DRN-4252772

The complaint

Mrs G, through her representatives, complains that she was mis-sold a Free Standing Additional Voluntary Contribution plan (FSAVC) by Allied Dunbar.

Zurich Assurance Ltd (Zurich) is responsible for this advice and I will be referring to Zurich throughout this decision for ease of reading.

What happened

Mrs G was advised by Zurich in 1996 to contribute into an FSAVC. At the time she was a member of the Teacher's Pension Scheme.

In February 2022, her representatives raised a complaint about the advice she received. They raised the following points:

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

During the complaint investigation, Zurich started asking for information from Mrs G and from the Teachers' Pension Scheme. They said they were looking to carry out an Added Years loss assessment. However, Zurich then issued their final response to the complaint and said Mrs G had complained outside the regulator's time limits and so her complaint wouldn't be considered further. They also objected to our service looking into Mrs G's complaint if we agreed with their assessment on jurisdiction.

I previously issued a decision explaining that Mrs G had complained in time. We asked Zurich to provide their files so we could consider the merits of Mrs G's complaint. We also noted that they had previously considered making an offer of redress and asked them to let us know if they were still willing to do this.

Zurich provided their file but didn't put forward an offer. One of our investigators therefore independently considered the merits of Mrs G's complaint and found that she hadn't been appropriately advised. His view was that if she had been, she likely would have contributed to the in-house AVCs in the Teacher's Pension instead of the FSAVC due to its lower charges. He asked Zurich to compensate Mrs G for any losses she incurred as a result which is mainly based on the difference in charges between an in-house AVC and an FSAVC.

Zurich agreed with the view including the proposed redress. Mrs G's representatives disagreed. They point to the fact that Zurich originally wanted to settle on an Added Years basis and feel this should be considered.

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 understand that Zurich started making enquiries and indicated they were considering making an offer on an Added Years basis before they decided to raise jurisdiction objections. However, they didn't revisit such an offer after the jurisdiction decision was issued.

I have made my decision based on the information I have and what I consider fair and reasonable in the circumstances and like the investigator I'm not persuaded Mrs G would have likely chosen to buy added years in 1996.

Mrs G was advised by a tied adviser who could only recommend products provided by the company he worked for. At the time of the advice he had to follow the rules set in 1988 by LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation) and adapted by the Personal Investment Authority (PIA - a predecessor of the Financial Conduct Authority) in 1994.

Amongst other things, the LAUTRO code of conduct said advisers should exercise due skill, care and diligence and deal fairly with investors. And they had to have regard to any rights under an occupational scheme and give consumers all relevant information.

It was recorded on the fact find that Mrs G had a pension with her employer and that it was a defined benefit scheme. I would expect the adviser to have mentioned the generic benefits of in-house options.

These generic benefits would include that:

• Money purchase AVCs could potentially offer lower charges than the FSAVC
• Added years might have been available
• Mrs G's employer might match or top-up the amount she paid into an in-house option

If the adviser couldn't make further enquiries with Mrs G's occupational pension scheme, potentially due to being tied to Allied Dunbar, I would have expected the adviser to recommend that Mrs G explored those options herself with her employer, before considering whether to take out an FSAVC.

Based on the information provided, there is no evidence that options in the Teachers Pension were discussed, so I think the adviser failed in his obligation to have regard to any rights under an occupational scheme and give Mrs G all relevant information. In doing so he didn't treat her fairly.

What I need to decide is what Mrs G more likely than not would have done if the adviser had given her some generic information about in-house benefits and pointed her to her employer for further information.

The fact find shows that Mrs G and her husband could only afford £35 to go towards Mrs G's pension. So I think taking advantage of generally lower costs in an in house AVC would have been attractive to her. On balance I therefore think she would have chosen to contribute into her in-house AVC instead of an FSAVC if this option had been pointed out to her. Zurich has accepted to pay this redress, so I don't see the need to address this in more detail here.

I considered whether Mrs G would have opted for added years, however I'm not persuaded for the following reasons:

Like I said above, the adviser didn't have to recommend added years to Mrs G or even do a cost comparison. He just needed to point out possible available in-house options and point Mrs G to her employer for more information.

Mrs G's representatives have not provided any particular reasons why they think Mrs G would have opted for added years at the time. They are correct to say that there are different factors which influence if added years might be a suitable option for someone, including for example their age, marital status, retirement age, whether they are likely to remain with their employer and if their salaries are likely to increase substantially over time and their attitude to risk.

However, I would like to reiterate here, that Mrs G wouldn't have received advice on added years based on her specific circumstances. If she chose to contact her employer-which isn't guaranteed in itself- she only would have been provided with information about added years. It would have been then up to her to make a decision on what she preferred.

I've considered Mrs G's circumstances, but overall, I think she likely wouldn't have chosen to buy added years.

The fact find shows the couple were about to increase their mortgage as they were planning home improvements and they only could afford £35 per month to put towards Mrs G's pension. They chose level contributions instead of increasing ones which further demonstrates the tight budget. With Added Years, Mrs G would have had to commit to an increasing contribution which couldn't be easily stopped and started if contributions became unaffordable for example. Given her financial circumstances at the time I'm not persuaded she would have seen this as an affordable option.

Even if she could have found more money to put towards her pension, Added Years also would have looked expensive compared to the projected benefits of the FSAVC given that estimated investment returns in 1996 would have been a lot higher than they are now. Added Years also aren't subsidised by the employer like the regular DB benefits are.

Added years would have provided guaranteed benefits whereas AVC or FSAVCs were subject to investment risk. However, Mrs G was still many years from retirement and could accrue additional guaranteed benefits as well as take some risks with a smaller part of her pension. The fact find shows her attitude to risk to be 2 on a scale of 1-4 (one being cautious and 4 being speculative). So I think she was willing to take some risk with her pension.

I think Mrs G would have likely seen Added Years as a less affordable option which also would have looked expensive and not particularly good value for money compared to an AVC or FSAVC at the time. With hindsight and investment returns not matching expectations of the mid 1990s, Added Years have become a very valuable benefit. However, I think Mrs G would have seen cheaper AVCs as the more attractive and affordable option at the time of the advice.

Putting things right

My aim is to put Mrs G as much as possible back into the position she would be in if Zurich had advised her properly. I think Mrs G would have likely ended up contributing to her in-house AVC instead of an FSAVC.

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 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

I uphold the complaint and require Zurich Assurance Ltd to pay Mrs G compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 14 September 2023.

Nina Walter
Ombudsman