

## **The complaint**

Ms P's representative has complained, on her behalf, that a former iteration of Liverpool Victoria Financial Services Limited (LV) mis-sold her a free standing additional voluntary contribution (FSAVC) policy.

## **What happened**

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In July 1990, Ms P was sold an FSAVC plan by a financial adviser from Teachers Assurance, now LV, and she was contributing a gross payment of £40 per month.

At this point, Ms P was aged 41 years, married with two school aged children and working full time as a teacher, earning around £19,000 per annum. Ms P became a member of the Teachers' Pension Scheme at age 22 and considered retiring at age 50, which was then pushed back to a later date.

There were subsequent increases to Ms P's contributions in November 1991, October 1993 and October 1994 and she increased her gross premium to £80, £106.67 and £160 respectively.

Ms P's last contribution into her FSAVC scheme was in May 2009. Thereafter, she transferred her fund of around £49,000 to a self-invested personal pension (SIPP) in October 2020.

On 22 October 2024, Ms P's representative raised a complaint with LV, saying that the FSAVC plan had been mis-sold as Ms P hadn't been informed of the alternative options to buy added years that she was entitled to within the Teachers' Pension Scheme.

LV acknowledged that the sale was unsuitable and, on 12 December 2024, it issued a final response letter. LV upheld the complaint, saying that the available evidence didn't support the position that alternative options had been discussed with Ms P. The two available options within the Teachers' Pension scheme were a variable return using a defined contribution plan (AVC) and a guaranteed return linked to pensionable salary through the added years arrangement.

LV said that, as the FSAVC policy was mis sold, it would return Ms P to the position she would have been in, had the advice not been given.

When reaching its outcome, LV said that the cost of buying an added year was usually decided by the pension scheme actuary who relied on assumptions and therefore the variable return of the AVC could outperform the return on offer from added years. So, typically, a person that was willing to take risk for higher returns would likely choose the AVC plan, whereas a person averse to taking risk would likely opt for the added years option.

In this case, as Ms P held four endowment plans in 1990 where the final value was unknown until the maturity date, this demonstrated Ms P was willing to take some risk, indicating she would have likely chosen the AVC plan for her contributions. LV confirmed that it would refund the difference in charges.

On 19 December 2024, Ms P's representative responded, saying that had she been made aware of both options at the point of sale, she would have chosen additional years in the Teachers' Pension Scheme and not FSAVC policy. Therefore, the representative requested that the redress be re-calculated on this basis, and not on the AVC option assumed by LV.

On 7 January 2025, LV responded to Ms P's request and said that its decision remained unchanged. LV said that Ms P's monthly contributions towards the FSAVC plan was as follows:

- £40 from August 1990 which was equivalent to 2.47% of her 1990 salary (£19,425).
- £80 from March 1992, which was equivalent to 3.6% of her 1992 salary (£26,661).
- £106.67 from October 1993 which was equivalent to 3.96% of her 1993 salary (£32,300).
- £160 from October 1994, which was equivalent to 5.77% of her 1994 salary (£33,256).

LV said that, as Ms P wished to retire at age 55, she would need to buy seven years of additional service to reach her full number of years' service, which would have cost 8.19% of her salary. And Ms P wasn't making sufficient contributions to cover the shortfall if she were to pay towards the added years arrangement. Therefore, LV maintained that the correct redress was a comparison of charges between the FSAVC plan and the in-house AVC plan.

On 14 January 2025, the representative said LV's assumption about her age, risk profile, other investments at the time and level of contribution shouldn't indicate a preference for an AVC plan over guaranteed benefits via added years. Both products had different risk/reward profiles, and the comparison failed to address the detriment suffered by her being denied the opportunity to choose added years.

As for her age, the representative said that Ms P's retirement age moved farther away and she continued working for a further 18 years.

On 18 February 2025, LV responded to Ms P's objections and confirmed its decision remained unchanged. LV acknowledged there was different risk and reward in the two options, but it maintained that Ms P chose the contribution amount to pay towards her additional FSAVC pension, which presumably matched her affordability at the time.

As the AVC scheme had lower charges than the added years, it considered that Ms P would have proceeded with the AVC plan had she not invested in the FSAVC plan.

Dissatisfied with the response, however, Ms P's representative referred her complaint to our service.

Having considered the matter, our investigator thought that LV's offer was reasonable, saying the following in summary:

- Both parties had agreed that the FSAVC was mis-sold to Ms P. What remained in dispute was how the loss calculation should be completed. Ms P's representative had said that she'd like it to be done on an added years basis and LV had proposed a cost comparison based on investment in the in-house AVC.

- Added years were considered to be a more expensive and less flexible option to the in-house AVC option. The in-house AVC was also expected to provide better returns based on knowledge and the financial markets at the time.
- Where documentary evidence from the time of sale wasn't possible to obtain or was unclear, our role was to make a conclusion about the likely option a consumer would have chosen on the balance of probabilities.
- Ms P's representative had said she would have chosen the added years option because she could have contributed higher monthly payments to secure the additional years required and her FSAVC contributions being lower didn't demonstrate that she would have been unwilling to pay more for a guaranteed benefit. Furthermore, it had said that her other investments didn't override her explicit statement about what choice she would have made.
- However, the investigator wasn't persuaded that Ms P would have chosen the added years option. This was because, in her case, the added years option was more expensive compared to the projected returns and benefits of the FSAVC at the time of the advice.
- Having compared the cost of both added years contributions and AVC contributions since 1990, it was clear that the cost of added years would have been significantly more than Ms P's regular premiums. For instance, in 1990 Ms P was paying £40 gross payments towards the FSAVC plan, however if she were to be contributing to an added years arrangement, this contribution would be more than triple the amount she was paying, which would have been a monthly payment of £132.58, increasing to a monthly payment of £226.97 in 1994 compared to her actual FSAVC contribution of £160 in that year.
- The available evidence didn't support the position that Ms P was willing to increase her contribution beyond that which she was paying. As Ms P hadn't contributed a significantly higher amount of contributions regularly within this period of time, it wasn't more likely than not that Ms P would have opted for the added years arrangement.
- The representative had said that Ms P would have been inclined to opt for the guaranteed benefits that the added years arrangement offered, but given that the AVC plan offered a higher return for lower charges at the time of sale, it would have been more likely than not that Ms P would have proceeded with the AVC plan had the option been presented to her.
- To get the full benefits of the defined benefit scheme, LV calculated that Ms P would need to purchase 7 added years to match the 40 years of full benefits, which was calculated to be 8.17% of Ms P's salary. As Ms P wasn't making high enough contributions to cover the shortfall, as well as the amount being significantly higher than that which she was contributing at the time, Ms P wouldn't have opted for added years, which also quickly became more expensive over time.
- It was also important to note that Ms P had two young children at the time, so it was unlikely that she would have wanted to commit to 8.17% of her salary until retirement.

- The “tied” adviser also wouldn’t have necessarily been expected to offer an opinion on whether Ms P should buy added years or not. They only had to inform her about the existence of that option. So, it would have been Ms P’s choice from that point to find out more about added years or not and make her own decision.
- Investment returns in 1990 were much higher than they are now. So, it was likely that, even with further research, Ms P would have concluded that the cost of added years would have been more expensive compared to the better projected benefits of the in-house AVC.
- LV should therefore undertake a redress calculation in accordance with the regulator’s FSAVC review guidance, incorporating an amendment to take into account that data for the CAPS ‘mixed with property’ index wasn’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 was why a benchmark index was 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, LV 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 demonstrated a loss, the compensation amount should if possible be paid into Ms P’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 wasn’t possible or had protection or allowance implications, it should be paid directly to Ms P 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 would reflect this.
- This wouldn’t be a payment of tax to HMRC, but an adjustment to ensure that Ms P wasn’t overcompensated.

Ms P’s representative disagreed, however, saying the following in summary:

- The investigator had made a fundamental error by substituting their speculation for Ms P’s clear, unequivocal statement about what she would have chosen. Ms P had consistently and explicitly said that, had she been properly informed of all options, she would have chosen the added years option.
- The established legal principle that the individual was best placed to know their own mind and preferences had been disregarded. Ms P’s testimony about her own intentions and risk appetite should carry significant evidential weight, and not be dismissed in favour of external assumptions about what she “would have” done.

- This approach fundamentally undermined the purpose of redress, which was to put the consumer in the position they would have been in, had proper advice been given.
- The investigator's analysis was fundamentally flawed as it focused solely on monthly contribution amounts, whilst completely ignoring the lifetime value of the competing options – these being that added years provide guaranteed pension income for life - a benefit potentially worth hundreds of thousands of pounds over a retirement spanning decades.
- No quantitative analysis had been provided of what the added years would actually deliver in retirement income terms.
- The decision treated cost in isolation without considering the corresponding guaranteed benefit. This approach would suggest that no consumer should ever choose guaranteed benefits if they cost more than investment-based alternatives.
- The conclusion that Ms P couldn't afford higher contributions wasn't supported by the evidence. Ms P's FSAVC contributions increased progressively - from £40, to £80, to £106.67, and then £160 - demonstrating both capacity and willingness to increase pension savings.
- Her salary increased from £19,452 in 1990 to £33,256 in 1994, indicating growing financial capacity.
- No investigation had been undertaken into Ms P's actual financial circumstances, priorities, or capacity for higher contributions.
- The assumption conflated what she was paying with what she could afford to pay and the investigator had made unsupported assumptions about Ms P's financial capacity based on incomplete information.
- The decision failed to properly consider the professional and cultural context that should inform this assessment.
- As a teacher, Ms P was part of a profession that traditionally valued pension security and guaranteed benefits. The Teachers' Pension Scheme existed as a defined benefit scheme precisely because teachers historically prefer certainty over investment risk. Ms P's professional background should have been a key factor in assessing her likely preference. The decision gave no weight to the reasonable expectation that a teacher would prefer guaranteed pension benefits.
- The reliance on endowment policies to indicate appetite for pension investment risk was flawed reasoning. Different financial products serve different purposes and risk tolerances.
- Pension planning often follows different risk considerations than other investments. This reasoning would illogically suggest that anyone with any investment product would never choose guaranteed pension benefits.
- The presence of endowments didn't override explicit testimony about pension preferences.

- The decision significantly understated what constituted proper advice in 1990. The adviser had a clear duty to properly explain and compare all available options. Simply mentioning that added years existed was wholly insufficient to discharge this duty.
- Without proper explanation of the guaranteed nature and lifetime value of added years, Ms P couldn't make an informed choice. The existing mis-sale finding acknowledged this fundamental duty was breached. The decision appears to suggest that minimal disclosure was sufficient, which contradicted the finding that the sale was unsuitable due to inadequate consideration of alternatives.
- Ms P's subsequent career decisions strongly supported her stated preference for pension security. She worked for 18 years longer than initially planned, demonstrating a clear commitment to maximising pension benefits. This extended career pattern shows that she valued pension security and would likely have chosen guaranteed benefits if properly advised. Her actions throughout her career were entirely consistent with preferring certainty over risk in pension planning.
- The evidence showed that Ms P had a consistent pattern of increasing FSAVC contributions over time, despite having young children. She also had a rising salary throughout the relevant period providing increased capacity. There was no evidence that higher contributions would have been unaffordable and the decision assumed financial limitations that were simply not evidenced.
- The investigator had incorrectly placed the burden on Ms P to prove her stated preference, when the burden should be on demonstrating why her explicit, consistent testimony should be rejected.
- The decision was based on speculation and assumptions rather than evidence. The investigator had conducted a theoretical exercise in preference prediction whilst ignoring the primary evidence of Ms P's actual stated preference. This approach was contrary to established complaint resolution principles and created an impossible standard for consumers to meet.
- Any proper redress calculation must include a quantitative analysis of the lifetime retirement income which would have been generated by added years, a comparison of total lifetime value rather than just contribution costs, recognition that pension planning inherently involves long-term value considerations, not just short-term affordability, and an assessment of the guaranteed nature of added years benefits versus investment risk in AVC options.
- If this decision stood, it would create deeply concerning precedent whereby individual testimony about personal financial preferences could be routinely overridden by external speculation, complex financial decisions could be reduced to simplistic affordability assumptions, the guaranteed nature of pension benefits could be ignored in redress calculations, and consumers' explicit statements about their own preferences would carry no evidential weight. This approach would fundamentally undermine consumer protection and the purpose of redress.
- The investigator's conclusions were contrary to the FCA principles requiring firms to treat customers fairly, the established approach that redress should reflect what the consumer would actually have chosen, previous decisions from this service which had given appropriate weight to consumer testimony about their preferences, and the fundamental principle that the person best placed to assess their own risk tolerance and preferences was the individual themselves.

- The investigator's decision was fundamentally flawed in its methodology, analysis, and conclusions. Miss P's explicit, consistent statement that she would have chosen added years should be the primary consideration in this redress calculation. This was supported by her demonstrated commitment to pension security through career decisions, evidence of increasing financial capacity and willingness to prioritise pension savings, the professional context as a teacher naturally inclined towards guaranteed benefits, and the inadequate advice that prevented her from making an informed choice about her pension options.
- It was requested that LV be required to recalculate redress based on added years methodology, recognise that Ms P's stated preference must be given primary consideration, order a comprehensive lifetime value analysis comparing all available options, and ensure the redress reflects the guaranteed benefits Ms P would have received through added years.
- The current decision failed to address the actual financial detriment Ms P had suffered by being denied the opportunity to choose added years. It perpetuated the original mis-sale by continuing to deny her the redress that reflects what she would have chosen with proper advice.

As agreement couldn't be reached on the matter, it's been referred to me for 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.

And having done so, I've reached similar conclusions as the investigator, and for broadly the same reasons.

I'd firstly say that as with the investigator, it's not disputed that Ms P should have been made properly aware of the options available to her. And so LV has conceded that the adviser at the time didn't act in line with the requirements of the time and that Ms P was denied the opportunity to make an informed choice. My role here is to determine, on balance, what Ms P was more likely than not to have done, had she been properly informed.

With regard then to the representative's assertion that Ms P's testimony on what she would have done should be afforded greater prominence in my consideration than a balance of probability, I think it has to be borne in mind that there is a great benefit to hindsight and also that recollections can change over time.

Therefore, whilst I certainly take into account Ms P's own comments on what she would have done, I think it's also important to take into consideration the facts as they are known from the time, and how that might reasonably and realistically have influenced her thinking.

And in doing so, I've noted the representative's comments relating to likely affordability, but when individuals are considering making additional contributions to their pension arrangement, which I agree indicates a commitment to boosting pension benefits, I don't think it would be unreasonable to say that they tend to pay an amount which is comfortably affordable. To pay significantly less than what's affordable would make little sense if maximising pension benefits is the overall objective.

I disagree with the representative's assumption that Ms P should be viewed as part of a professional cohort which typically would seek to maximise guaranteed benefits - rather as

than an individual with her own risk attitude and objectives. Further, I don't think it's accurate to say that the Teachers' Pension Scheme was formatted as a defined benefit arrangement due to the conservative nature of its members. Again, this would be making some rather far-reaching assumptions about the type of individual who works as a teacher. Rather, pension schemes related to the state sector tended to be defined benefit in nature as a benefit of working within that sector, and were created at a time when defined benefit schemes were also in any case much more common within the private sector.

I also think it's something of a leap to suggest that Ms P extended her working life solely in order to enhance her guaranteed pension benefits rather than this being for a range of potential different reasons (e.g. additional earnings, change in personal circumstances).

Nevertheless, even if a different interpretation on the above were possible, enhancing her pension benefits was clearly something which Ms P was thinking about throughout the life of her FSAVC policy. And rather than simply allowing it to be maintained at the same monthly premium, she proactively increased it several times. This reflected salary increases and also indicates that affordability over time, as a percentage of overall salary, increased as well.

Clearly some thought was given to this at each increase, as the percentages or amounts don't appear to have been arbitrary, again suggesting that Ms P was making calculations and decisions as to what would have been comfortably affordable at different points in time.

And so, for this reason, and even if it were possible to reconstruct a clear picture of Ms P's circumstances and objectives in 1990, some 35 years ago, I don't think this is necessary here. As set out above, I'm satisfied that Ms P was paying what was affordable for her.

But at no point did the monthly premium come close to the percentage which would have been required to maximise her number of years' service.

It's possible for course that Ms P may have decided to buy a lower number of added years with what she could afford at the time. But there are also other considerations here which I think are relevant when Ms P would have been weighing up which was the better option for her. Ms P was young at the time, with at least a 28 year, long term investment horizon. And she would have been provided with projections which indicated a return which, for the amount invested, would have likely produced higher benefits than would have been gained by buying the number of years she could afford with the extra contributions she was able to make.

And I do think it's pertinent to note that Ms P was investing in other risk-based investment plans, which would indicate a degree of comfort with that type of risk/reward at the time. And so, whilst much has been made of Ms P's preference for guarantees, I think it's reasonable to conclude that, investment terms, she was at least prepared to accept a mixture of both the guarantees offered by the main scheme, and the risk/reward offered by other types of investment. And I have no reason to believe that this wouldn't have extended to investment in the in-house AVC, with the higher returns that this was projected to offer at the time.

And so, given the overall circumstances here, in thinking what Ms P was more likely than not to have done had she been made aware of all of the available options, my view is that it is more likely than not that she would have chosen the defined contribution in-house AVC.

As such, Liverpool Victoria Financial Services Limited should undertake the FSAVC redress calculation as directed by the investigator.

### **My final decision**

For the reasons given, my final decision is that the offer to calculate whether redress is due on the basis of a comparison with the in-house defined contribution AVC arrangement is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 31 December 2025.

Philip Miller  
**Ombudsman**