

## The complaint

Mrs T has complained that Aviva Life & Pensions UK Limited (“Aviva”) mis-sold her a Free Standing Additional Voluntary Contribution (“FSAVC”) plan in 1992. She believes she should have been advised to buy added years in the NHS Pension Scheme instead.

A Claims Management Company is acting on Mrs T’s behalf. For simplicity, I’ll refer to all comments and submissions as having been made by her. In addition, figures in this decision are given in pounds with the pence omitted.

## What happened

Mrs T was an active member of the NHS Pension Scheme. In February 1992, at the age of 49, she met with an adviser from Axa Equity & Law (now Aviva), who recommended and arranged an FSAVC plan. The application form recorded the following details:

- Mrs T’s annual salary was £17,000;
- she was contributing 6% of her salary to the NHS Pension Scheme;
- FSAVC premiums would start at £40 per month gross, increasing annually by 10%;
- her attitude to risk was rated 5 out of 10 (with 1 being the lowest and 10 the highest);
- premiums would be invested 100% in an Equity Fund;
- she wanted to increase her retirement provision “as much as possible”; and
- her selected retirement age was 60.

Mrs T continued contributing to the FSAVC plan until September 2002, by which time her premiums had increased to £103 per month due to the agreed annual uplift.

In June 2003, at the age of 60, Mrs T took benefits from her FSAVC plan. The total fund value at that time was £7,758, which was used to purchase an annuity. The annuity provided an annual income of £379, based on a level and single-life basis. On the retirement benefits application form, Mrs T explicitly stated that she didn’t wish to include a spouse’s pension in the annuity.

### This complaint

In June 2024, Mrs T submitted a formal complaint to Aviva. She alleged that she had been wrongly advised to take out an FSAVC plan in 1992, rather than being guided to buy added years in the NHS Pension Scheme.

Aviva upheld the complaint in part. It acknowledged that it couldn’t confirm whether its adviser had made Mrs T aware of the in-house AVC options available through the NHS Pension Scheme at the time of the advice. These in-house options would likely have carried lower charges than the FSAVC plan. However, Aviva didn’t agree that redress should be based on a comparison with the added years option. Instead, it proposed that redress should be calculated on a charges-only basis, comparing the FSAVC plan with the money purchase in-house AVC plan. Aviva explained that Mrs T’s initial contribution of £40 per month suggested she may not have been willing or able to commit to the higher costs associated with buying added years over the 10-year period until her retirement at age 60.

Aviva carried out a loss assessment based on the charges-only comparison. This showed that Mrs T had suffered a financial loss of £2,584 gross, which equated to £2,096 net after tax. As a result, Aviva offered to pay Mrs T the net amount of £2,096 to settle this complaint.

### Investigator's findings

Mrs T didn't agree with Aviva's redress methodology and so referred the matter to this service. She said that she should have been advised in 1992 to buy added years because it would have reduced both risk and charges while maximising benefits without the need to create an additional pension scheme with added complexity and cost.

After reviewing the case, one of our investigators concluded that this complaint shouldn't be upheld and that no further action is required from Aviva beyond the compensation already offered. This was because, based on available evidence, they thought it unlikely Mrs T would have opted to buy added years due to the higher cost and commitment compared to the money purchase in-house AVC plan. The investigator's reasons can be summarised as follows:

- **Mrs T's financial position:** At the time of Aviva's advice, she earned around £17,000 annually and expressed a desire to maximise her retirement provision. However, her FSAVC premium was only £40 per month, suggesting limited affordability or willingness to commit to higher payments required for buying added years.
- **Cost and flexibility considerations:** Added years were more expensive and less flexible than money purchase AVCs. Conservative actuarial assumptions would have made added years appear costly, while money purchase AVCs offered potentially higher returns based on growth projections available at the time.
- **Spouse's benefits:** Although added years could provide valuable spouse's benefits, Mrs T decided that she didn't wish to provide a pension for her spouse when she took retirement benefits in 2003, suggesting this feature wasn't important to her. With the money purchase in-house AVC option she would have been able to secure retirement income on a single life basis and not be compelled to include the cost of a spouse's pension.

### Follow-up and escalation

Mrs T disagreed with the investigator's findings and provided further comments. She largely repeated her earlier points about the suitability of the added years option compared to the money purchase in-house AVC option. The investigator reviewed Mrs T's additional comments but remained of the view that their original opinion was correct. As no agreement was reached, the complaint has now been escalated to me for further consideration.

### **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 all relevant laws, regulations, regulatory rules, guidance, standards, and codes of practice, as well as what I believe represented good industry practice at the time. Where the evidence is unclear or conflicting, I've made my decision based on the balance of

probabilities – that is, by weighing the available evidence and surrounding circumstances to determine what I believe is more likely to have happened.

This decision doesn't address every individual point raised by the parties. If I haven't commented on a specific issue, it's because I don't consider it to have a material impact on the outcome of this complaint. I've reviewed all the evidence carefully, including Mrs T's additional comments in response to our investigator's view. Having considered everything, I agree with the investigator's conclusions for broadly the same reasons. My overall findings are summarised below.

### Regulatory expectations

Mrs T's FSAVC plan was sold by an adviser who was 'tied' to Aviva. In 1992, a tied adviser could only recommend products provided by the company they worked for. And they had to follow the rules set in 1988 by LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation). The LAUTRO Code of Conduct required tied advisers to maintain high standards of integrity and fair dealing, exercise due skill, care and diligence in providing any services, and generally take proper account of the interests of investors. It added that businesses should:

- Have regard to the consumer's financial position generally and to any rights they may have under an occupational scheme; and
- Give the consumer all information relevant to their dealings with the adviser in question

In Mrs T's case, I would have expected Aviva's adviser to be aware that in-house AVC options were available under the NHS Pension Scheme. I also would have expected the adviser to explain the general benefits of those options, which include:

- **Lower charges:** Money purchase in-house AVCs typically had lower charges than FSAVC plans.
- **Guaranteed benefits:** The added years option provided a guaranteed benefit linked to salary, along with an additional element of tax-free cash – neither of which were available under the FSAVC or money purchase in-house AVC options.
- **Employer contributions:** Mrs T's employer might have matched or topped up contributions the in-house options.

If the adviser was unable to make further enquiries with Mrs T's employer – perhaps due to being tied to Aviva – I would have expected them to recommend that Mrs T explore these options directly with the NHS Pension Scheme before proceeding with the FSAVC plan.

### Was the FSAVC plan mis-sold?

Aviva has already accepted that Mrs T's FSAVC plan was mis-sold. This is because there's no evidence that its adviser made her aware of the in-house AVC options available at the time. Therefore, I don't need to assess whether the adviser met the requirements of the LAUTRO Code of Conduct.

The key issue to consider is whether, had Mrs T been fully informed in 1992, she would have chosen the in-house money purchase AVC or the added years option. This assessment will determine the appropriate basis for calculating redress.

At the time, added years would likely have seemed expensive compared to the projected benefits of the money purchase option. Growth expectations and annuity rates were higher then, making the money purchase route appear more attractive overall. Most consumers were unlikely to pay more for similar projected benefits under the added years option.

There's no evidence Mrs T expected a promotion or significant income increase that might have made added years more appealing. She was 49 at the time, leaving less time to spread the cost of added years before retirement at 60. In contrast, the money purchase option provided flexibility and uncapped investment growth potential (subject to an overall pension income limit under the Inland Revenue rules in place at that time).

While the money purchase option carried investment risk, it also offered growth potential. Mrs T's FSAVC application form stated she wanted to increase her retirement provision "as much as possible." Her recorded attitude to risk was 5 out of 10, and she chose to invest 100% in an Equity Fund. This suggests she was comfortable with a medium level of investment risk and wasn't seeking a risk-free option. Additionally, her ongoing NHS pension provided a low-risk foundation, giving her capacity to accept some investment risk with the additional provision she wanted to make.

The FSAVC illustration showed projected fund values at age 60 based on different assumed growth rates:

- 8.5%: £11,300
- 13.0%: £13,900

It's important to note that the in-house money purchase AVC would have used the same projection rates but likely illustrated higher projected fund values due to lower charges, making it even more attractive.

Finally, the added years option included a 50% spouse's pension, the cost of which would have been paid for by Mrs T through her contributions. I note that when she took benefits from her FSAVC plan in 2003, she chose not to include a spouse's pension. This suggests to me that providing a spouse's pension from this portion of her retirement provision wasn't important to her. With the money purchase option, Mrs T had the flexibility to secure an annuity on a single-life basis, which would have provided a higher level of immediate income compared to a joint-life annuity.

Taking all of this into account, I'm not persuaded Mrs T would have chosen the added years option. On balance, I believe it's more likely she would have opted for the in-house money purchase AVC if she had been properly informed in 1992.

### Conclusion

I understand this may be disappointing for Mrs T, but I won't be asking Aviva to recalculate the loss on an added years basis. In my view, Aviva's previous offer – set out in its final response letter dated 18 November 2024 – is fair. It reflects the more likely scenario that, had Mrs T been fully informed in 1992, she would have chosen the money purchase in-house AVC option.

### **My final decision**

Based on the reasons set out above, my final decision is that I don't uphold Mrs T's complaint. If it hasn't already done so, Aviva Life & Pensions UK Limited should pay Mrs T redress in line with its previous offer set out in its final response of 18 November 2024.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 6 September 2025.

Clint Penfold  
**Ombudsman**