

The complaint

Mrs L complains that although Canada Life Limited has accepted it mis-sold a Free Standing Additional Voluntary Contribution policy (FSAVC), it hasn't acted fairly in how it offered to put things right.

What happened

Mrs L took out a FSAVC policy with Canada Life in 1993. In 2000 she stopped paying into the policy and in 2003 she vested the FSAVC and took the benefit as a single life annuity.

Mrs L complained to Canada Life in 2020. She said she'd received unsuitable advice to take out the FSAVC policy when she could've invested in her employer's in-house AVC scheme. She thought she would've been better advised to buy added years in her employer's scheme.

Canada Life looked into her complaint. It said it hadn't been able to find sufficient evidence Mrs L was made aware of her employer's in-house AVC options. It engaged a specialist firm to calculate the amount of compensation she should receive as a result.

Using various assumptions, it said Mrs L could've purchased three years and 26 days added years in her employer's pension scheme. Taking account of increases in deferment and accumulating interest to October 2020, it said that the difference between what she had received from her annuity (from October 2003 to October 2020) and what she would have received under her employer's scheme (from the date she had retired – May 2011 – to October 2020) was £6,704.15. It offered to pay her this amount as a cash payment.

Canada Life then considered what Mrs L's future loss might be. It said her future loss was £37,742.82. Canada Life said this was equivalent to a top up of her existing single life annuity of £1,891.64 per annum. It offered to pay her this extra amount, on a non-increasing basis, annually from October 2020.

Mrs L, who is represented by a claims management company, agreed with Canada Life's calculations. But she said her future loss payment should be paid as a cash amount and not by means of a top up to her annuity. She referred to the Financial Conduct Authority's (FCA's) Finalised Guidance (FG17/9) which she said applied to complaints about FSAVCs. She said the guidance stated that where it wasn't possible to pay the redress by augmentation the redress should be paid in the form of a lump sum. Mrs L said it wasn't possible to augment her FSAVC because it had already vested. She also referred to tax issues arising from Canada Life's proposal to top up her annuity. Canada Life didn't change its view. Mrs L referred her complaint to our service.

Our investigator looked into her complaint. He thought Canada Life's offer was fair. It sought to put Mrs L back into the position she would've been in had she taken the AVC with her employer. He thought the lump sum for past losses was fair. In relation to future losses

our investigator said Mrs L had chosen an annuity as the method to receive income from her FSAVC. So, by arranging for future losses to also be paid as an annuity she was being put into the position she would've been in had she taken her employer's AVC.

Mrs L didn't agree, so the complaint was passed to me to decide. I issued a provisional decision in which I said:

What I've provisionally 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.

Canada Life has acknowledged that it didn't provide suitable advice to Mrs L in 1993. It's calculated the amount of redress it thinks is owed. Mrs L hasn't disputed the methodology or the assumptions used to carry out the calculations. She accepts that she should be paid £6,704.15 for past loss. But she thinks the future loss amount of £37,742.82 should be paid to her as a lump sum after deduction of tax. So, the crux of this complaint is about how Mrs L should be compensated for her future loss.

When a complaint is referred to our service we reach decisions based on what we consider to be fair and reasonable having regard to all the circumstances of the individual complaint. When considering what is fair and reasonable, we take account of laws, regulations, regulatory guidance, rules and standards, codes of practice and what we consider to have been good industry practice at the relevant time.

So, when reaching this decision I have taken account of all these matters. The objective of redress is to put the complainant back into the position they would've been in had the unsuitable advice not been given.

Having considered everything here, I've provisionally decided that I think it's fair and reasonable to expect Canada Life to compensate Mrs L for her future loss by means of a cash lump sum rather than a top-up to her existing annuity. I'll explain why:

The assumptions Canada Life has used in its calculations:

When thinking about Mrs L's complaint, I'm mindful that the unsuitable advice about which she's complained related to taking out the FSAVC. Mrs L doesn't appear to have sought or received any advice when she decided to vest the FSAVC and take out the single life annuity in 2003.

It's important to note that, when assessing Mrs L's losses, Canada Life hasn't assumed Mrs L would've contributed to her employer's AVC and then vested those benefits in the same way as she vested the FSAVC. Instead its assumption is that she would have added years to her employer's scheme and then taken her benefits at age 60.

On that basis Canada Life assessed her past loss by deducting the amount Mrs L has been paid under her single life annuity (which she'd brought into payment in October 2003) from what she would've received from her employer's pension scheme had she instead purchased 3 years and 26 days added years and taken her

benefits at age 60 (May 2011). Mrs L hasn't disputed the assumption used to calculate her past loss.

When considering future loss, Canada Life adopted the same approach. It looked at how much she would've received (based on various assumptions) from her employer's pension scheme had she purchased added years and then deducted the amount she will receive from her single life annuity with Canada Life. It says the future gross loss is £37,742.82. Mrs L hasn't disputed that amount.

The offer to top-up Mrs L's annuity

Canada Life says Mrs L's future gross loss equates to a top up of her existing annuity of £1,891.64 per annum.

At the outset, I'd point out that I don't think Canada Life's proposal to compensate Mrs L for her future loss by way of topping up her annuity is inherently unfair – because the top up of her annuity would make up the difference between what she is receiving by way of pension payments from her employer's scheme and what she would've received had she purchased additional years in her employer's scheme.

So, I've considered if there's any valid reason why Canada Life should instead be required to compensate Mrs L, for future loss, by way of a cash lump sum.

Mrs L says that if she'd acquired added years in her employer's scheme, she would've been entitled to a spouse's pension in the event that she pre-deceased her spouse. She says that the offer to top up her annuity on a single life basis won't put her in the same position as she would've been in had she not received the unsuitable advice. I've also noted that under Mrs L's employer's scheme her benefits were subject to increase after they came into payment at age 60. The single life annuity is non-increasing.

Canada Life says it wouldn't be fair to top up her annuity on the basis of joint lives because a single life annuity cost Mrs L less and provided her with more income than a joint life annuity.

I've thought about what Canada Life has said.

As mentioned above, the purpose of compensation is to put Mrs L back in the position she would've been in had she not been given the unsuitable advice. And as set out above, Canada Life has assumed Mrs L would've added years to her employer's pension. But, if she'd done that she wouldn't be in receipt of a single life annuity. Instead she would be receiving the benefits for added years offered by her former employer under its pension scheme. And, those benefits would be subject to increases and would include spousal benefits.

I asked Canada Life to comment on whether it could top up the single life annuity to better match her employer's scheme and what the tax implications would be. It said the only way it could do this would be by amending the existing policy to show a second coverage. It could then pay any backdated payments by way of a bulk payment but Canada Life said it wasn't sure how its proposed course of action

would impact Mrs L from a taxation perspective. So, there's the possibility that Mrs L may end up having to pay more tax than might otherwise have been the case.

Whilst, as I've mentioned above, Canada Life's approach here would ordinarily be considered as fair and reasonable, I'm not persuaded that Mrs L should be placed in the position where there's more than a remote possibility that she has to either pay additional tax or take specialist tax advice to help her manage a taxation matter that would not otherwise have arisen. I think that would be unfair – even if any overpaid tax could ultimately be refunded.

Having considered everything here, I've decided it's fair and reasonable, in all the circumstances, that Canada Life should pay the compensation for both past losses and future losses as a lump sum, after deducting a notional amount for income tax that Mrs L would always have been liable to pay on her pension income.

Putting things right

In order to put Mrs L, as far as possible, back into the position she would have been in, but for the unsuitable advice, I've provisionally decided that Canada Life should take the following actions:

1. In response to this provisional decision, Canada Life should update its redress calculations, using the same assumptions and methodology. Those calculations were set out in the attachment to its final response letter dated 23 November 2020 and assessed Mrs L's loss as at 1 October 2020. The calculations should be updated to the current date.
2. Canada Life should then pay Mrs L the updated amounts for past losses and any future losses as a cash lump sum.
3. Mrs L's pension would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs L won't be able to reclaim any of the reduction after compensation is paid.
4. My understanding is that Canada Life accounted for income tax in its original calculation for past losses and that Mrs L has accepted Canada Life's approach. For future losses (which are now being compensated for in a different way), I consider it fair and reasonable to assume 25% of the loss would be tax-free and 75% would have been taxed according to Mrs L's income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.
5. Interest should be added to the compensation amount at the rate of 8% per year simple interest if the compensation amount is not paid within 90 days of the date of my final decision.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint about Canada Life Limited. I intend to require it to pay compensation in line with what I've set out above.

Canada Life responded to my provisional decision. It said it accepted my determination. It also provided its updated calculations which were shared with Mrs L. Canada Life said it had brought the calculations up to date for past payments and valuation for future loss was calculated using the current financial assumptions.

Mrs L also responded to my provisional decision. She agreed with the provisional decision but she challenged the updated calculations provided by Canada Life. She accepted its updated calculations for her past loss – but not how it had calculated her future loss. She said it was clear she'd been disadvantaged financially because Canada Life had used current financial assumptions to calculate future loss. Whilst she accepted that the pension and annuity landscape was in a "different place" than when the original calculations had been completed, she thought she should receive compensation to the level which was appropriate at the time she'd raised her complaint.

So, I now have to make a final 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've considered the responses to my provisional decision. It is the case that when updating its redress calculations to assess Mrs L's future loss, Canada Life, in response to my provisional decision, used current financial assumptions. Mrs L thinks it should've used the same financial assumptions as it used when it calculated her future financial loss in 2020. She says that would also have been in line with what my provisional decision said.

I've thought about what Mrs L has said here. As stated in my provisional decision, our approach is to try to put Mrs L back into the position she would've been in had Canada Life not given her unsuitable advice. That's entirely in keeping with the approach taken by our service and it also means that a consumer should not end up being over or under compensated.

In these circumstances, I think it is fair and reasonable for Canada Life to update its assumptions (such as financial assumptions) so as to put Mrs L as close as possible into the position she would've been in but for the unsuitable advice she'd received. To do otherwise would result in Mrs L receiving the wrong amount of compensation. In this case, it would appear that Mrs L would be over-compensated if Canada Life didn't update its assumptions because the "cost" of putting things right for Mrs L appears to have fallen since Canada Life's initial calculations.

In my provisional decision, I said that Canada Life should update its calculations using the same "methodology and assumptions." But for the reasons set out above and in order to provide greater clarity about what I require Canada Life to do here, I will remove the words "and assumptions" from this, my final decision.

My final decision

For the reasons given above I uphold this complaint about Canada Life Limited. Canada Life Limited must now, as far as possible, put Mrs L back in the position she should have been in but for its mistake.

I now require it to take the following actions:

1. Canada Life Limited should update its redress calculations, using the same methodology. Those calculations were set out in the attachment to its final response letter dated 23 November 2020 and assessed Mrs L's loss as at 1 October 2020. The calculations should be updated to the date of my final decision.
2. Canada Life Limited should then pay Mrs L the updated amounts for past losses and any future losses as a cash lump sum.
3. Mrs L's pension would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs L won't be able to reclaim any of the reduction after compensation is paid.
4. My understanding is that Canada Life Limited accounted for income tax in its original calculation for past losses and that Mrs L has accepted Canada Life Limited's approach. For future losses (which are now being compensated for in a different way), I consider it fair and reasonable to assume 25% of the loss would be tax-free and 75% would have been taxed according to Mrs L's income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.
5. Interest should be added to the compensation amount at the rate of 8% per year simple from the date of my final decision if the compensation amount is not paid within 90 days of the date of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 25 April 2023.

Irene Martin
Ombudsman