

## The complaint

Mr W complains about advice given to him relating to Free Standing Additional Voluntary Contributions (“FSAVC”) and says the offer made by Tilney Financial Planning Limited is not enough to put things right for him.

The advice was given by another firm which is now part of Tilney. For ease of reading I’ll refer to Tilney in my decision.

## What happened

Mr W is represented in this complaint by a claims management company (CMC).

Mr W started working for the NHS in 1993 and became a member of the NHS pension scheme. He decided to make additional contributions toward his retirement provision and says he took advice about this in 1997. Following that advice, he took out an FSAVC starting in June 1997 rather than make additional voluntary contributions (AVCs) to his occupational scheme. The CMC says Mr W wasn’t told about the risks involved or alternative options and so was badly advised.

Mr W paid £100 per month which was invested in a fund with a company I’ll call E. His retirement date was selected as December 2020 (at age 55).

Over the lifetime of the plan Mr W remained invested in the same fund with the same level of contributions. He continues to work in the NHS, has remained a member of the NHS pension scheme and has not bought additional years in that scheme.

When Mr W complained, Tilney said it didn’t have any records from the time but accepted it was likely Mr W was disadvantaged by taking out an FSAVC rather than using the in-house AVC scheme. It didn’t think he would have decided to buy added years in the occupational scheme.

Tilney offered to instruct a third party to calculate redress in accordance with the regulator’s FSAVC guidance, based on a comparison with the in-house scheme. But the CMC said Mr W would have been better off if he’d bought added years in his employer’s pension and Tilney should calculate the redress on that basis.

Tilney didn’t agree so Mr W complained to this service. Our investigator thought Tilney’s offer was reasonable and didn’t think it needed to do any more. Mr W disagrees and has requested an ombudsman’s decision. He’s made a number of comments, including that:

- he didn’t want to take any risks with his pension and was content to accept the option of the one additional pension presented to him;
- the monthly payments were not high and the benefits presented to him were clear;
- he didn’t give the additional pension any further thought and didn’t come across the term “added years” until recently, when a colleague who was retiring mentioned it to him;
- now he can see the real worth of the additional pension he’s been paying into all

these years and compare it to the value of the added years he could have bought, he's been left severely disadvantaged;

- his salary has increased regularly so added years would have been affordable.

### **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.

The plan was taken out by Mr W in 1997 and there are no records available from the time, so it's very difficult to say precisely what was discussed or what information Mr W was given. I've made my decision on the basis of what I think is most likely to have happened, based on the information we do have.

The business that became part of Tilney was an independent financial adviser (IFA), so wasn't tied to a particular provider. The advice took place after May 1996 and the regulator had by then clarified the standards it expected IFAs to follow. The adviser was expected to explain the difference in cost between FSAVCs and in-house AVCs, and discuss the choice of investments and the availability and cost of buying added years in the occupational scheme.

Tilney was prepared to carry out a comparison following the regulator's FSAVC redress guidance. That's what we'd expect a firm to do. Generally speaking people are better off making in-house AVCs as the charges tend to be lower, and the perceived benefits of FSAVCs (such as flexibility and portability) are less likely to be relevant for a medical professional like Mr W. He was likely to remain in the profession (and therefore the same pension scheme) rather than change employers over his working life.

I've considered Mr W's comments that he would have been better off if he'd bought added years rather than invest in an FSAVC. He could have reasonably expected to stay in the same employment and to receive pay increases through his career, which were likely to be linked annually to inflation and career progression. So, I think it's fair to say he would have expected his income would increase regularly – as indeed it has. But Mr W didn't ever increase his payments into the FSAVC over the years.

To buy added years he would have had to commit to a fixed percentage contribution from his salary. So by its nature, the amount he'd pay would rise each time his salary went up. Since he chose not to commit at the outset to paying a percentage of his increasing salary, which would have been required to buy added years, it doesn't seem likely he would have chosen the more expensive and increasing premiums needed for added years.

I've considered where Mr W invested his contribution. As there's no documentation from the point of sale, I can't be sure of Mr W's attitude to risk at the time. But in 1997 retirement was far enough away to mean he wouldn't have been completely risk averse. The Global fund he invested in (and remained invested in) carries a higher than average level of risk as it's mainly invested in equities. This shows he took some risk in order to maximise returns over the longer term. That seems reasonable, given he had more than twenty years until retirement. I think if added years were discussed at that time, they would have been a less likely choice as they are a much more conservative, risk averse and expensive route to the same outcome. The anticipated returns from an FSAVC were high, with relatively low contributions. On balance, I don't think it's likely he would have opted for a more expensive choice, committing himself to higher – and increasing – contributions to reach the same goal.

I've also taken into account Mr W's ongoing membership of the NHS scheme. Having an FSAVC didn't prevent him from buying added years at any point after 1997 until that option

was withdrawn in 2008. He didn't do so and there's no evidence that he ever considered this. Although the NHS would not provide individual specific financial advice about that, it's likely they would have made him aware as a member of that change.

I appreciate Mr W says he can now see the value of the additional pension he's been paying into compared it to the value of the added years he could have bought. But I have to make my decision based on what I think is most likely to have happened at the time, rather than looking at it now with the benefit of hindsight.

For all these reasons, I think Tilney's offer to carry out a comparison following the FCA's FSAVC review guidance is the right outcome in this case. I don't think Tilney needs to carry out the comparison with added years as I'm not persuaded that's what Mr W would have done in 1997, even if he knew he could.

For the avoidance of doubt I've set out below what Tilney should do.

### **Putting things right**

Tilney 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, Tilney 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 W'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 W 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 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**

Tilney Financial Planning Limited has already made an offer to settle the complaint by carrying out a redress calculation and I think this offer is fair in all the circumstances.

So my decision is that Tilney Financial Planning Limited should carry out the calculation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 July 2022.

Peter Whiteley  
**Ombudsman**