

The complaint

Mrs G complains that a business that has now become part of The Royal London Mutual Insurance Society Limited (RL) gave her unsuitable advice to purchase a Free Standing Additional Voluntary Contribution (FSAVC) plan.

Mrs G is represented in her complaint by a complaints management company (CMC). But I'll only refer to her in my decision.

What happened

Mrs G and her husband met with an RL appointed representative in January 1998. She wanted advice on how to improve her pension at retirement. RL advised Mrs G to take out an FSAVC plan.

A fact find was completed at the time of the advice. This recorded the following about Mrs G, who was 49 at the time:

- She was married with no dependent children
- She was employed part-time. And had been a member of her Occupational Pension Scheme (OPS) for 2 years.
- The normal retirement age in the OPS was 65, but early retirement could be taken from age 60. Mrs G had no other pensions.
- She wanted to retire at age 65 and to have 50% of her earnings to provide a comfortable retirement.
- She had a small amount of savings. She and her husband were saving £130 each month in a deposit account.
- Her and her husband's total outgoings were only a little less than their joint net income.
- She was happy to contribute £30 each month, to be funded from regular savings, to improve her pension provision.
- She was a cautious investor.
- Her needs and objectives were recorded as: *"Your existing pension arrangements are unlikely to meet your retirement aspirations".* Objective: *"start saving on a regular basis in the next 10 years".*

It was noted on the fact find that: *"AVCs have been discussed with the customer in accordance with GMC 3516. A Copy of the leaflet PP.166 has been handed to the customer".*

RL told this service that GMC 3516 set out the procedures for the sale of FSAVCs at the time of the advice. And has provided this service with a copy. It has also provided us with a copy of the PP166 leaflet from April 1998.

RL recommended that Mrs G set up an FSAVC plan from 1 February 1998, with a retirement age of 65 and monthly premiums of £30.

RL also produced an illustration dated 30 January 1998 to show what benefits Mrs G might get from the FSAVC plan. This used projected growth rates of 6%, 9% and 12% to age 65.

The illustration noted that the total of all commissions, expenses and charges would impact the eventual benefits from the plan. It said: "*Putting it another way, this would have the same effect as bringing the investment growth used from 9.0% to 6.9%*". It also said that average commission charges would be £126 in the first year and £13 annually thereafter.

Mrs G complained to RL through her CMC on 31 January 2023. She felt that the FSAVC plan had been mis-sold. And that if she'd been advised correctly, she would've contributed to the most suitable in-house AVC arrangement. She wanted RL to return her to the financial position she would've been in if the product hadn't been mis-sold. Mrs G made the following points:

- The adviser had failed to accurately assess the level of risk she was willing to take.
- There was no justifiable reason for her having a portable FSAVC as she was likely to remain in the same employment until her retirement.
- The adviser had failed to establish if her OPS had an added years or any other enhanced benefit AVC arrangement that she would've chosen if properly advised.
- There was no evidence that the adviser had compared the benefits of the FSAVC with additional contributions to the OPS AVC scheme.
- The adviser should've referred her to the OPS for the full details of charges in order to make an informed choice.
- There was no evidence that the adviser made her fully aware of the comparison of charges with the FSAVC recommended and the in house AVC scheme.
- There was no evidence that more suitable retirement alternatives were discussed with her in a fair and balanced way.

RL issued its final response to the complaint on 28 February 2023. It didn't think it'd done anything wrong. It said that at the time of the advice, its representatives had a recorded guideline to issue a leaflet at the sale which gave details of the options available from the OPS. And that its representative had made notes on the fact find to say these had been discussed. It therefore felt that it'd provided sufficient documentation to alert Mrs G to other options available through her OPS.

Unhappy with RL's response, Mrs G brought her complaint to this service on 27 April 2023, through her CMC. RL gave this service its consent to consider the complaint. Mrs G said that RL hadn't provided any suitability letter or Reasons Why Letter. So there was nothing to suggest that any meaningful discussion had taken place about the critical issue of charges. She said there was no evidence that the likelihood that the in-house AVC charges would be lower than the FSAVC charges was discussed and explained.

RL told this service that it didn't hold a copy of the Reasons Why letter. But that it would've been a brief letter with a copy of the fact find and illustration/Key features only.

Our investigator felt that the complaint should be upheld. He felt that RL hadn't been able to demonstrate that Mrs G had been given the required information from the outset. And that if she had been, she would've most likely opted to take an in-house AVC option, given it would've been substantially the same product to the same retirement age and at a cheaper cost.

To put things right, he felt that RL should undertake a redress calculation in accordance with the regulator's FSAVC review guidance.

RL didn't agree with our investigator. It felt that the leaflet it had provided had met the regulatory requirements in force at the time of the advice. It said that the leaflet was used as a tool to discuss the differences with the client. And that the GMC 3516 update had laid out very clearly what had to be discussed in more detail. It said that a section in GMC 3516 stated:

"Although the expenses associated with a [RL] Free-Standing Pension are relatively low, those associated with many AVC schemes are often lower because of the reduced costs arising from group arrangements. Expense considerations are, of course, just one of the features which affect the suitability of an investment and do not alone preclude a recommendation in favour of a [RL] Free-Standing Pension".

RL said that this section expanded on the elements in the leaflet about the charges. It said that the adviser had indicated that the leaflet was used and left with the client. And that the full procedure for the discussion had been covered. So it felt that Mrs G had been made fully aware of the differences between the in-house AVC and the FSAVC. And that it had followed the relevant regulation at the time.

As agreement couldn't be reached, the complaint has come to me for a review.

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.

Having done so, I'm going to uphold it, for largely the same reasons as our investigator. I'll explain the reasons for my decision.

I first considered the guidance in place at the time of the advice.

Regulatory Guidance

The adviser in this complaint was an appointed representative, or tied agent, of RL. The rules under which tied agents operated meant they could only offer products from one provider. They weren't allowed to sell products from any other provider.

The provider of the in-house AVC connected to the OPS was often a competing provider in the marketplace. So an appointed representative of the FSAVC provider wouldn't typically have investigated whether these options were better than the FSAVC - they weren't allowed to. They could only recommend the products provided by the company they were tied to.

The tied adviser was usually required to follow the rules set in 1988 – called LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation). The Personal Investment Authority

(PIA - a predecessor of the Financial Conduct Authority) initially adopted the LAUTRO rules when it took over from LAUTRO in 1994.

The PIA set out guidance for advisers recommending FSAVCs in its Regulatory Update 20 (RU 20) of May 1996. In summary, an adviser 'tied' to one provider needed to make the client aware of the in-house AVC. He also needed to talk about the differences between the FSAVC and the in-house AVC option in generic terms, including the likely lower charges of in-house AVC schemes. And to direct the client to their employer's OPS for more information about the in-house option.

The sale of Mrs G's FSAVC was made almost two years after RU 20. So I'm satisfied that RL would've been clear about its obligations in terms of providing suitable advice.

Did the adviser meet the regulatory guidance?

RL felt that its adviser had met the regulatory guidance. It said its representative had followed its guidance to issue a leaflet giving details of the options available from the OPS. And had made notes on the fact find to say these options had been discussed.

RL said that the leaflet its adviser had given Mrs G met the regulatory requirements in force at the time of the advice. And that its process document GMC 3516 had clearly laid out what had to be discussed in more detail.

RL felt that as its adviser had indicated the process had been followed, Mrs G had been made fully aware of the differences between the in-house AVC and the FSAVC.

I've carefully considered the points RL has made. I've also reviewed the GMC 3516 process document and the PP166 leaflet RL said its adviser had given to Mrs G.

The copy of the PP166 leaflet RL provided this service with is from April 1998, so after the advice in question. However, on the assumption that the version before that was similar, I note the following about this leaflet:

- It said a consumer could make additional contributions through an OPS or through a FSAVC plan, or both.
- It said that an OPS could offer special features, such as added pension years. Or that an employer might even make extra contributions if a consumer paid into the in-house AVC.
- It said that AVCs are group arrangements, so expenses were generally very competitive.
- It said that the consumer's employer could provide them with specific details.
- The leaflet also said that either in-house or FSAVCs could be the answer if a consumer needed to improve their pension.

RL said that the PP166 leaflet would've drawn Mrs G's attention to the in-house scheme and explained the differences between it and the FSAVC plan. And that it would've let her know that her employer could give her more information.

RL felt that the GMC 3516 process very clearly outlined what the adviser was required to discuss with the consumer. And that between that process and the PP166 leaflet covered the required outline of the charges.

I acknowledge RL's point that it had clear and robust guidelines for its appointed representatives to follow. And that if this process was followed in full, the regulatory requirements of the time would've been met. I would expect there to have been clear guidelines in place at the time of the advice, as RU 20 had been in force for almost two years by then.

However, I'm not persuaded that there's enough evidence that the full procedure was followed. I say this because, although I acknowledge that the adviser noted what documents had been given to Mrs G on the fact find, I've seen nothing to confirm that she received them. I've not been provided with anything signed by her. And I've seen no other note showing that the full process, as outlined by CMC 3516, was followed.

I agree with our investigator that although the GMC 3516 process note, and the PP166 leaflet, did both mention charges were often lower in in-house AVC schemes than in FSAVC plans, the process note didn't require the adviser to have a discussion with the consumer about this. Therefore, as the process document didn't require a discussion, and as there's no evidence that one took place, I'm not persuaded that RL met the regulatory guidance at the time.

I've seen no persuasive evidence that the adviser gave Mrs G a copy of the PP166 leaflet, and then discussed it with her. So I'm of the view that it was more likely than not that the adviser didn't make Mrs G aware of the in-house AVC. I also consider that it's more likely than not that the adviser didn't discuss the differences between the FSAVC and the in-house AVC option with Mrs G in generic terms, including the likely lower charges of in-house AVC schemes. And that he didn't direct her to her employer's OPS for more information about the in-house options.

I agree with our investigator that if the adviser had clearly outlined the likely differences in charges between the in-house AVC and the FSAVC plan, Mrs G would've chosen the in-house AVC plan. I say this because it was likely to cost less, while still providing her with the retirement age she wanted.

I also agree that given how much any potential in-house added years option might've cost, it would likely have looked expensive compared to the projected returns and benefits of the FSAVC. And that this service considers that the majority of consumers, at the time of advice, were unlikely to want to spend a potentially greater monthly amount to get the same projected benefits from added years as they could've had from a money purchase arrangement. And that this is especially relevant here, as Mrs G had a negligible net disposable income and planned to fund her pension contributions from her relatively limited savings. So I consider that an "AVC" type option would've seemed more attractive to Mrs G than added years.

Overall, I agree with our investigator that if RL had given Mrs G all of the information required by the regulatory guidance, she would've chosen the in-house AVC option. I say this because I consider it would've offered her substantially the same product at a cheaper cost. Therefore I uphold the complaint.

Putting things right

RL 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, RL 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 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 Mrs 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 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 above, I uphold the complaint. The Royal London Mutual Insurance Society Limited must take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 29 August 2023.

Jo Occleshaw
Ombudsman