DRN-4318761

The complaint

Mr C says Wesleyan Assurance Society (Wesleyan) was negligent when it advised him to take out a Free Standing Additional Voluntary Contribution (FSAVC) pension plan. He says the recommendation wasn't suitable and has caused him financial detriment.

Mr C is represented by It Is Your Money (IIYM).

What happened

Mr C was working for the NHS. In December 1996 he saw a financial adviser about his pension. The outcome of the meeting was he agreed to start a FSAVC, paying in £135 per month gross, up to age 60.

IIYM, on behalf of Mr C, raised a complaint with Wesleyan in February 2022. It had several concerns about what had happened during the sale of the FSAVC policy in 1996. These included that the adviser had failed to explore whether as a member of a defined benefit (DB) pension scheme he had better 'in-house' options for making additional contributions.

Wesleyan responded to IIYM on 20 April 2022. It upheld Mr C's complaint, concluding in the following terms:

"Mr C has confirmed that he was aware that he could contribute to the in house AVC arrangement and the Added Years scheme. He further confirms he later purchased some Added Years. However, as mentioned earlier, I have been unable to locate the full sales file to confirm why the FSAVC was recommended. Furthermore, I am unable to evidence the [adviser] fully explained the risks and charges of the FSAVC against the in-house AVC or Added Years scheme. It is likely the advice would have been for Mr C to contribute into the in-house AVC on an added years basis scheme."

Wesleyan said it would conduct an assessment of final loss. And in December 2022 it wrote to Mr C and his representative with the outcome of that process. In summary, it concluded that although it had got things wrong in 1996, Mr C hadn't suffered a financial loss, and was actually significantly better off as a result of what had happened.

IIYM disagreed with Wesleyan's calculation method. It said:

"The calculation has revealed there is no financial loss but we are not in agreement that the calculation used is the fairest or most accurate assessment of Mr C's circumstances and in principle is incorrect. The business (or their actuaries) has deemed that Mr C should have started purchasing added years in January 1997 at a cost of 0.93% of salary for 1 added year through to when he stopped paying the FSAVC contribution in 2012. Had he received the correct advice and done this, he could have contracted to purchase Added Years of 2 years 83 days up to age 60."

"Mr C did in fact go on to start an added years contract in 2006 where over a term of 14 years to age 60 he would have purchased 3 additional years. We believe the cost to purchase 1 additional year at this point was 1.58% of salary. We do not believe that Mr C lost the opportunity to buy added years and even with the hypothetical and actual added

years would not have exceeded 40 years maximum service. However, he's paid more (1.58% rather than 0.93% per year) for the additional 3 years that he later purchased. The business has simply disregarded this element from the calculation and in doing so are disadvantaging Mr C."

An Investigator reviewed Mr C's case and concluded it shouldn't be upheld. He noted that it wasn't the role of this Service to check redress calculations. But he also thought, based on the available evidence, Wesleyan had conducted a loss calculation that was reasonable and in keeping with the regulator's methodology.

As both parties couldn't agree with the Investigator's view, Mr C's complaint was passed to me to review afresh and to provide 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr C's complaint. I'll explain why.

In May 1996 the Personal Investment Authority (PIA) issued Regulatory Update 20 (RU20) which set out the procedures it expected product providers to follow. It said that a tied adviser like Wesleyan shouldn't recommend its own FSAVC until it had:

- Drawn Mr C's attention to the in-scheme alternative.
- Discussed the differences between the two routes in generic terms (including likely lower charges for AVCs and the possibility of employers being willing to top-up benefits).
- Directed the client to his employer, or to the scheme trustees, for more information on the in-scheme option.

As we know Wesleyan couldn't evidence that its adviser followed all the steps he should've in 1996. And so it upheld Mr C's complaint. But IIYM on Mr C's behalf disagreed with the redress methodology used. In responding to the Investigator's view it said:

"The business was unable to confirm what alternatives, if any, were discussed with Mr C when he saw the adviser in December 1996. It then instructed the independent actuary to complete the necessary calculation on the Added years basis. It was the business who chose the method, not the actuary!"

"Was this instruction correct? We ask this as a valid question given that your colleagues often state: "Our service's starting point is that the majority of consumers, at the time of the 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..."""

“Moving to the actual calculation that has been carried out at the request of the business. Whilst we acknowledge that the calculation has been carried out in part, by using the Pension Review methodology as updated by the Financial Conduct Authority in its Finalised Guidance 17/9. We don’t believe strictly applying them is appropriate in the particular circumstances of this case.”

“Mr C’s FSAVC plan didn’t fall within the initial scope of the review for which the guidance was intended…And crucially, there’s nothing in the Dispute Resolution rules (DISP) – the rules in the FCA handbook that set out how complaints are to be dealt with by firms and the ombudsman service – which stipulates that this guidance must be applied to all FSAVC complaints being raised now, that didn’t fall within the initial scope of the review.”

“That’s not to say the guidance and bulletin aren’t relevant at all; they do still provide a useful guide, particularly when we consider complaints about mis-sold FSAVC cases where it’s been determined that the consumer would’ve joined their employer’s AVC scheme. However, in this case, we believe departing from a strict interpretation of the guidance is necessary in order to provide Mr C with fair compensation....”

“You appear to suggest that Mr C wouldn't have chosen to buy the actual added years he did in 2006 at an earlier date due to affordability. We dispute this as it is clear that to purchase the full 5 years and 83 days would have cost him approximately £2500 per annum. He could've afforded this!”

“Secondly, the assumption that 0.93% of pensionable pay over 23 years is probably broadly similar to paying 1.58% over 14 years is wildly inaccurate when considering if there is a loss or not. It is clear that Mr C has needed to pay more into the 2006 added years contract to purchase the 3 years he did than he would've needed to if he had purchased them earlier.”

Where something has gone wrong, it is the role of this Service to make sure things are put right. And that, as far as is reasonably possible, people like Mr C are returned to the position they would’ve been in now but for any failings identified. But it’s important to recognise, particularly given the passage of time, working with the available evidence and the need to avoid the benefit of hindsight, that redress isn’t always a scientific matter.

Wesleyan instructed an actuarial firm to conduct a loss assessment using methodology prescribed by the regulator. It considered how many added years Mr C’s FSAVC contribution could have purchased. This was calculated as 2 years and 83 days. It assessed whether these added years or the FSAVC policy would’ve provided greater retirement benefits. It found that his policy generated a net gain to him of around £22,000. On this basis it concluded Mr C hadn’t suffered financial detriment.

IIYM challenged whether Wesleyan had commissioned the correct loss assessment. It seemed to suggest that rather than being based on added years, this should’ve been based on the purchase of in-house additional voluntary contributions (AVCs). But Wesleyan asked Mr C to complete a questionnaire about his recollections from 1996. And he states that had he been better informed at the time he would’ve purchased added years, not AVCs. And we know he went on to purchase added years from his DB scheme in 2006.

Mr C indicated that he would’ve purchased added years in 1996 had he been better informed. And his actions in 2006 bear this out. So, I think the assessment commissioned by Wesleyan was reasonable. IIYM hasn’t done enough to demonstrate Mr C would’ve chosen the in-house AVC.

IIYM appears to change horses when it went on to challenge the Investigator’s finding around affordability likely inhibiting Mr C from buying the added years he bought from 2006 any earlier. He’d said:

"…My point in my original view about affordability is simply that, clearly Mr C and the adviser would have arrived at a figure of £135 per month as being affordable…I imagine if he had felt he could have afforded a higher contribution comfortably that would have been considered at the meeting; indeed maybe other figures were discussed but clearly the amount that Mr C felt comfortable paying was £135 per month."

"…You state that the cost of 5 years and 83 days would have been approximately £2,500 per annum and that Mr C could have afforded that amount. However we do not have the benefit of knowing what was discussed at the meeting or what was considered affordable at the time, or indeed what Mr C's priorities were for any disposable income he had at that time. On the balance of probability I would have expected that affordability would have been part of the discussions around the FSAVC contributions and that the £135 per month Mr C agreed to was the amount he felt comfortable paying."

I note that Mr C made no further provision for his pension until 2006 when he bought three added years. So, I think it's more likely than not, a higher contribution figure was not affordable prior to that, or wasn't his priority at that time.

I've set out the regulations Wesleyan had to adhere to at the time Mr C bought his FSAVC policy. Documentation from 1996 indicates the adviser did make him aware of the alternatives. In addition, Mr C indicated in his recent testimony the adviser may have informed him of the differences between the routes, and confirmed he'd been aware of the added years option in before he met with the adviser.

IIYM, on behalf of Mr C, hasn't done enough to satisfy me his decision in 2006 to buy additional years from his DB scheme was directly connected to the failings in the 1996 which Wesleyan has accepted responsibility for.

Based on the available evidence, I've decided the redress method used by Wesleyan in assessing any potential loss caused to Mr C was reasonable and in accordance with the regulator's expectations.

My final decision

For the reasons I've set out, I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 November 2023.
Kevin Williamson
Ombudsman