DRN-3658620

The complaint

Mr G complains that Liverpool Victoria Financial Services Limited mis-sold him a Free Standing Additional Voluntary Contribution (FSAVC) plan.

What happened

Mr G met one of LV's advisers in April 1991, when he was 40 years old and earning £21,500 per year. He'd been a member of his employer's occupational pension scheme (OPS) since he was 28 years old and his normal retirement age was 65. The adviser recommended that Mr G take out an FSAVC plan to top up his benefits at retirement. Mr G contributed £40 per month gross from 1 April 1991 until 1 October 2003.

In 2021, Mr G complained to LV about the advice he was given in 1991. LV reviewed Mr G's complaint and agreed his FSAVC plan was mis-sold because he wasn't given enough information about the in-house options available to him through his employment. LV says Mr G could've likely bought six added years for a monthly premium of £121 per month over 15 years. But it didn't think Mr G would've chosen this option because he elected only to contribute £40 per month grow, didn't increase his contributions at any point and ceased contributions in 2003, when he was 52 years old. So, LV said it was likely Mr G would've joined his employer's in-house AVC if he'd been given enough information about it. To put things right, LV offered to complete a loss assessment on the basis Mr G would've chosen to contribute to his employer's in-house AVC.

Unhappy with LV's response, Mr G referred his complaint to our Service. Mr G believed LV has not compensated him on an added years basis because its records from the time of sale suggest LV's adviser gave him an indication of how much it would cost him to buy added years in his OPS, and he still decided to go ahead with the FSAVC. He said he'd been given incorrect information about the cost of buying added years, which acted as a deterrent. And if he'd been given accurate information, Mr G said he would've bought added years from his OPS rather than joining the in-house AVC. Mr G reiterated he was well paid, likely to progress in his career and receive above average salary increases.

One of our Investigator's reviewed Mr G's complaint and thought LV's offer to complete a loss assessment in line with the FSAVC review was fair. He didn't think it was likely Mr G would've bought added years from his OPS. Mr G disagreed, adding his wife was also mis-sold a FSAVC in 1990 and was being compensated on the basis she would have chosen to buy added years. And if his wife had been properly advised to buy added years in 1990, Mr G would have been more likely to have bought added years if he'd been properly advised in 1991. So, this has come to me for a decision.

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.

I note Mr G's argument he would likely have bought added years in 1991 if his wife had been properly advised to buy them in 1990. But I've not considered a complaint made by Mrs G, so I can't comment on whether I agree with the firm that mis-sold his FSAVC that he would have bought added years instead of joining his employer's in-house AVC. And even if I could, it doesn't necessarily follow that Mr G would have made the same choice as his wife. Instead, I've considered what I think Mr G would likely have done based on the evidence available about his circumstances at the time the FSAVC was mis-sold. And I note Mr G has emphasised his belief that LV has not compensated him on an added years basis because its records from the time of sale suggest LV's adviser gave him an incorrect indication of how much it would cost him to buy added years in his OPS. But again, I have independently considered the evidence from both parties to decide what I think Mr G would likely have done had his FSAVC not been mis-sold. So, even if LV was persuaded Mr G would not have purchased added years because of incorrect cost estimates, I would still need to consider afresh whether I think Mr G would have bought added years or contributed to his employer's in-house AVC.

At the time of advice, Mr G was 40 years old and would have needed to buy around six or seven added years to get the maximum benefit from the OPS. We don't know for sure how much each additional year would've cost Mr G in his particular OPS. But we know it would've cost approximately 0.83%) of his annual salary for *each* added year Mr G could've bought if he were to retire at 65 years old – so, it would've cost him around £89 a month to buy six added years). It would've cost Mr G approximately 1.02% of his annual salary for each added year Mr G could've bought if he were to retire at age 60 when the FSAVC was due to mature, so it would have been around £109 a month to buy six added years on this basis. But Mr G chose to contribute around £40 per month before tax-relief (1.67% of his annual salary in 1991) to his FSAVC. He contributed much less than the likely cost of buying all, or even most, of the added years he was eligible for.

I appreciate Mr G did not need to buy all of the added years he was eligible for. But at the time, it would probably have been shown that the projected benefits from the in house AVC – based on a monthly contribution of £40 gross – would be greater than the benefits of using this same contribution rate to buy added years. And If Mr G had bought added years, he would have had to give up a set percentage of his salary until retirement, and his contributions would have increased in line with his salary over the years. But Mr G chose not to increase contributions to his FSAVC in line with his earnings, and I note he stopped contributing entirely in 2003.

Taking into account the evidence available, I think it's unlikely Mr G would have considered added years to be the cost effective or affordable option compared to the projected benefits available from investing in the in-house AVC scheme. Considering realistic assumptions of future investment experience at the time, it would probably have been shown that the projected benefits from making contributions to his employer's AVC scheme would be greater than the projected "added years" benefits. This is why, in my opinion, I think Mr G would've likely chosen to contribute to his employer's in-house AVC scheme.

Further, there is no evidence from the time of the sale that Mr G was unwilling to take any investment risks and his general circumstances suggest that he would have been able to take some risk. This is why, in my opinion, contributing to the in-house AVC scheme would have been suitable for Mr G at the time. It's only now, with the benefit of hindsight, that we know that Mr G may have been better off with the added years. And a major factor in this is that the investment returns achieved have been much lower than expected. But that wasn't anticipated at the time – and I can't use hindsight when making my decision. Given the above, I've not seen enough evidence to suggest Mr G would've purchased added years within his employer's OPS. Instead, I think if he'd been given sufficient information, it's more likely he would have chosen to contribute to the in-house AVC scheme. For these reasons, I think LV's offer to complete a loss assessment in line with the FSAVC review, on the basis Mr G would have contributed to his employer's in-house AVC, is fair.

Putting things right

LV 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, LV 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 G'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 G 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 20% So, making a notional deduction of 15% overall from the loss adequately reflects this.

My final decision

For the reasons explained above, I've not upheld this complaint because I think Liverpool Victoria Financial Services Limited's made a fair offer to put things right before this complaint was referred to our Service to consider. However, when putting things right, Liverpool Victoria Financial Services Limited should follow the methodology I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 16 February 2023.

Victoria Blackwood
Ombudsman