

The complaint

Mr J complains about the sale of an FSAVC (Free Standing Additional Voluntary Contribution) pension by United Friendly Assurance (now part of the Royal London Mutual Insurance Society Limited) in 1996. For convenience, I'll refer to the business as Royal London throughout.

His representative says that the policy was mis-sold as he wasn't provided with details of the alternatives available. He had planned to spend his whole career in his profession in the public sector, and as added years were withdrawn in 2008 he had now missed any opportunity to purchase them.

What happened

Royal London has produced an earlier fact find from November 1992 and a review action plan from late 1993. The fact find shows that Mr J was married with two dependents. At that time he had been in the armed forces (and its pension scheme) since age 23 approximately. His net income was £2,859pm with total outgoings of £2,882 - meaning he had little, if any, surplus income. His wife only had a very small amount of earnings. They had mortgages totalling £155,000, bank/finance house loans totalling £20,000, a £14,000 overdraft and other credit totalling £12,000. Their concerns at the time were the cost of this borrowing.

By the following year, Mr and Mrs J's disposable income had increased by £100pm and were expecting to receive further funds of £15,000 mainly from an inheritance. Investments were being proposed for these funds, but Mr J also wrote to the adviser that he would like to set aside £400 per month for school fees. He indicated that he was prepared to invest in personal equity plans (PEPs) and perhaps "*a slightly higher risk, higher return vehicle for the rest*". He was looking to leave his role and expected to receive a lump sum package.

Mr J subsequently joined his new employer's public sector pension scheme in December 1995. At the time of the advice, Mr J's net income had increased to £3,457pm. He was aged 39 and Royal London proposed he start contributing to the FSAVC at the rate of £80pm, which was 1.8% of his pensionable salary of £52,440.

Royal London was required to send Mr J a 'reasons why' letter, dated 26 March 1996. This is very brief and doesn't mention any other options in his employer's scheme. However it does say that a benefit of its unit linked contract was that Mr J could choose a fund more specifically corresponding to the level of risk he wanted to take. Mr J chose to invest 25% in the managed fund and 75% in the UK managed fund. Mr J's representative argues the letter provided insufficient information for Mr J to make an informed choice.

Mr J says he drew pension benefits at his employer's normal retirement age of 60 in 2016, when I note his salary was in excess of £145,000. (However he's provided a payslip from 2019, suggesting he has continued to work for the public sector in the same profession.)

Royal London has offered Mr J compensation based on the fact that the charges in the in-house Additional Voluntary Contribution (AVC) arrangement operated by Mr J's employer in 1996 was likely to have offered lower charges, and it couldn't show this was likely to have been explained to Mr J at the time.

Mr J's representative disagreed. It said that as a result of Royal London's advice, Mr J missed out on the opportunity to buy 'added years' in his employer's defined benefit scheme, so the loss he'd suffered was greater than Royal London had calculated.

Royal London observed that the application indicated Mr J only agreed to pay a level contribution, which was maintained to April 2016. Buying added years would have been a more costly route as the level of contributions would be indexed in line with earnings. It also said that the managed fund Mr J invested in involved taking a higher degree of risk to meet his potential need for early retirement. In its view, he didn't necessarily require a risk averse investment that added years would have provided. Royal London has since accepted that Mr J's intended retirement age of 60 was actually the scheme's normal retirement age.

Our investigator concluded that it was unlikely Mr J would have bought added years even if better advised by Royal London. In brief, she said:

- Royal London's regulator (LAUTRO)'s Code of Conduct at the time required it to have regard to any rights Mr J may have under an occupational scheme (such as to contribute to added years, which public sector schemes provide).
- Mr J should have been directed to his occupational scheme by the adviser, to find out more about this option.
- At the time of advice, added years would likely have looked expensive compared to the projected returns and benefits of the FSAVC, because they weren't intentionally subsidised by Mr J's employer.
- As per the figures his representative provided, buying one added year would have cost Mr J about 1% of salary over a 20-year term: i.e. 20% of his salary, compared to the 6% (subsidised) rate he was contributing for each year he worked there.
- This was a fixed commitment increasing with salary, which couldn't be easily or regularly stopped and re-started (e.g. in the event of financial difficulty).
- Mr J was unlikely to want to spend a potentially greater monthly amount to get the same projected benefits from added years as he could have from an FSAVC.
- The complaint was being brought with the benefit of hindsight, but did not warrant being upheld based on Mr J's circumstances at the time of sale.

Mr J's representative didn't agree with the investigator. In summary, they said:

- The view was based on inaccurate information from an out-of-date fact find.
- Mr J had substantial pay and expected to spend his career in the public sector, so buying added years wouldn't have been seen as expensive for him.
- Even though Mr J's premiums remained level, affordability wouldn't have been an issue for him - as his salary was index-linked, he was expecting promotion and could accommodate increasing contributions, had he opted to make them.
- Recommending added years wouldn't have earned the adviser a commission.
- The benefits under added years were guaranteed, whereas Mr J's FSAVC (or the in-house AVC) was subject to risk.
- Mr J wasn't seeking anonymity from his employer, expecting to be a job mover, to have poor growth in earnings, or retire early (which were typical reasons for recommending an FSAVC over added years).
- *"Royal London[s] ... recommendation was therefore negligent and breached the PIA Principles PRIN 2.1.1 R No.6 and No.7"*

Mr J also made his own comments, reiterating that he was persuaded by the adviser at the time that added years were unaffordable and inflexible. He believed that was the wrong advice, adding *"I may have needed to make difficult choices about where I spent my money*

but the incorrect advice that I received meant that I did not consider purchasing added years”.

He pointed out that by February 1996, he had additional private earnings (after tax) of £400-600pm and his wife also earned £400pm. His records at the time indicated he was projecting a net monthly surplus of £681 – rather different to that recorded on the fact find from 1992. Shortly after the advice, he also took on additional management responsibilities in his role, which increased his salary further.

The investigator wasn't persuaded to change her view, so the complaint was passed 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.

*Did Royal London consider and then advise Mr J **not to** purchase added years?*

The adviser who recommended the FSAVC was tied to an insurer that is now part of Royal London. So he couldn't recommend products provided by other insurance companies. But technically, the added years arrangement isn't provided by another insurance company. It was an existing option available to Mr J under his employer's scheme.

To answer one of the representative's points, as the investigator has already pointed out – the adviser was bound by the LAUTRO Code of Conduct. The PIA had adopted this Code when it assumed responsibility for LAUTRO-regulated firms, but this was before the FSA (which introduced the PRIN section of the rulebook to which the representative refers) took over in 2001. So I'm satisfied that the investigator set out the correct rules.

The LAUTRO Code of Conduct required the adviser to 'have regard to' any rights Mr J may have under an occupational scheme. In my view it wouldn't have been inconsistent with this Code if the adviser *did* consider the potential benefits of added years as part of his advice rather than simply mentioning they were available – although I'm satisfied that he should at least have done the latter.

And in this particular case, Mr J seems to have given a reason for the adviser to comment on added years. He completed a complaints questionnaire for Royal London which stated “*I was told that this [FSAVC] was the best option for me, and preferable to buying added years...which had been my intention*”. He mentions in response to the investigator's view that the adviser persuaded him that added years were unaffordable and inflexible.

Mr J's representative and Royal London will be aware that in some cases there is little evidence that added years were even discussed at all. But I'm required to consider all of the evidence, including Mr J's recollections – and as a result I don't think this is one of those cases.

On balance I find it likely that Mr J did mention to the adviser that he was aware of and considering buying added years, and this resulted in a discussion about the relative merits of what the adviser was offering (an FSAVC). Whilst I would find it more compelling if such discussions had been included in the reasons why letter, that doesn't mean I could safely conclude they didn't happen at all - given Mr J's testimony in this case.

I think Mr J's recollections are the best evidence we have of what likely happened. As people's recollections may take on a different complexion over a time gap of some 25 years,

I can't know precisely what was discussed. But if an adviser was commenting on added years, it's not surprising to find some reference being made to the fixed-term commitment of an added years arrangement as well as its relative cost to the FSAVC. These are, after all, the two main things the investigator has referred to as well.

Would the adviser have been right to point out the potential increased cost of added years over an FSAVC?

In my view, the adviser would have been. I can see that in principle with a gap of at least a few years' service and a wife and young family to support, buying added years could have looked attractive to Mr J as not only he and his dependants might benefit. He says he had been intending to do buy them before he met the adviser. So it looks to me that he wanted advice on whether an FSAVC would likely produce better benefits, when they were costed for him and his dependants, than added years.

As the investigator highlighted, the added years arrangement wasn't intentionally subsidised by the employer. As a result he would need to pay about three times as much into it as he was doing for each year of 'normal' service he gained through membership of the pension scheme. And I think whether that was likely to benefit him would, in the main, depend on Mr J's view of what returns he was likely to achieve by investing in line with his attitude to risk.

Based on comments Mr J had already made to the adviser about being prepared to invest in PEPs (the forerunner to a stocks and shares ISA), or "*slightly higher risk, higher return*" vehicles than these, I think he would have understood the relationship between risk and reward. I appreciate his representative's comments that there is no record of how Mr J's attitude to risk was assessed. However, the rather specific fund split chosen for the FSAVC - 75% in a UK managed fund and 25% in what was likely to be higher risk than this (a non-UK managed fund) – persuades me that there likely was a discussion about how much risk Mr J wanted to take.

At the time, the regulator laid down projection rates that were considered indicative of the potential investment return Mr J could obtain and, of course, the higher projection rates were more likely to be achieved by taking higher risks. From what we know of Mr J's attitude to risk, I think it would have been reasonable to contemplate returns between the middle rate of 9% and the upper rate of 12%, but closer to the middle rate than the upper rate. Over much of the period since 1996 those returns unfortunately won't have been achieved, but that wasn't generally foreseeable at the time – and it wouldn't be reasonable for me to take that into account.

It should also be noted that Mr J would have been closer to achieving the returns it had been hoped his additional contributions would achieve, if he'd paid the lower charges under the in-house AVC scheme. Royal London has accepted this part of the complaint and, although fine-tuning the fund split seems to have been one of the selling points of the FSAVC at the time, I assume it's therefore accepted that there would have been a standard fund choice under the in-house alternative that would have aligned with Mr J's attitude to risk. I see no reason to doubt that would have been the case.

Taking a neutral view that isn't influenced by hindsight, I think it's likely that for someone of Mr J's attitude to risk – perhaps a little above average – an investment-linked AVC arrangement was likely to produce higher benefits than added years, for the same level of contribution. Or to put it another way, Mr J could save on the amount he contributed and still hope to achieve a similar level of benefit, because he did have the capacity to take that risk. He was only putting a relatively small slice of his pension provision at risk, given that he would have guaranteed benefits covering most of his career in the armed forces and

subsequent employer's schemes. And I don't find it unlikely that Mr J followed the adviser's advice because this was an acceptable level of risk to him.

'Expensive' vs 'affordable'

Further, I don't think whether something is seen as 'expensive' or 'affordable' is the same thing. I accept from what Mr J has said that he had likely seen sufficient increases to his earnings, including from private work and his wife's income, by the time the FSAVC was sold. I agree that as the added years contributions would still increase in line with Mr J's salary, it would have largely been a question of prioritising these over other expenses for them to remain affordable. Nevertheless, there are references to needing to budget for school fees leading up to the time of the advice – and Mr J has acknowledged in his response to the investigator that there were competing pressures on his finances, notwithstanding that the household income had gone up.

But my overall point here is that Mr J being able to *afford* the increasing cost of added years would not de-legitimise the view that they were still likely to have looked expensive, compared with the alternatives, at the time of advice. I don't consider that Mr J was a cautious investor, in respect of making this top up to his pension. So I don't follow the argument that he would have wanted to pay potentially over the odds just to ensure that every last part of his pension provision was guaranteed.

Retirement age

There does seem to have been a confusion over Mr J's retirement age at the time of advice. Mr J seems to have had the same misunderstanding as the adviser that age 60 was an early retirement age – despite taking his benefits in 2016, it was his representative that corrected his understanding when the complaint was submitted. But however the confusion arose in 1996, I would expect the adviser to have known or double-checked what was the retirement age for a very common public sector scheme.

However, I don't think makes a difference to the outcome of the complaint. For all the other reasons I've given above, I don't find that the adviser was wrong – according to Mr J's recollections – to highlight the potential added expense of added years for someone of his attitude to risk. And, as Royal London has accepted, if he had referred to the potential lower cost of the in-house AVC arrangement, I think it's likely Mr J would have chosen that arrangement over the FSAVC.

My final decision

Royal London has already made an offer to calculate and settle Mr J's complaint in line with the regulator's FSAVC review guidance on a charges-only basis. I consider that to be a fair and reasonable offer and require Royal London to settle the complaint in line with that offer if Mr J accepts this decision.

Royal London also offered to pay Mr J an additional £350 for the time it took to respond to Mr J's complaint. This is not something the investigator has commented on because compliance with the rules on complaints-handling is a matter for the regulator and not this service. If Mr J wishes to accept Royal London's further offer of £350 he will need to discuss this directly with the business.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 10 July 2023.

Gideon Moore

Ombudsman