate (8%) after ten years. Illustrations from April 2016 for increased monthly contributions show £250 a month grows to £39,000 at the high growth rate. In total this makes £87,700 against a target of £120,000 - over £30,000 and almost 30% short of the mortgage amount. The May 2015 illustrations were dated the day after Quilter’s advice letter, so they weren’t sent with that letter. I’ve seen no reference to these or the 2016 illustrations being sent to Mr and Mrs S.

Quilter in April 2021 commented on the 2016 email as follows:

“In January 2016 we had a discussion regarding funding to pay off the mortgage. Working on a set of assumptions – which in no way can be guaranteed, I came up with figure of saving £250 to £300 per month into your ISAs to work towards this. In the end you decided to invest £125 each – which star[t]ed in May / June 2016. In an email I sent you… I did suggest transferring part of the mortgage to repayment (to get some certainty) – I did also explain that it would obviously increase your mortgage payments – possibly quite substantially.”

Quilter says there were reviews conducted with Mr and Mrs S in 2016 and 2017 but they turned down the reviews offered in 2018 and 2019. It says there was a review in 2020 but the review in 2021 was turned down by Mr and Mrs S.

But in February 2021 Mr and Mrs S did speak to Quilter and, according to Mr and Mrs S's emails, Quilter had suggested they might need to increase their payments of £250 by £100 or £200, which they said *"seemed… like a massive hike"*.

Quilter gave Mr and Mrs S new figures in April 2021. These said their ISAs were worth £54,988 as at March 2021 and had a projected value of £95,037 in five years - some way short of the £120,000 target - based on the *"current contribution"* which it didn't specify. It also said increasing monthly payments to £350 would increase this projected value to £102,196 and increasing monthly payments to £500 would increase this to £112,936.

Quilter also said at that time that running the ISAs for seven rather than five more years, would increase the projected value to £126,025 if the monthly contribution was £300 and this would be £142,187 after seven years if monthly payments were increased to £500.

Mr and Mrs S say they took this as Quilter telling them their investments wouldn't be able to repay the mortgage in 2025 but increasing their monthly payment from £250 to £300 would put them on track to repay it by 2028. They increased the ISA payment to £300 in July 2021 – and say the delay in setting up this increase was down to Quilter.

However in July 2022 Quilter gave them figures showing the ISAs were worth £56,069 and projected to be worth £87,358 by 2028, leaving a shortfall of £32,019. Quilter said that for the projection to reach the target Mr and Mrs S needed to pay £675 rather than the current contribution of £300. It said an alternative was to change to a repayment mortgage, but the mortgage term might need to be increased to keep this affordable. It said if the ISAs were used to reduce the mortgage, Mr and Mrs S could repay the rest of the mortgage at £611 a month for ten years (so 2032 rather than 2028 or 2025). At some point in 2022 Quilter had stopped charging Mr and Mrs S an advice fee, to help the ISAs grow more quickly.

Quilter says no advice was given in 2015 or 2016 about the existing ISAs repaying the mortgage loan. Quilter says the advice it gave related only to investing £30,000 from the ISAs and a maturing investment. It says Mr and Mrs didn't wish to discuss their mortgage at the time of that lump sum investment. It points out that the suitability report says other needs and priorities may have been identified had there been a full review.

Quilter says its January 2016 email just provided Mr and Mrs S with "assumptions" replying to their query, and just gave options relating to increasing regular ISA payments or extending the mortgage and converting part to repayment. It says mortgage reviews and mortgage repayment options would have been discussed with the mortgage adviser who arranged the mortgage - and points out that it told Mr and Mrs S to contact their mortgage lender for a quote. Quilter says the loan repayment arrangements would have been reviewed by the lender or mortgage adviser when the fixed rate ended in April 2016. It points out the mortgage was newly arranged at that point through Mrs S's employer.

Quilter says its April 2021 email covered solutions like increasing the ISA payments, extending the mortgage term and overpaying the mortgage but it wasn't advice and it related to discussions years earlier.

Our investigator thought the complaint should be upheld. In brief he thought Quilter gave unsuitable advice in 2016 when it told Mr and Mrs S that paying £250 to £300 a month to the ISAs could, with the £30,000 lump sum investment, produce enough to repay the mortgage in 2025. He thought the amount they should have been advised to invest had they been more suitably advised on 5 January 2016 would've been higher and Mr and Mrs could have afforded to pay more at that time. To put things right he thought Quilter should compensate Mr and Mrs S for the shortfall between their actual position and where they would've been if they had paid in the maximum they could've afforded instead. He also thought Quilter should pay Mr and Mrs S £500 for the inconvenience caused.

Mr and Mrs S said they would be happy with this, so long as the result was close enough to the £58,000 shortfall projected at the end of the term.

Quilter didn't agree. In brief, it said it didn't agree that the email of 6 January 2016 constituted regulated advice. It noted the email stated it was *"obviously full of assumptions"* and said what it had provided to Mr and Mrs S was 'assumptions' not advice. It noted that it had suggested Mr and Mrs S contact their mortgage lender and Quilter had not had input into either the original or mortgage or any changes made to it later.

Quilter said the 2021 email again contained assumptions about various options and ended by stating this would be better discussed at a 'proper' meeting. It said t*he clients did not proceed with a 'proper' meeting whereby a formal recommendation and advice would take place."* It said when its advisers provide advice, they provide a suitability report detailing their discussions and recommendations, and they are required to give regulatory documentation (Terms of Business, Authority to Proceed, Business Card).

Quilter also pointed out that the Financial Conduct Authority said on 6 November 2017 that *"In line with FSMA, we expect consumers to take reasonable responsibility for their choices and decisions."* In this regard Quilter highlighted that it had written to Mr and Mrs S each year for a review of the ongoing suitability of their arrangements, but Mr and Mrs S had declined a number of reviews.

- Provisional decision text ends.

My provisional decision then set out my provisional findings, including the following:

<u>*What I've provisionally decided – and why*</u>

It isn't disputed that Quilter recommended in 2015 that Mr and Mrs S invest £30,280 into new ISA arrangements. Its fact find notes make plain that Quilter knew those ISAs were the repayment vehicle for Mr and Mrs S's mortgage and that the proceeds would be used for that purpose. Also the maturing funds came from a product taken out for that purpose too.

Quilter didn't in 2015 or 2016 express a view as to whether an investment linked mortgage was the best course for Mr and Mrs S or more suitable than a repayment mortgage. But I've seen nothing to suggest Quilter ought to have advised Mr and Mrs S to change from the investment linked mortgage they had chosen before they met Quilter. Also I've seen nothing to suggest Mr and Mrs S wanted Quilter's advice on this or were looking to change this.

But Quilter knew the purpose of the ISA investment on which it was giving advice, was to repay Mr and Mrs S's mortgage. It is apparent that in July 2015 it also knew this wouldn't be sufficient to repay the mortgage – and that Mr and Mrs S would need to "up" what they paid to the ISA. It recorded this in its fact find notes. It is also apparent that the repayment of the mortgage and the adequacy of the existing investments for this had been discussed with Mr and Mrs S by Quilter, given the remarks about this in their September 2015 email.

It is also apparent that Quilter at the time of the 2015 investment advice gave Mr and Mrs S to understand that it would give further advice as to the amounts that would need to be invested into the ISA. This is clear from Quilter's September 2015 email that said: "*The next step is to work out how much you need to be saving each month to pay the mortgage off in*

10 years Will have a look at that when I get back from holiday". So what followed in that regard was a continuation and completion of a process that had started with the 2015 ISA investment advice.

What followed was Quilter's 2016 email suggesting that a contribution of between £250 and £300 a month would be needed. In my view this was advice and was given to Mr and Mrs S to guide them to invest a sum in that range in order that the ISA might repay the mortgage.

I note what Quilter says about the absence of the formalities that are meant to accompany advice, but the absence of such formalities doesn't mean advice wasn't given. It is plain that Quilter offered expert opinion on how much Mr and Mrs S would need to put into the ISA to have a chance of repaying the mortgage in time. The fact this was offered by email and not at a formal meeting, doesn't mean this opinion wasn't advice. Nor does the fact it was based on assumptions. What was being contemplated was repaying a loan using an investment whose returns weren't guaranteed, so working out what to pay in would necessarily involve assumptions about returns. That much was no doubt known and accepted by all the parties. But this doesn't mean that the opinion Quilter offered wasn't advice. In offering that opinion to Mr and Mrs S, Quilter had a duty to act with due skill and care.

Even if what Quilter told Mr and Mrs S in its 2016 email hadn't amounted to advice and had been mere information, Quilter had the same duty to act with due skill and care when giving that information. If it failed it would be responsible if this caused Mr and Mrs S loss. I say this bearing in mind the information it gave was clearly given in connection with, and ancillary to, the regulated advice it had given in 2015 on the ISA lump sum investment.

In any event, I don't see the distinction between advice and information, or whether Quilter's guidance was regulated advice or just ancillary to its regulated advice, would make a difference here when considering what loss might have been caused in this case and what a fair and reasonable remedy for that might be. So I won't discuss that distinction further here.

Looking at what Quilter told Mr and Mrs S in its 2016 email, it seems to me Quilter did not act with due skill and care in arriving at the figures it suggested. Mr and Mrs S had to expect Quilter had made assumptions about future growth, but it seems to me they were entitled to expect such assumptions would be reasonable, in accordance with regulatory guidelines and not otherwise arrived at negligently. In my view this means figures given by Quilter ought not to have assumed growth at rates in excess of those allowed at the time by the regulator in projections and illustrations. But illustrations produced for the lump sum investment and the regular ISA contributions in 2015 and 2016 respectively, show combined figures well below those needed to repay the mortgage even at the highest growth rate shown.

Based on this, I think it more likely than not that Quilter did use an unreasonable growth rate when calculating the monthly contribution Mr and Mrs S ought to make. As such I find that it was negligent in the advice and information it gave to Mr and Mrs S in its 2016 email.

I note that in March 2021 Quilter gave Mr and Mrs S an update on the situation and they increased their payments and accepted an increase in the mortgage term to 2028. But from the information given in 2022, it appears the 2021 figures may well have been incorrect too and not reasonable. But even if that is so, it isn't material to the outcome here, given the error I've already identified that was made in 2016.

In my view Quilter in 2016 miscalculated the monthly amount it suggested Mr and Mrs S should invest to repay their mortgage, such that their ISA had little chance of returning what they needed and was likely to leave a shortfall and the problems they did encounter. Quilter was responsible for this error.

Looking at what we have, I think Quilter made another error at the time too. Mr and Mrs S withdrew £3000 from the investment that 'matured', which was an investment for mortgage purposes. The withdrawal was apparently made because this investment was deemed to have been *"overperforming"*. I take it this means Mr and Mrs S believed themselves to be ahead of where they needed to be at the time as far as saving towards their mortgage was concerned. But based on what followed, it seems more likely they were behind target. So this wasn't a sum that Mr and Mrs S could afford to take out at the time. I think it likely that their view that the investment had overperformed was based on what Quilter had told them. That said, whether Quilter was at fault for Mr and Mrs S making this withdrawal or not, the adjustment it suggested to their monthly payments later failed to account properly for what was needed, and what was needed had been increased by the withdrawal.

Quilter says mortgage advice Mr and Mrs S would've received from other parties means Quilter isn't responsible for the results if the contributions it suggested for the ISAs weren't sufficient for mortgage purposes. But I've seen no evidence Mr and Mrs S took advice on the repayment of the mortgage from elsewhere. From what I've seen they sought and relied on the advice and information Quilter gave them on appropriate ISA funding levels. Also I don't think this issue not coming to light is explained by - or can be blamed on - Mr and Mrs S missing reviews, as Quilter didn't identify the issue at the reviews they did have. Also while Quilter says Mr and Mrs S turned down a review in 2021, it appears they did interact with Quilter about the ISA and mortgage repayment in 2021. So, overall, having considered all Quilter has said, I remain of the view that Quilter is responsible for the results of its error.

I've considered what detriment Quilter has caused and what would be fair and reasonable as a remedy. In doing so I've considered what Mr and Mrs S might have done had Quilter not made its error.

Mr and Mrs S say redress should be a lump sum paid that would ensure their mortgage is repaid in 2025 without them having to increase their monthly contribution. They say that if the mortgage has to be extended, Quilter should potentially cover the interest after 2025 too. They also seek a payment for distress. They say:

"This whole situation has had both a short and long term impact on our family. In the short term, our household is already on a tight budget, and any increased expenditure will result in serious lifestyle changes, with regards to housekeeping, holiday plans… In the long term, any extension and/or increase of the payment period into our fund, along with the extension of our interest only mortgage term, will result in a massive change in personal plans for the future, such as home improvements we had planned for at the end of our mortgage term, career breaks/changes, plans to move home and retirement… Had we been given better advice and provided with illustrations at the outset, we would have made very different decisions along the way and this could have all been avoided."

Quilter should have used permissible growth rates in 2016 to project the existing ISA value forward to 2025 and to work out the monthly ISA payment needed to increase this value to the mortgage target by 2025. Had it done so, this would've shown that the monthly payment Mr and Mrs S needed to make was higher – even at the highest allowable growth rate.

Mr and Mrs S were given a choice of two monthly payments in 2016 and chose the lower one. So, in working out the monthly payment they would have chosen in 2016, it should be the payment arrived at using the highest growth rate allowed at that time. This would give a new figure higher than what they paid but lower than if it had been projected using a lower growth rate. So long as this were affordable in 2016 (and absent evidence showing it wasn't affordable, I intend to proceed on the basis it was affordable), I think Mr and Mrs S would've agreed to increase their payment to this amount. It is also possible they may have chosen not to withdraw the £3000 from the investment in 2015, which would've reduced the amount of the monthly payment increase (and perhaps helped solve any affordability issues). But for simplicity I ignore this here and assume this would've still been withdrawn.

Quilter gave accurate information about the position in July 2022, so the detriment caused in 2016 in my view is most fairly judged as the difference between Mr and Mrs S's actual position in July 2022 and the position they would've been in instead had they paid the higher contribution. From that point they were free to take additional steps to mitigate their loss.

Had Mr and Mrs S agreed to pay more in 2016, a further increase or change in approach might still have been taken in 2021 when the ISAs were next assessed if they were falling short at that time. But given this would have only a year to take effect before the 2022 point at which I propose to assess loss, I propose this be disregarded. Also the values in 2021 appear higher than were illustrated in 2016, so on the face of it the ISA performance might have been ahead of the illustrated performance at that stage in any event.

Had Mr and Mrs S agreed to pay more in 2016, the calculated ISA value at July 2022 could still be behind the target needed at that stage, if the actual growth rate on Mr and Mrs S's contributions since 2016 was lower at that stage than the growth rate that is used to estimate the right monthly contribution. But that shortfall wouldn't be Quilter's fault, because it would arise from the risk Mr and Mrs S chose to take by choosing an interest only mortgage and an investment repayment method (and, within that, from using a contribution amount based on the higher rather than lower growth rate allowed for such projections).

If Quilter had acted with due skill and care when giving advice or information on how much to contribute in 2016, it would've quoted Mr and Mrs S a reasonable monthly contribution figure based on the highest growth rates allowable – and Mr and Mrs S would've contributed that higher figure to their ISAs. This would've had two results. Firstly their ISA values would've been higher in July 2022 than they actually were. I'll call this extra value "(A)". Secondly this extra value would've been achieved at extra cost to Mr and Mrs S – due to the extra they would've paid into the ISAs. I'll call this extra cost (B). So my starting point for redress is the extra Mr and Mrs S would've had at July 2022 minus the extra they would've paid. So (A) minus (B).

The resulting redress is the extra growth that would've been achieved by the extra contributions they should have been paying from 2016 to July 2022. This is fair on the basis that Quilter's error caused them not to make those extra contributions, and so caused them to miss out on the receiving that growth. I say this bearing in mind that from what I've seen Mr and Mrs S didn't invest the saving - (B) - so there is no lasting positive return on (B) for them to give credit for or to set against that lost growth. But (B) is still subtracted from the redress, so the extra contributions themselves are not part of the award, just the growth on them. This reflects that Mr and Mrs S are responsible for repaying their mortgage and would've had to pay more if Quilter had acted properly and quoted a higher contribution.

This starting point leaves Mr and Mrs S having to find now all the extra money they should have paid to the ISAs from 2016 up to July 2022. This is fair if the saving they made (of (B)) led to them enjoying a benefit whose value it is fair to take into account now. This would be so if the saving gave them a lasting benefit – reducing their credit card debt for example or building up cash deposits. It would also be fair if the sacrifices they must make in future to find these funds, match sacrifices they avoided having to make in the past by spending the funds – but in this latter situation there could still be a loss due extra mortgage interest they have to pay if the time it takes them to find the extra now means extending the mortgage.

On the other hand it wouldn't be fair for Mr and Mrs S to have to give credit for the saving if they dissipated it on extra spending that didn't offer a lasting value or notable benefit at the time. I say this taking into account that had they known they needed to pay more to their

ISAs, Mr and Mrs S would've likely spent less and operated on a tighter budget. Also I bear in mind forgoing spending now to make up the difference may impact Mr and Mrs S more than it would've done in the past, on top of the extra interest cost that will be incurred insofar as it takes time to save the extra funds. Changes in spending can't be made as gradually now as the might've been in 2016, and so may have more impact.

So if Mr and Mrs S have to pay all of (B) now, and all the extra interest arising from any extension to the mortgage, this risks Mr and Mrs S not being put back into the position they would've been in if things had been done correctly – so the redress might not properly reflect the full disadvantage they suffered as a result of not being advised to pay enough to their ISAs in the past.

With all this in mind, I've considered to what extent it would be fair to say that part of the saved contributions shouldn't be deducted from the redress above – due to Mr and Mrs S not having a benefit to show for it and the extra difficulty they would otherwise have in adjusting their financial situation now.

How much of the saving was dissipated by Mr and Mrs S depends on the actual pattern of their spending, which is hard to capture precisely given the six year period involved. It also depends on how that spending might have been different had they been paying more to their ISAs - which can't be answered with evidence from the time, because the situation never arose. But I can seek to make some reasonable inferences from what we have concerning Mr and Mrs S's circumstances at the time.

In 2015 Quilter assessed Mr and Mrs S as having net disposable income of over £1500 each month. But if the net disposable income was £1500, it would imply higher regular savings than the £200 a month recorded. So I think it likely that more of their income was devoted to essential or habitual spending than was recorded at the time. For example mortgage interest doesn't appear to have been accounted for. Also a credit card debt of £9000 doesn't seem consistent with spare income of £1500 each month – so I think it likely their finances were tighter. This means there was a risk the saving was dissipated on everyday but not essential living costs. Mr and Mrs S have referred to having to make changes now to *"housekeeping".* This means making savings on everyday spending – which supports the idea that at least some of the past ISA savings was dissipated in general spending on everyday living on which they might've made savings had they known they needed to pay more to the ISAs.

But on the other hand Mr and Mrs S did have wine worth £7000, so some of their spending in the past had led to the accumulation of an asset with realisable value. Also the plan in future was to use income to reduce credit card debt. Lower ISA payments would've allowed them more scope to do this. It seems to me this was a benefit Mr and Mrs S may have gained that was helped by making lower ISA contributions. On that basis, it might be fair for them to have to find up to £9000 of the savings they made on the ISA contributions.

Mr and Mrs S have referred to having to make longer term changes to *"home improvements we had planned for at the end of our mortgage term, career breaks/changes, plans to move home and retirement".* In my view having to make some changes to future plans like this so as to pay more to the mortgage, isn't unfair given Mr and Mrs S paid less to the mortgage in the past.

But Mr and Mrs S have also said they now have to change *"holiday plans",* which suggests in the past they may spent more in that way than they would've done if they'd been paying more to the ISAs. Such additional spending in the past could be recovered by spending less in future and so broadly this would balance out – but this could lead to an interest cost as it may take time for that saving to build up.

So it seems to me there is a case for saying some of the savings was dissipated such that Mr and Mrs S shouldn't have to give credit for it now - and some was dissipated such that they should still have to give credit for it but account should be taken of the extra interest they will incur given the time it will take them in future to make the savings this will require. But will have been given Mr and Mrs S a benefit that it is simply fair to deduct from the redress figure.

I don't know what the additional monthly ISA payment would've been in 2016 – and I don't know how much of the credit card debt Mr and Mrs S were able to reduce (or how much of this was due to the lower ISA payments). But subject to further evidence or arguments, I think it fair to assume that roughly half the ISA saving went towards reducing or stopping the increase in credit card debt – or otherwise produced a lasting benefit and as such it is fair that Mr and Mrs S rather than Quilter make up that amount.

This leaves the other half of the ISA saving. With all I've said above in mind, and subject to the further representations of the parties, I suggest it would be fair to assume Mr and Mrs S gained a material benefit from half of this saving (1/4 of the total) such that it is fair to take it into account even though it didn't provide a lasting benefit (better holidays for example) but dissipated the rest (1/4 of the total) on day to day spending that didn't produce any notable benefit and that it wouldn't be fair to ask them to account for now.

On this basis the reduction in redress made for savings made by Mr and Mrs S through past lower ISA payments, should be reduced by 25%. But an allowance for future mortgage interest should be made on 25% of the saving (being part of the saving Mr and Mrs S have to give credit for) to reflect the time it may take Mr and Mrs S to save up this sum now. This should be paid as a lump sum calculated using the mortgage interest rate they are paying and using the number of years it might take them to find these extra sums. As the saving was made over six years, I think it fair to assume it could take Mr and Mrs S the same time to make up. So this should be calculated as: (B) x 25% x their mortgage interest rate x 6.

I note this is a value being paid now for a future liability, so a discounting factor could be applied to give a more accurate present value – but given the approximations necessarily involved in the overall estimation of the loss Mr and Mrs S suffered due to the dissipation of the ISA saving, such precision would be artificial and I think it fair to disregard this.

I suggest no mortgage interest allowance for the 25% of the saving that isn't deducted from the redress, because Mr and Mrs S can use this sum to repay debt and avoid interest. I'm also not suggesting an allowance for future mortgage interest on the 50% of the saving I've said Mr and Mrs S may have gained a lasting benefit from or used to reduce credit card debt (or to stop it increasing more). If they pay mortgage interest on this for a time in future, I don't think this is unfair given they saved debt interest on this amount in the past.

No interest would be payable by Quilter on the sum paid in advance for future mortgage interest. But interest should be paid on the rest of the award at the rate of 8% from the 2022 calculation date until the date the redress is paid.

In addition, Quilter should pay Mr and Mrs S £500 for the distress and inconvenience Quilter's error has no doubt caused them. The inconvenience of having to rearrange their affairs now is no doubt considerable and the disappointment caused by the extra mortgage shortfall was also plainly considerable.

I accept my approach is broad brush, but it is based on the available evidence and, subject to the representations of the parties, I'm satisfied it is a fair and reasonable approach.

- Provisional decision text ends.

Mr and Mrs S replied to say they were willing to accept my findings and redress proposal. Quilter replied disagreeing.

Quilter said it had concerns about my findings but particularly and mainly the redress I'd proposed. It asked that I look carefully at the calculations I was proposing to ask Quilter to carry out. In particular Quilter said to find it liable for payments Mr and Mrs S didn't pay to their ISA for repayment of their interest only mortgage, was without precedent and risked setting a new and alarming precedent. In addition, and in support of all this, it made the following points, in brief summary:

- It was plainly Mr and Mrs S's responsibility ultimately to ensure their payments were of a high enough level to meet their obligations.

- Quilter couldn't force Mr and Mrs S to make increased payments – it could only put them on notice that they should pay more.

- Basic mathematics clearly show that Mr and Mrs S would need to increase their payments from the base level to a level consistent with the term and value of their liability.

- Quilter isn't responsible for Mr and Mrs S's spending or income variations and so clearly isn't liable for payments Mr and Mrs S didn't make as a result.

- Quilter hasn't seen evidence that shows it is culpable for Mr and Mrs S not saving enough at the relevant times so as to be able to repay their mortgage when it fell due. Mr and Mrs S haven't provided any such evidence and I hadn't obtained such evidence.

As the matter couldn't be resolved informally, it has been passed back to me to decide.

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've arrived at the same conclusions as in my provisional decision and for the same reasons. I've briefly rehearsed some of these points below and also addressed briefly the new points Quilter has raised.

I agree Mr and Mrs S were responsible for funding the monthly contributions for their ISA. But looking at what Quilter told them in its 2016 email, Quilter didn't act with due skill and care when calculating the monthly contributions it suggested Mr and Mrs S might make.

In my view this miscalculation was such that Mr and Mrs S's ISA was likely to leave a shortfall and the problems they did encounter. Quilter was responsible for this error. I note what Quilter says about being unable to force Mr and Mrs S to pay higher contributions, but the evidence we have suggests that Mr and Mrs S were willing to pay the contributions that Quilter estimated would be needed to have a chance of repaying their mortgage – although they preferred to pay the lower of the quoted figures when given the option of two figures.

I note what Quilter says about basic mathematics showing Mr and Mrs S would need to increase their payments, but if this was so obvious, I don't see that Quilter would have made the error it made. I note that in 2021 Quilter did suggest that Mr and Mrs S pay more, and they were willing to do so. But calculations in 2022 still showed a very significant shortfall. I don't see that Mr and Mrs S as lay people ought to have been able to identify the funding shortfall that Quilter with its expertise, hadn't been able to spot (or identify this earlier than

Quilter was able to).

I’ve considered what detriment Quilter caused and what would be fair and reasonable as a remedy. In doing so I’ve considered what Mr and Mrs S might have done had Quilter not made its error. If Quilter had acted with due skill and care when giving advice or information on how much to contribute in 2016, it would’ve quoted Mr and Mrs S a reasonable monthly contribution figure based on the highest growth rates allowable – and Mr and Mrs S would’ve contributed that higher figure to their ISAs. Quilter gave accurate information about the position in July 2022, so the detriment caused in 2016 in my view is most fairly judged as the difference between Mr and Mrs S’s actual position in July 2022 and the position they would’ve been in then instead had they paid the higher contribution. From that point they were free to take additional steps to mitigate their loss.

I’ve explained my view that Quilter’s error deprived Mr and Mrs S of the return they could have made had Quilter suggested a reasonable funding level for their ISAs. Quilter hasn’t said anything to change my view on this point.

But, as I said in my provisional decision, redress on this basis alone leaves Mr and Mrs S having to find now all the extra money they should have paid to the ISAs from 2016 up to July 2022. I explained the circumstances in which this might be fair – and also those in which it might not be fair. I won’t repeat all that here. But I explained that in my view this might not be fair if Mr and Mrs S dissipated the saving on extra spending that didn’t offer a lasting value or notable benefit. I noted also that forgoing spending now may impact them more than it would’ve done in the past, on top of the extra interest cost that will be incurred insofar as it takes time to save the extra funds. Changes in spending can’t be made as gradually now as the might’ve been in 2016, and so may have more impact.

Quilter says it isn’t responsible for Mr and Mrs S’s spending or income variations and so clearly isn’t liable for payments Mr and Mrs S didn’t make as a result. But I don’t agree. In my view Quilter’s error, in suggesting too low an ISA contribution figure, meant Mr and Mrs S thought they had more spare income, and scope to spend, than they ought to have thought they had. It is foreseeable that this would likely affect their spending patterns in some way.

Quilter says it hasn’t seen evidence that shows it is to blame for Mr and Mrs S not saving enough at the relevant times so as to be able to repay their mortgage when it fell due. But in my view Quilter’s error did stop Mr and Mrs S paying in as much as they would otherwise have paid in – and if this error also affected Mr and Mrs S’s spending pattern such that the extra that they saved was actually dissipated by them in ways that mean it wouldn’t be fair to take this into account now, then Quilter’s error caused that additional loss. The question of how much of the saving was dissipated by Mr and Mrs S depends in part on how their spending would have been different had they been paying more to their ISAs.

My provisional decision sought to make reasonable inferences about this from the evidence we have – I don’t agree that it wasn’t based on evidence. I considered what Mr and Mrs S have told us about how the shortfall impacted them and what they might have done if they’d known they needed to pay more earlier. I thought it fair to assume that roughly half the ISA saving went towards reducing or stopping the increase in credit card debt – or otherwise produced a lasting benefit such that is fair that Mr and Mrs S rather than Quilter make up that amount. I suggested it would be fair to assume Mr and Mrs S gained a material benefit from half of the saving that remained (1/4 of the total saving) such that it is fair to take it into account even though it didn’t provide a lasting benefit (better holidays for example) but dissipated the rest (1/4 of the total) on day to day spending that didn’t produce any notable benefit and that it wouldn’t be fair to ask them to account for now.

As I understand it, Quilter’s objection is in the main focussed on this last point. I explained that how Mr and Mrs S's spending might have been different had they been paying more to their ISA, is a question about a situation that never actually arose – so there are limits to the extent to which this can be answered definitively from evidence from the period. Also while Quilter has suggested my answer is not sufficiently supported by evidence, it hasn't provided any alternative answer or interpretation of the available evidence, nor has it provided further evidence or any calculations to show what the additional contributions might have been. So what Quilter has sent doesn't make me think I ought to change my answer. My approach is broad brush, but this is necessarily so to some extent, and my approach is based on the available evidence. I'm satisfied it is a fair and reasonable approach.

I've thought carefully about Quilter saying this approach is without precedent. My role is to decide what is fair and reasonable in the particular circumstances of this complaint. But I don't agree my approach is novel. DISP App1 for mortgage endowment complaints sets out circumstances in which it wouldn't be reasonable to take into account the saving from lower outgoings under an endowment mortgage. Also the principle set out by the Court of Appeal in R v ICS ex parte Bowden [1994] provided it was fair to take a saving into account where it can be shown the complainant knew they were making a saving, and had kept those savings and had them readily available. It is considerations of these kinds that I have weighed in reaching my decision.

So for the reasons and on the basis and to the extent set out in my provisional decision, I uphold Mr and Mrs S's complaint.

Putting things right

In summary I conclude Mr and Mrs S would've paid more to the ISAs had Quilter used a more reasonable growth rate to estimate the required contribution. Quilter should pay the growth Mr and Mrs S missed the chance to make (1 below). Mr and Mrs S will have to fund 75% of the contribution shortfall themselves, but Quilter should pay 25% of it (2 below) given it's likely some of the saving was dissipated such that wouldn't be fair to ask Mr and Mrs S to find this now. Quilter should make a payment (3 below) for six years' mortgage interest on another 25% of the contribution shortfall, to reflect that it may take Mr and Mrs S time to make future savings to make up this sum. Quilter should also pay a sum for distress (4). Quilter should also pay interest on (1) and (2) from July 2022 until redress is paid. So to put things right, Quilter Financial Services Ltd must pay Mr and Mrs S the following sums:

(1) (A) – (B); and
(2) (B) x 25%; and
(3) (B) x 25% x mortgage interest rate x 6
(4) £500 for distress and inconvenience caused
(5) Simple interest at 8% on (1) and (2) above from July 2022 until redress is paid.

Note: (A) is the extra value the ISAs would've had on the July 2022 date of the new ISA projections, if the monthly ISA contributions that restarted in 2016 had included the extra that a projection at that time would've shown was needed to increase the projected ISA values to the mortgage target at the 2025 mortgage repayment date, using the highest growth rate allowed for projections in 2016. (B) is the extra Mr and Mrs S would've paid to the ISAs to achieve the extra value in (A).

My final decision

For the reasons I've given, and in light of all I've said above, I uphold this complaint.

Quilter Financial Services Ltd must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs S to accept or reject my decision before 28 January 2025.

Richard Sheridan
Ombudsman