

The complaint

Mrs W complains that Ludlow Wealth Management Group Ltd trading as Ludlow & Co gave her unsuitable advice when they mis-sold her Freestanding Additional Voluntary Contribution (FSAVC) plan. She also said it failed to properly assess her attitude towards investment risk when it provided further advice in 2006.

What happened

Mrs W has been represented by a professional representative throughout her complaint. But for ease, I'll mostly refer to Mrs W throughout this decision when talking about the actions of Mrs W or her representatives.

In July 2024 Mrs W complained to Ludlow & Co. Her complaint was entitled (in bold) 'Mis-selling of a Free Standing Additional Voluntary Contribution plan'. She said she was writing in relation to the mis-selling of the aforementioned product.

Mrs W's complaint went on to say the reasons for her complaint were as follows;

- The adviser failed to accurately assess the level of risk Mrs W was willing to take when they provided further advice in 1996 regarding their FSAVC policy.
- There was no justifiable reason for Mrs W having the portable FSAVC(s) as she was likely to remain in the same employment until her retirement.
- The adviser failed to establish if Mrs W's occupational pension scheme had an added years or any other enhanced benefit additional voluntary contribution (AVC) arrangement that she 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 pension scheme's AVC scheme.
- The adviser should have referred Mrs W 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 Mrs W 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 W in a fair and balanced way.
- If the adviser had advised Mrs W correctly, she would have contributed to the most suitable in house AVC arrangement.

Mrs W's complaint included a letter written on Ludlow & Co headed paper from 1996 to Mrs W's FSAVC provider enclosing a request to increase her premiums.

Ludlow & Co responded to Mrs W's complaint. It said it had no record of a client with Mrs W's name. It noted the letter that Mrs W had sent but explained that it did not evidence advice was given to set up an FSAVC. It instead indicated Ludlow & Co had passed on an instruction to increase premiums into Mrs W's existing FSAVC. It said it was unable to respond to the allegations raised as there was no evidence of them providing advice to Mrs W.

Ludlow & Co went on to say that the industry had been required to review the sale of policies

prior to the year 2000 in the industry wide pensions review. As such they believed any claim would have already been dealt with and would be time-barred under the regulator's rules.

Mrs W was unhappy with Ludlow & Co's response and so brought her complaint to our Service. In referring her complaint Mrs W said she was '*complaining about the negligence of the advisor in giving her the advice to have a Free Standing Additional Voluntary Contribution (FSAVC) plan and that the plan was unsuitable for her*'.

Mrs W said there was no evidence she was included in the pensions review mailing and didn't think her complaint was time-barred.

Our Investigator said that in order for our Service to consider a complaint it needs to be a complaint which arises from matters relevant to a relationship Mrs W held with the business. He said in this complaint there was evidence Mrs W was, at one point, a customer of Ludlow & Co. However, he said Mrs W's complaint is about advice to enter into the FSAVC, and the evidence demonstrated that Ludlow & Co didn't give that advice.

In response, Mrs W said she'd received advice to start her FSAVC from a tied representative of her FSAVC provider. She'd made a complaint in that regard to her FSAVC provider and had received an offer of compensation.

She went on to explain that in 1994 she appointed Ludlow & Co as her advisors and requested her FSAVC provider to transfer the servicing of all of her policies to Ludlow & Co with immediate effect. In 1996 Mrs W, with the assistance of Ludlow & Co increased the premiums to her FSAVC. And it's that piece of advice that the complaint is regarding.

Mrs W provided a complaint response from her FSAVC provider dated 1 July 2024 which upheld the mis-sale complaint but capped its liability due to Ludlow & Co's involvement in increasing the premiums in 1996.

Mrs W concluded that there was clear evidence of a relationship with Ludlow & Co for the advice in 1996 and there was evidence their involvement was more than merely administrative. So, Mrs W said she meets the eligibility criteria as set out in the regulator's rules.

Our Investigator wasn't minded to change his view on our Service's jurisdiction of this complaint and so, it was passed to me for a decision.

I sent Mrs W and Ludlow & Co my provisional decision on this complaint addressing both our Service's jurisdiction and the merits of the complaint. I've copied the relevant parts of my provisional decision below.

My Provisional decision

In my provisional decision I said;

'Why I can look into this complaint

The emphasis of Mrs W's complaint to Ludlow & Co appears to me to have been focused on a possible mis-sale of Mrs W's FSAVC by Ludlow & Co. I say that because it was entitled, in bold text, 'Mis-selling of a Free Standing Additional Voluntary Contribution plan'. So, I can understand the response Ludlow & Co gave to Mrs W when they established that they had no record of the sale.

Mrs W's representatives were clearly aware that Ludlow & Co hadn't sold the FSAVC to

Mrs W when making the complaint. I say that as Mrs W's FSAVC provider sent a complaint response acknowledging one of its tied representatives had sold the policy, a week before the complaint was made to Ludlow & Co. It's disappointing to see that Mrs W's representatives didn't clarify its complaint to Ludlow & Co on receipt of the complaint response it received from them.

It's also disappointing to see that Mrs W's representatives, in submitting her complaint to our service, also told us that Mrs W was 'complaining about the negligence of the advisor in giving her the advice to have a Free Standing Additional Voluntary Contribution (FSAVC) plan and that the plan was unsuitable for her'. I say that because it already knew Ludlow & Co hadn't given Mrs W advice to have an FSAVC. Again, because of the poor submissions made by Mrs W's representatives the crux of Mrs W's complaint appeared to be about advice to take out an FSAVC.

But my decision here isn't focused on the actions of Mrs W's representatives.

While I'm in agreement that Mrs W didn't have an eligible relationship with Ludlow & Co regarding the original sale of the policy. Mrs W's now confirmed her complaint relates to the assistance Ludlow & Co gave her in increasing her premiums in 1996 to the existing FSAVC. Broadly speaking our Service can only consider complaints if a complainant has previously communicated its substance to the respondent business and given them an opportunity to deal with it. So, I've considered if that's the case here.

*In her complaint to Ludlow & Co one of Mrs W's points was (with my emphasis); 'The adviser failed to accurately assess the level of risk Mrs W was willing to take when they provided **further advice in 1996** regarding their FSAVC policy'. The mention, albeit briefly, of 'further advice in 1996' and the inclusion of the letter from 1996 suggests to me that Mrs W intended to complain about the actions of Ludlow & Co in 1996 when her premiums increased. Therefore, I think the substance of the complaint has already been made to the respondent business.*

Additionally, in its response Ludlow & Co addressed the merits of the evidence sent by Mrs W, explaining its view that the letter didn't evidence that it gave advice. It considered that the letter indicated Ludlow & Co had passed on an instruction to increase premiums to Mrs W's existing FSAVC on her behalf. Therefore, I think Ludlow & Co have had an opportunity to provide an account for its actions in 1996.

From the evidence I've seen I'm satisfied that Ludlow & Co became the servicing agent on Mrs W's FSAVC from 1994. And, in 1996, Ludlow & Co wrote to Mrs W's FSAVC provider, enclosing a letter from Mrs W asking it to increase her monthly premiums. Ludlow & Co seem to accept that in their complaint response.

On balance, I think it's likely that Mrs W was a customer of Ludlow & Co in 1996 when she asked her FSAVC provider to increase her premiums. And she's alleging that Ludlow & Co gave her regulated advice to do that.

I'm satisfied that's a complaint that would fall within our Service's jurisdiction, as Mrs W was a customer of Ludlow & Co and her complaint related to the provision of a regulated service. And whilst it wasn't made particularly clear in Mrs W's complaint to Ludlow & Co, the reference to 'further advice' in 1996 and the enclosure of letters from 1996 in the complaint was enough for Ludlow & Co to have considered that aspect of the complaint.

Having decided that our Service has the jurisdiction to consider part of Mrs W's complaint, I've gone on to consider its merits.

What I've provisionally 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'm mindful that I'm looking at events that happened nearly 30 years ago and neither side have been able to provide much evidence of the event. Where evidence is conflicting or missing, I base my decision on what I think is most likely to have happened based on the evidence before me.

The only evidence I've seen from the time of the alleged advice are two letters. The first from Mrs W to her FSAVC provider which says;

"I would like to increase my regular contributions to my above pension plan to £171.05 gross per month with effect from 1st September 1996.

I look forward to receiving via my Independent Financial Adviser Mr [X] of Ludlow & Co that this is acceptable along with any appropriate policy endorsements"

The other letter was from Ludlow & Co to the FSAVC provider which I think likely enclosed the above letter saying;

"With reference to the above, please find enclosed instructions from our client requesting her regular pension premiums to be increased to £171.05 with effect from 1st September 1996."

In order to uphold any complaint that Ludlow & Co had given unsuitable advice, I'd first need to be satisfied that, on balance, Ludlow & Co had given Mrs W advice.

Ludlow & Co say they have no record of Mrs W. Had regulated advice been given to her I'd have expected Ludlow & Co or Mrs W to hold some record of that. There is nothing in either of the letters from 1996 that mentions that Mrs W had been advised by Ludlow & Co to increase her premiums into the pension.

While it's Mrs W's testimony she received advice from Ludlow & Co, it has been nearly 30 years since the alleged advice and memories fade. Mrs W also alleged that Ludlow & Co mis-sold the FSAVC which has since been established didn't happen. So, I place less weight on her testimony than the documentation, or lack thereof, from the time. Whilst I cannot rule out that Ludlow & Co provided a financial recommendation, I think that it is equally likely Mrs W decided to increase her contribution to her existing FSAVC and all that Ludlow & Co did was to facilitate that.

Given what I've said above, I can't say, on balance, there's enough evidence to demonstrate Ludlow & Co, more likely than not, gave Mrs W any advice to increase her premiums in 1996. Therefore, unless any new evidence comes to light which causes me to change my mind, I'm minded to not uphold this complaint.'

The responses to my provisional decision

Ludlow & Co didn't respond to my provisional decision.

Mrs W's representatives didn't provide any new evidence for me to consider but said that the FSAVC provider had confirmed Ludlow & Co were Mrs W's adviser and that it (Ludlow & Co) received commission. They also noted that there was a requirement under COBS 9.5.2 for firms to keep hold of their sale files.

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've considered again our Service's jurisdiction over Mrs W's complaint. As neither side have provided any new evidence or submissions regarding our jurisdiction over this complaint, I see no reason to depart from my provisional decision on our jurisdiction. Therefore, for the reasons I've already given, this complaint falls within our Service's jurisdiction.

I've also considered again the merits of Mrs W's complaint. Neither side have provided any new evidence for me to consider on this point either. While I see no reason to depart from my provisional decision on this matter, I will address the relevant points Mrs W's representatives made.

Mrs W's representatives have already asked Zurich for any documentary evidence that advice was given to Mrs W by Ludlow & Co. In response, Zurich only provided the two letters referred to in my provisional decision.

Regarding commission Zurich said *"We're unable to confirm the amount of commission paid to the IFA as this is a private arrangement but I can confirm that, because they were the 'allocated' financial adviser before and during the time of the increase, they would have received the commission payable from it."*

This evidence demonstrates that Ludlow & Co may have received commission from the increase of contributions as they were the 'allocated' adviser at the point that the premiums increased. However, that doesn't demonstrate that advice was given to Mrs W by Ludlow & Co to increase her premiums.

These events occurred many years ago prior to the retail distribution review in 2012 which effectively withdrew the use of commission. However prior to that, commission was likely paid to the 'servicing agent' on the plan whether or not advice had been given. So, the existence of commission (and in this case there's limited evidence commission was actually paid) doesn't in itself demonstrate that advice was given to Mrs W by Ludlow & Co. In any event, I don't think I need any more evidence as to whether commission was paid to Ludlow & Co, or not, as it isn't likely to shed any more light on whether advice was given to Mrs W to increase her premiums. Mrs W has not made a complaint to Ludlow & Co about whether it received commission, her complaint is that Ludlow & Co gave her unsuitable advice.

Mrs W's representatives also mentioned requirements under COBS 9.5.2. But the COBS rules didn't exist at the time of the alleged advice in 1996. And I can't hold a firm responsible against rules which weren't in place at the time. In any event COBS requires firms to retain records relating to suitability, and it's Ludlow & Co's testimony that no advice on the suitability was given. If that's the case, there'd be no record of suitability to retain.

Considering the full circumstances of this complaint I've still not seen sufficient evidence to demonstrate, on balance, that Ludlow & Co advised Mrs W to increase her premiums in 1996.

My final decision

For the reasons I've given in this and my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 27 February 2025.

Timothy Wilkes
Ombudsman