

The complaint

Miss M complained about advice she received in 1996 to take out a free-standing additional voluntary contribution (FSAVC) plan.

Miss M says she wanted to increase her pension provision and the recommendations she received weren't suitable. She implies if she'd been given the right information about her options, she would have acted differently, including using additional voluntary contributions (AVCs) linked to her employer's 'in-house' occupational pension scheme (OPS). Miss M therefore says she has lost out financially because of this.

Aviva Life & Pensions UK Limited has accepted responsibility for answering this complaint. Miss M is being represented in her complaint by a claims management company. So, to keep things simple, I'll refer mainly to 'Aviva' and 'Miss M'.

What happened

I issued a second provisional decision (PD) about this case in April 2022 in which I said I was still intending to uphold Miss M's complaint. That PD should be read in conjunction with this final decision.

Broadly, I said in the PD that had Miss M been given a fair explanation of the generic benefits of her 'in-house' AVC option she would have opted for an 'in-house' alternative as this would have given her more valuable benefits than the FSAVC she was sold instead.

I then gave the parties involved a further month to think about what I was intending to do and to reply with any further evidence or information they wanted me to consider.

I am grateful for the replies provided in the course of looking at this complaint and I apologise it's taken a while to reach this stage. However, ultimately none of what has been said is new information, but rather, more emphasis on what Aviva had already provided us with. Accordingly I am now ready to issue a final decision – I am upholding the complaint, for the same reasons I set out in my second PD of April 2022.

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.

Miss M had been employed in the teaching profession since 1990 and had been a member of her employer's OPS - a large public sector scheme - since starting. It seems that in October 1996, she met with an adviser who recommended that she start contributing to an FSAVC plan in addition to the OPS she was already a member of. Miss M was 28 years old at the time.

As the name suggests, FSAVCs are free standing, which means they are not tied to the employer, but typically run alongside the OPS. The FSAVC plan commenced with Miss M making a monthly contribution of £35.40 (gross).

I've considered what was expected of the adviser as they were a 'tied' appointed representative of the company at the time. A tied adviser was required to follow rules set in

1988 – called LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation). The LAUTRO Code said advisers should have maintained high standards of integrity and fair dealing, exercise due skill, care and diligence in providing any services, and generally take proper account of the interests of investors. It added that businesses should:

- Have regard to the consumer's financial position generally and to any rights they may have under an occupational scheme, and
- Give the consumer all information relevant to their dealings with the representative in question.

So, this means tied advisers should have known that 'in-house' AVC options would most likely be available to consumers like Miss M. And in addition to highlighting the benefits of the FSAVC, mention of the generic benefits of the 'in-house options' should have been made, including that:

- Money purchase 'in-house' AVCs could potentially offer lower charges than the FSAVCs
- 'Added years' might have been available under a defined benefit OPS
- The consumer's employer might match or top-up the amount the consumer paid into either in-house option

Mentioning these things – to the extent that they applied – was therefore consistent, in my view, with having regard to Miss M's right to contribute to other 'in-house' arrangements and also dealing fairly with her.

As a consequence of the meeting that took place between the Aviva adviser and Miss M, a 'Financial Planning Summary' was drawn up to formalise and clarify the issues which had been discussed; so this was basically a summary of the advice provided.

In fact, Miss M was advised about a range of other financial areas too, but the part in the summary relating to her retirement provision contained only four short paragraphs. In my view, this would have been an ideal opportunity to set out the differences involved in the options and the charges relating to 'in-house' and / or other options (such as the FSAVC plan she was eventually sold). However, I note the only reference to these areas in the summary said, *"you are proceeding with this plan after receiving an explanation of the comparative benefits of in-house AVC and FSAVC Plans, and you have received written material summarising these"*.

The question is therefore was sufficient information given to Miss M to enable her attention to be drawn to the other options she had at the time, such as 'in-house' AVCs and their benefits? As I've said, the summary contained very little in this regard so I've therefore gone on to look at the FSAVC brochure (*"Helping you plan towards a comfortable retirement"*) Miss M was given to read. And whilst I accept there was mention of there being 'in-house' alternatives, I think the issues above about her options were given insufficient prominence both in the brochure she was given to read and also in the 'Financial Planning Summary'.

So, while I think the overall information contained in the brochure can be said to be clear and it does set out there are different options available, I don't think simply giving Miss M a brochure is enough for me to fairly say that Aviva's adviser complied with the regulator's requirements in this case. The guidance requires a discussion – not just the provision of information. And as I've found, there's simply no evidence to show or imply that the contents of the brochure were discussed with her. In my view, the generic differences of the 'in-house' AVC option within her teacher's OPS - and the FSAVC option - were most likely well known to the Aviva adviser and should have been explained to Miss M. I also think the evidence in this case strongly implies the adviser would have regularly dealt with those in a very similar situation to Miss M, so I think it was known to the adviser the charges under the in-house AVCs were likely to be cheaper.

It should therefore have been explained that the charges for those AVCs would have probably been lower, reflecting economies of scale, rebated commission rates or as a result of contributions to administration expenses by the employer. In short, I would have expected to see reference to charges in the 'Financial Planning Summary'. The summary doesn't confirm that such a discussion took place and the brochure gives only a general sense that other options might exist without these being put into context for Miss M.

I now need to consider the second question and decide if Miss M has potentially lost out as result of the failing identified – i.e. would she have likely acted differently had everything happened as it should have and directed her additional pension contribution to her in-house scheme instead? I can see that Miss M expected to retire at age 60 – but earlier if possible. I'm also mindful that she was still some way away from her preferred retirement age (it was preferred and perhaps not a set intention) and her plans might change.

On the other hand, given the regulator's view that a critical factor driving choice between FSAVCs and AVCs was the typically lower charges, I think Miss M would have chosen to contribute to her 'in-house' AVC scheme had she been properly advised and informed. She was a teacher and in my view likely to remain within its employment. So it is for these reasons that I think she has lost out because I think she would have more likely contributed to her in-house AVC scheme.

"Added years"

I've gone on to consider the 'added years option'. Again, no mention at all is made in the summary Miss M was given but there is reference to it in the brochure she was given to read. Nevertheless, the 'added years' option was quite a different one to the other two (FSAVC and AVC) in that it provided certain guaranteed benefits. Typically, with this option, the employee commits to pay either a lump sum or a percentage of their future salary into the OPS to buy more years. If it is a percentage, the amount paid will increase as the salary increases – the percentage remains the same.

We now know Miss M remained in her occupation and would have no-doubt enjoyed some salary increases, but this doesn't necessarily mean she would have purchased 'added years'. As a starting point it should be remembered that she only wanted to contribute a relatively small amount. And in 1996, when projected investment returns were much higher, 'added years' would have seemed expensive compared to AVC-type projected returns. I think there is solid evidence here that the flexibility, or otherwise, of this option would have also been an important consideration for Miss M as she stated early retirement was something she was interested in, although a long way off. Overall, I think this option would have seemed less attractive given her particular circumstances of that time. In coming to that judgement, I've also taken account of her age, circumstances and budget.

Summary

Miss M was clear she was on a relatively tight budget and wanted only to contribute a moderate amount to her additional pension provision. She had a cautious approach to investing and despite being a member of a large OPS, the details of which would have been known to the adviser, the benefits of 'in-house' options within that scheme were not made clear enough.

So, I consider had Miss M been given a fair explanation of the generic benefits of her in-house option she would have opted for AVCs as these would have given her more valuable benefits than the FSAVC.

I uphold this complaint.

Putting things right

The compensation for Miss M should be calculated in line with our general approach to complaints of this type. Aviva 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, Aviva 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 Miss M'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 Miss M 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. Miss M should confirm her tax rate to us

My final decision

For the reasons I've given above, I uphold this complaint and direct Aviva Life & Pensions UK Limited to use the FCA's FSAVC guidance as I have set out in the section 'Putting things right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 9 June 2022.

Michael Campbell
Ombudsman