DRN-3227524

The complaint

Mrs J's complaint is that Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) mis-sold her a free standing additional voluntary contribution (FSAVC) policy. Mrs J says taking this policy was not a suitable option given her circumstances at the time.

What happened

On 1 February 1998 Mrs J had a meeting with a Sun Life representative (tied advisor). Advice was given to Mrs J around her pension requirements.

Sun Life has provided a copy of the fact find document that was produced as a result of what was discussed during the meeting.

The fact find included details about Mrs J's age, employer, salary, marital status and dependents. The fact find also showed that Mrs J was enrolled on her employer's pension scheme and owned her own home with a mortgage.

In addition to the above information the fact find also recorded that Mrs J may wish to change her profession in the future.

The advisor recommended that Mrs J should take out a FSAVC policy as it was possible to port the policy should she change her employer. It was agreed that Mrs J would contribute £50 each month to the policy. In May 1998 Mrs J was advised to contribute an additional £50 per month to the policy.

Our Investigator considered Mrs J's complaint and didn't think the advisor had done everything they should have at the time they sold the policy. He found that had the advisor done everything they should have Mrs J would have taken an in-house additional voluntary contribution (AVC) policy.

As Sun Life didn't agree this case has been passed to me to deicide.

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 don't think the advisor did everything he should have at the time of the policy sale. Tied advisors at the time of the sale were required to follow the rules set out by the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO).

The rules say that the advice tied advisors gave should include that:

- In-house money purchase 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

The recommendation written by the advisor states:

“Having discussed the generic differences between in house AVCs and FSAVCs you have decided to do an FSAVC because of portability between employers.”

There is no other evidence within the document that shows the generic benefits were discussed, including that it was likely an in-house AVC would be cheaper.

Mrs J says she may have looked to change her employer in the long term, but it is possible her new employer would also have offered a similar in-house AVC with preferential terms that would have been suitable for her. It is also unlikely her in-house arrangement would have imposed any penalty if she left the scheme due to a change in employment.

Had Mrs J been given the required information from the outset I think it is likely she would have opted to take the in-house AVC option as it likely offered her substantially the same product at a cheaper cost and I don’t think the flexibility of the FSAVC would have outweighed this.

Putting things right

Sun Life Assurance Company of Canada (U.K.) 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, Sun Life Assurance Company of Canada (U.K.) 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 Mrs J’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 Mrs J 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 her likely income tax rate in retirement –

presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

My final decision

I uphold this complaint and require Sun Life Assurance Company of Canada (U.K) to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 4 April 2022.

Terry Woodham
Ombudsman