

## **The complaint**

The estate of Mr W complains through a professional representative that Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) mis-sold a Free Standing Additional Voluntary Contribution (FSAVC) plan.

## **What happened**

In 1993, the late Mr W was aged 52 and working as a bricklayer earning approximately £19,000. He met with an adviser from Confederation Life (now Sun Life) and was advised to take out an FSAVC. At the time he was a member of his Occupational Pension Scheme (OPS).

Mr W took his benefits from the plan in 2006. Sadly, in 2017 Mr W passed away.

More recently through a professional representative Mrs W, representing Mr W's estate, complained about the advice given in 1993. In short, the complaint was that the opportunity of an in-house AVC scheme wasn't discussed with Mr W.

Initially Sun Life told Mrs W that she wasn't an eligible complainant. However, sometime later Sun Life then admitted it had made an error and re-opened the complaint. It then upheld the complaint and made an offer on a charges only basis. It said the loss had been calculated at £5,221.83.

The representative didn't agree, he said Mr W would've more than likely bought added years, the reasoning given, that it would've been in his best interests.

The investigator explained he didn't agree because at the time of advice the in-house scheme didn't offer added years. It was only after a change of employment years later that Mr W would've had the opportunity to purchase added years. And so had the adviser made Mr W aware of the in-house scheme, he wouldn't have purchased added years in any event.

The representative didn't accept this and said but for the advice given by the adviser, Mr W would've taken added years in his later employment.

## **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.

Sun Life has provided evidence to show it has looked into Mr W's employment situation throughout the years in question. And at the time of advice to take out the FSAVC, the in-house scheme Mr W could've joined didn't offer added years. It was only later when Mr W moved to a new employer that added years might have been an option. The representative says that Mr W would've taken out added years as it was the beneficial option. But has provided no further reasoning or supporting evidence.

At the time of advice in 1993, the adviser was tied to Sun Life products, and so could only give advice about them. However, the LAUTRO code of conduct required a company representative to exercise due skill, care and diligence and to deal fairly with investors.

So, this means we'd expect tied advisers should have known in-house AVC options would be available to the consumer. And in addition to highlighting the benefits of the FSAVC, they should mention the generic benefits available with in-house options.

Even if a tied adviser only knew the consumers occupation these generic benefits would include:

- In-house AVCs could potentially offer lower charges than the FSAVC
- 'Added years' might have been available under a defined benefit occupational scheme, particularly in the public sector - these provided a guaranteed benefit linked to salary and an additional component of tax-free cash, neither of which were available under an FSAVC
- The consumer's employer might match or top-up the amount the consumer paid into either in-house option

So had the adviser acted correctly and advised Mr W to look into his in-house options, he wouldn't have been able to take out added years in any event – and wouldn't have been provided with any information about them.

The representative says that Mr W would've taken out added years when he joined his new employer three years later, as it was the beneficial option. He hasn't explained given the above, how this is linked to the advice given in 1993. But in any event, I see this as an argument constructed with hindsight and there's been no supporting evidence specific to Mr W provided. At the time of the advice added years would have likely looked expensive when compared to an AVC and projections likely would have shown that similar benefits could be achieved through investment returns. And I note the representative's initial complaint focused on the advice to Mr W not giving due consideration to low cost options and investments. Added years likely wouldn't have been a low-cost investment compared to the alternatives. It's a stretch to link the advice given in 1993 (when added years wasn't an option for Mr W) to him not taking added years in 1996 with a later employer. But even in the event I accepted this link, I'm not persuaded Mr W would've taken added years in 1996 had the adviser told Mr W about the in-house option.

So, I'm satisfied Sun Life's offer on a charges only comparison in line with the regulators guidance is fair and reasonable.

The complaint from the representative since the offer was made has focused solely on whether Mr W would've taken out added years but for the advice given in 1993. And so, this is what I consider to be the crux of the complaint.

However, following our investigator's recommendation, Sun Life offered to pay £150 due to errors and delays it's accepted. And it offered to pay 8% interest from the date of its initial offer to the date of the investigator's view – this was just over £100. The investigator accepted this and put the offer to the representative but there was no comment on this offer. The representative instead re-iterated his belief that the comparison should be done on an added years basis.

The interest was offered to bring the award made in the initial offer up to date of the investigators view. It wasn't an offer of 8% on the whole award (this would be much more

than £100). This isn't something the regulator requires a business to do in its review guidance. And for the avoidance of doubt, I don't think an award of 8% interest on top of the loss established is required here – I think the regulator's review guidance is the appropriate way to redress this complaint.

Sun Life made this offer and the representative has had the opportunity to comment on it but no further points have been raised regarding this. As I can see no grounds to make any additional award – I will simply include this offer (as Sun Life was prepared to offer it) as a settlement in my decision.

### conclusions

In conclusion, I am satisfied that a review in line with the regulator's guidance and on the basis of a charges only comparison is a fair way to redress this situation.

### **My final decision**

I'm satisfied a charges only comparison is a fair and reasonable method to redress this complaint. On notification of the acceptance of this decision, Sun Life Assurance Company of Canada (U.K.) Limited should pay the settlement it has offered to the estate of Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 22 April 2022.

Simon Hollingshead  
**Ombudsman**