The complaint

Mrs L complains that Zurich Assurance Ltd mis-sold her a Free Standing Additional Voluntary Contribution (FSAVC) plan.

What happened

Mrs L met one of Zurich's advisers in 1993, when she was 26 years old and earning £16,900 per year as a teacher. Mrs L had been a member of her employer's occupational pension scheme (OPS) since she was 22. The adviser recorded Mrs L was married, intended to retire at 55 years old and her attitude to risk was a 3 on a scale of 1 (very cautious) to 4 (speculative). The adviser recommended that Mrs L contribute £42.61 (gross) per month to an FSAVC from 1 December 1993. Mrs L met one of Zurich's advisers again in 1998. Zurich recorded she still wanted to retire at 55 and had a '3 out of 4' attitude to risk. Mrs L was advised to contribute £58.22 (gross) per month to her FSAVC.

In 2021, Mrs L complained to Zurich about the advice she was given to contribute to her FSAVC. Zurich agreed her FSAVC plan was mis-sold. And if it hadn't been mis-sold, Zurich thought Mrs L would likely have contributed to her employer's in-house Additional Voluntary Contribution (AVC) scheme. Zurich didn't think Mrs L would've chosen to buy added years because, in 1993 and 1998, she wanted to retire early – the normal retirement age for her OPS was 60.It said retiring early would've made buying added years appear to be a less attractive proposition for Mrs L. To put things right, Zurich undertook a redress calculation in accordance with the regulator's FSAVC review guidance and then offered Mrs L £5,571.58 compensation.

Mrs L said if she'd been properly advised, she would have chosen to buy two added years in her employer's OPS. Mrs L said it would have only cost her around £16 a month to buy added years – about half of what she was contributing to her FSAVC. Mrs L said her FSAVC contributions were also indexed to increase contributions every year, which she believes supports that she would have been prepared to buy added years where the cost would rise in line with Mrs L's salary. Mrs L added that in 1993, she was earning an above-average salary for her profession and progressing quickly in her career, so she was unlikely to retire early. Mrs L referred her complaint to our Service to review.

One of our Investigator's reviewed Mrs L's complaint and thought Zurich's compensation offer was fair. Our Investigator said, in summary, they didn't think Mrs L would've bought added years because she wanted to retire early. And our Investigator thought it was likely Mrs L would've thought contributions to her employer's AVC scheme provided better value for money than buying added years. Mrs L didn't agree, reiterating the reasons why she would've bought added years. Mrs L said she could've bought added years and made additional contributions to an AVC or FSAVC to maximise her retirement benefits. 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.

It's not in dispute that Mrs L's FSAVC was mis-sold. So, the only issue for me to decide is how Zurich should put things right.

At the time of advice, Mrs L would have needed to buy two added years to get the maximum benefit from the OPS – if she retired at 60, the usual age for her employer's pension scheme. And it's likely the cost of buying added years would have been considerably less at the start than she was contributing to her FSAVC, if she'd chosen to buy added years and retire at 60. However, the paperwork from 1993 and 1998 very clearly says Mrs L intended to retire at 55 years old. These notes are handwritten, which I think suggests they were written following a discussion with Mrs L. I know Mrs L has since said she was unlikely to retire early, given her promising career trajectory. But the contemporaneous evidence from 1993 and 1998 is that she intended to retire early. So, if Mrs L had wanted to buy added years over a shorter period, in order to retire at 55, this would have made the cost of buying added years more expensive than Mrs L has suggested as she would have needed to pay for them over a shorter period

Most people would be better off making contributions to their employer's in-house AVC scheme instead of an FSAVC as the AVC schemes tended to have lower charges than FSAVCs. I accept it's possible, as Mrs L has said, that she would have been better off now if she'd bought added years instead of contributing to an AVC. This is because investment returns at the time of the advice given in 1993 and 1998 have not performed as predicted. But that wasn't anticipated at the time – and I can't use hindsight when making my decision. At the time the advice was given, the realistic assumptions of future investment returns would probably have shown that the projected benefits from making contributions to her employer's AVC scheme would be greater than the projected added years benefits. So, I think it's unlikely Mrs L would have considered added years to be the cost-effective option compared to the projected benefits available from investing in the in-house AVC scheme. This is why, on balance, I think Mrs L would've likely chosen to contribute to her employer's in-house AVC scheme.

Further, there is no evidence from the time of the sale that Mrs L was unwilling to take any investment risks. The paperwork completed in 1993 and 1998 show Mrs L's attitude to risk was 3 on a scale of 1-4, with 1 being 'very cautious' and 4 being 'speculative'. So, I think it's fair to say the paperwork recorded Mrs M had a 'medium' attitude to risk. The paperwork shows Mrs L wasn't unwilling or unable to take any investment risk – I think her recorded 'medium' attitude to risk and her general circumstances suggest she had capacity to take some investment risk. So, I think contributing to her employer's in-house AVC scheme would have been suitable for Mrs L at the time. And as I've said above, it is only with the benefit of hindsight that we know the investment returns achieved have been much lower than expected.

Taking all the evidence into account, I think it's more likely than not Mrs L would have contributed to her employer's AVC scheme instead of buying added years. So, I think Zurich's offer of compensation, which appears to be in line with the FSAVC review, is fair.

However, if Mrs L accepts my decision the calculation will need to be rerun to bring it up to date.

Putting things right

Zurich 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, Zurich 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 L'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 L 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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 6 March 2023.

Victoria Blackwood
Ombudsman