DRN-4009143

The complaint

Mr G complains about the advice he was given by Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) to take out a Free Standing Additional Voluntary Contribution (FSAVC) plan. And that it later told him he didn't need to increase his plan contributions.

What happened

In 1992, aged 27, Mr G was advised by Cannon Lincoln – which Sun Life has since taken over and now takes responsibility for – to take out an FSAVC plan, which he still pays into. At the time he'd been a member of his then employer's Armed Forces Pension scheme (AFPS75) since he was 18 and expected to work for it until he turned 55. And, in 2005, Mr G's AFPS75 moved over to the AFPS05.

In February 2020, Mr G complained to Sun Life about the advice he was given to take out his FSAVC plan. He said he was advised this, alongside his employer's pension scheme, would provide him with a pension that was two thirds of his final salary at age 55, but it has fallen vastly short of this. Mr G also said that when he was promoted and asked Sun Life if he needed to increase his contributions to his FSAVC plan, he was told this wasn't necessary as these would automatically increase. And he said he's become aware a loyalty bonus is payable as part of his FSAVC plan upon turning 60, which he'll miss out on as his matured at age 55.

In response, in April 2020, Sun Life said it couldn't determine if Mr G had been aware of his employer's money purchase additional voluntary contribution (AVC) plan at the time of the advice, so it would complete a loss assessment. It said this could take about five months to do. And Sun Life agreed to add the loyalty bonus to Mr G's FSAVC plan given his selected retirement age is 55.

In May 2020, Sun Life told Mr G it had instructed an actuary to carry out the loss assessment. And then, in February 2021, Sun Life sent Mr G a second final response letter explaining that, while it concluded he hadn't suffered a financial loss, it was offering him £350 in compensation.

In March 2021, unhappy with this, Mr G responded to Sun Life and referred his complaint to our Service adding that, while he received annual statements, he wasn't made aware his FSAVC plan wasn't going to perform as expected. He said that if Sun Life had sent him warning letters, in the way his endowment provider had, he could have made extra provision.

In April 2021, Sun Life told Mr G it didn't think he'd incurred a financial loss, as his pension scheme had confirmed there wasn't an in-house money purchase AVC option available to him at the time of the advice.

One of our Investigators looked into Mr G's complaint. She said, in summary, that alternative in-house options were available to Mr G at the time of the advice, which Sun Life doesn't seem to have considered when it looked to complete its loss assessment. So she said it should complete a new one taking these into account, along with the information Mr G's provided about his rank at the time.

Sun Life clarified that, despite there being no conventional money purchase in-house option available to Mr G at the time, its actuary had taken the three AVC options the AFPS75 did offer into account. In relation to purchasing added years it said Mr G's employer's pension scheme had confirmed that only the missing period between the enlistment date and pension start date could be bought. And Sun Life said this wasn't an option for Mr G as he anticipated working for his employer until age 55, by which time he would have accrued the maximum permissible service for pension purposes. Sun Life also said the Widows Benefit AVC wouldn't have led to an increase to Mr G's particular pension benefits. And that it was very unlikely he would have achieved any enhancement to his benefits with the Enhanced All Benefits AVC option.

Sun Life also clarified that, while it doesn't think Mr G's suffered a financial loss, it offered him £350 compensation to make up for the fact the adviser still either failed to discuss his alternatives with him in 1992, or at least failed to document that it did, which was an omission in its duty of care. And for the frustration caused to him by the time taken waiting for the loss assessment.

I let the parties know my provisional thoughts on Mr G's complaint, explaining I wasn't minded to ask Sun Life to do anything more than what it has already offered. I said Sun Life has shown it considered the Enhanced All Benefits AVC option in particular and concluded Mr G hadn't experienced a loss after speaking to his pension scheme, the scheme administrator and his previous employer.

I said that, in any case, having carefully considered the matter, I'm not currently satisfied Mr G would have opted for one of the alternative options if he'd been made aware of these by the adviser in 1992. Instead, I think it's likely he would have still opted for the FSAVC plan, for the following reasons.

While Mr G's employer's pension scheme was based on 'representative pay', being an average based on his rank, the final pension with the Enhanced All Benefits AVC option was based on 'actual pay' (if higher than the 'representative pay'). In which case, Mr G choosing this in 1992 would have meant paying into it knowing he might not receive any additional pension in return for his payments. And that for this to be worthwhile in light of the additional payments he'd be making likely depended on him having a much higher 'actual pay' than his average pay at the time of leaving his employer.

In any case, it seems Mr G had a low to medium risk profile at the time and that he went into – and remained in – a medium risk fund in 1992, which shows me he wasn't risk averse. And, while investment returns have been lower than anticipated, the projections were very positive at the time. So, I think it's likely Mr G would have found the FSAVC plan more attractive based on anticipated returns than the benefits the Enhanced All Benefits AVC option might provide. I also noted that it appears Mr G had no option to purchase added years at the time – another alternative to his FSAVC plan – as he expected to accrue the maximum permissible service in his employer's pension scheme.

In which case, I think it's likely Mr G would still have been prepared to take out the FSAVC plan at the time, on the basis it may have provided him with higher benefits than the Enhanced All Benefits AVC option. And, as I've said, Sun Life doesn't think Mr G's suffered a loss in any case as a result of not taking this option. So I think Sun Life's offer of £350 compensation is fair and reasonable in the circumstances. And I'm not asking it to do anything more.

In response, Mr G said that while he accepts he wouldn't have fared better in another plan, he's unhappy with Sun Life's lack of warning that his pension wasn't performing as expected.

Mr G said he was told he didn't need to increase his payments and that the annual increase would take care of this. Mr G also said he was promised a product at the start and, while he might not have fared better elsewhere, he can't now go back and make additional provision.

Having considered Mr G's further comments, I said that Sun Life's told us it hasn't located any letters from him making it aware of his promotions or any record of him asking to increase his FSAVC plan contributions. So, while I recognise it's possible Mr G contacted it to ask about this, there isn't enough evidence from the time to support this.

And I haven't seen anything to suggest Sun Life was engaged to provide Mr G with ongoing advice following the sale of his FSAVC plan. So, I think Sun Life was acting purely as the plan provider, which meant it was only expected to provide Mr G with accurate information about it. This means I wouldn't have expected Sun Life to warn Mr G that his plan was unlikely to perform in line with the projections he was given at time of advice in the way he's said it should have. Instead I'd expect it to have provided him with information about this in the form of annual statements, in the way it appears to have done.

And, while I appreciate Mr G's said he was sent warning letters for his endowment policy, that's a different financial product that was directly linked to repaying his outstanding mortgage. And the warning letters for endowments were issued at the request of the then regulator. There is no similar requirement for pension providers to issue annual pension statements in the same format as endowment warning letters.

For these reasons, I said that even if Mr G did call Sun Life to ask about increasing his FSAVC plan contributions, on balance I currently think it's likely he would have been given information on how his plan worked i.e. been told it was already increasing in line with national average earnings (NAE), rather than being advised he didn't need to increase his contributions.

I said that it doesn't seem to be in dispute that Mr G was aware his FSAVC plan was set up to increase with NAE. And I think he was aware of this given I can see this was clearly ticked in his application. I said I recognise Mr G's contributions might have increased slightly more over the same time period – Sun Life's said this would likely have been around 1% on average – if his plan had been set up to increase as a percentage of his salary instead. But this isn't a large difference. And it isn't unreasonable that his plan was set to increase in line with NAE at the time, as this means it wasn't a flat premium that remained level.

In any case, I said that I don't think the 1% difference is where the shortfall in the value of Mr G's FSAVC plan lies. Even if Mr G's contributions had increased in line with his salary this doesn't mean his plan would have performed in the way he's said he was advised it would. This unfortunately hasn't performed as expected due to investment returns, which weren't guaranteed.

I said that the projections Mr G was given at the time would likely have been based on the assumed and regulator approved growth rates. Anticipated investment returns were high in 1992 – industry standard projections for estimated growth rates were 8.5% at the lower, a mid-growth rate of 10.75% and a higher growth rate of 13%. But investment returns have failed to match those anticipated. From 2014 the respective estimated rates were 2%, 5% and 8%. Low interest rates and increases over recent years in the cost of purchasing annuities have also had an impact. So, while I understand Mr G's disappointed with how his FSAVC plan has performed and the position he's now in, I can't fairly hold Sun Life responsible for this.

So, as previously explained, I think it's likely Mr G would still have been prepared to take out the FSAVC plan at the time, on the basis it may have provided him with higher benefits in light of his risk profile and the projections which were considered reasonable at the time. And that, in any case, Sun Life has said it doesn't think Mr G's suffered a loss as a result of taking this out instead of the Enhanced All Benefits AVC option, even though the latter would have meant paying the increased appropriate percentage of his pensionable earnings.

In response, Mr G maintained that he spoke to Sun Life over the phone about increasing contributions to his FSAVC plan. And that, in any case, it still failed to inform him that this wasn't performing as expected, when it should have sent him warning letters.

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.

Mr G hasn't provided any new comments or information in response to my provisional thoughts, so I see no reason to depart from these.

While I've explained why I don't think Mr G would be in a different position now if Sun Life had discussed the alternative options to the FSAVC plan with him in 1992, it has offered him £350 compensation for its adviser's failure to explain these to him in the first place. As well as the frustration caused to Mr G by the lengthy amount of time it took to get back to him. And I think this is a fair and reasonable amount in the circumstances to make up for the customer service he's received.

For the reasons given above, while I understand Mr G's disappointment and strength of feeling about the matter, I'm not asking Sun Life to do any more than this.

Putting things right

Sun Life should pay Mr G the £350 compensation it's offered him.

My final decision

Sun Life Assurance Company of Canada (U.K.) Limited's offer to pay Mr G £350 compensation to settle the complaint is fair and reasonable in all the circumstances. So my final decision is that it should pay him this, if it hasn't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 April 2023.

Holly Jackson
Ombudsman