

## The complaint

Mrs P complains, with the help of a professional representative, that Zurich Assurance Ltd trading as Zurich ('Zurich') mis-sold her Free Standing Additional Voluntary Contribution ('FSAVC') plan. She says the adviser didn't explain the differences between the FSAVC plan and the in-house Additional Voluntary Contributions ('AVC') facility linked to her occupational pension scheme. And, in particular, that the AVC would have been the cheaper option given its lower charges.

At the time of the advice, the business was called Allied Dunbar. For ease, outwith quotations I've referred to the respondent business as Zurich throughout the decision.

## What happened

Mrs P took out an FSAVC plan in 1997, following advice to do so from a Zurich adviser.

We've been provided with copies of documentation from the point of sale and some of the subsequent correspondence sent to Mrs P by Zurich. I've set out details of some of this below.

### *Point of sale documentation*

A fact find, signed and dated by the adviser on 6 June 1997, noted information obtained by Zurich about Mrs P circumstances at the time of the advice:

- Mrs P had at the time been a member of her employer's scheme since 1976.
- Her scheme retirement age was 60.

The adviser's handwritten notes on the reasons for the retirement recommendations set out that:

*"As [Mrs P] works as a ... she **has** opted for a FSAVC as opposed to her in house AVC scheme for flexibility as she feels that she will become s/employed soon and requires a suitable scheme that can adapt."* [my emphasis]

The recommendation letter said, amongst other things, that:

*"During our discussions we identified **your priority as being to provide an income for your retirement in addition to that provided by your employer's scheme.** I have provided you with a booklet 'Topping Up your Occupational Scheme Benefits – Your Choice' which sets out the benefits and features of the AVC Pension Account and those typically available under the employer's in-house AVC schemes. You have advised me that you understand the choices available to you.*

*Whilst you have already made some provision, you agreed it is insufficient for your needs and that you should build on your existing arrangements. The recommended benefits should be sufficient to meet your needs.*

### **The Recommended Plan**

*I have therefore recommended the AVC Pension Account. This provides benefits in addition to those under your employer's pension scheme by building up a fund in a very tax efficient manner to provide additional income in retirement."* [my emphasis]

And

### **"Guaranteed Advice**

*Allied Dunbar are committed to ensuring that the Allied Dunbar plans and services your Financial Adviser recommends will be those best suited to your objectives at that time, given the information provided during the financial review. If this proves not to have been the case, Allied Dunbar guarantee to put it right."*

This was signed and dated by the adviser on 6 June 1997.

The 'Topping Up your Occupational Scheme Benefits – Your Choice' booklet referenced in the recommendation letter described some of the features of an FSAVC plan as compared to other options, it said:

*"People who belong to occupational pension schemes tend to assume that all their pension worries are taken care of. This is seldom likely to be the case. Very few occupational pension schemes provide the maximum benefits and people tend to find this out when it's too late to do anything about it – when they retire."*

And

*"You may be able to fill the shortfall by making personal contributions to a pension plan. Two methods are available to you:*

- *Make payments to an Additional Voluntary Contribution (AVC) scheme set up by your employer alongside the occupational pension scheme. This type of arrangement is called an 'in-house' AVC scheme; ask your employer for details."*

And, in relation to charges applicable to in-house AVCs:

*"Your employer may have agreed enhanced terms with the insurance company, in the form of reduced charges. This may mean that the charges levied on contributions to an in-house AVC are lower than those charged under the Allied Dunbar AVC Pension Account, particularly in the early years, **although over the life of the plan these may even out.**"* [my emphasis]

An Adaptable Pension Plan schedule confirmed that the commencement date of the FSAVC plan was 1 July 1997 and that Mrs P would be making regular monthly contributions of £86. This schedule was signed for by Zurich on 17 June 1997. After the plan was established, Mrs P maintained payments to it until February 2014, when she took her retirement benefits by way of a tax-free cash payment from Zurich and an annuity with another provider.

### **Background to the complaint**

Mrs P complained to Zurich in June 2024, it didn't uphold her complaint and explained that it didn't think her complaint had been made in time. Unhappy with its response, Mrs P referred her complaint to our service.

Zurich objected to us considering the complaint as it thought the complaint had been made late, ultimately a decision was issued by another ombudsman explaining why they found that the complaint had been made in time and was one that we could consider.

One of our investigators then reviewed the merits of Mrs P's complaint and concluded that it should be upheld. Zurich disagreed with the outcome reached and made further submissions, in summary, it said:

- It is clear from the contemporaneous evidence that Mrs P was aware of the in-house option.
- Mrs P made an informed decision to utilise the FSAVC plan over the in-house option available, not being in a permanent position and anticipating that she would soon become self-employed.
- It remained of the view that the recommendation was suitable for Mrs P, in light of her circumstances as recorded at the time.

Our investigator shared Zurich's comments about her employment situation with Mrs P, and she told us that:

*"I spoke to Zurich in June 1997. In May 1997 I accepted a permanent...post with [name of employer] so I had already secured a permanent post..."*

*By June 1997, I had a permanent...post and therefore planned to remain...with them, possibly up to my retirement. I remained with the service for 10 years (until August 2006) and then gained another...post within...until I retired in 2011."*

Mrs P's comments were shared with Zurich and the investigator explained that they remained of the view that the complaint should be upheld.

Zurich responded, in summary, it said that:

- Mrs P's comments contradict the evidence captured during her meeting with the adviser.
- The adviser could only base the suitability of their recommendation on the information that Mrs P provided at the time.
- When the fact find was completed, Mrs P described her circumstances to the adviser, and these were then noted in the fact find. If what was noted wasn't accurate, then it would seem odd that Mrs P didn't question this at the time.
- Mrs P understood that an in-house scheme was available to her and that the existence of the in-house scheme was discussed, as it was acknowledged in the recommendation letter.
- Mrs P was provided with a booklet which set out the features of the FSAVC and reminded her of the different arrangements typically available under the in-house scheme, including details about charges and added years, and how lower charges would likely apply to the in-house AVC facility.
- So, Mrs P made an informed choice to utilise the FSAVC over the in-house option and Zurich remains satisfied that this represented a suitable recommendation for her.

Because agreement couldn't be reached, Mrs P's complaint has been passed 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.

Having done so, I've reached the same conclusion as the investigator and for broadly the same reasons.

The parties to this complaint have provided detailed submissions to support their respective positions. I'm grateful to them for taking the time to do so. I've considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings, on what I consider to be the *main points*, and reasons for reaching them.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is more likely than not to have happened in light of the available evidence and the wider circumstances.

It's my role to fairly and reasonably decide if the respondent business (in this case Zurich) has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award appropriate redress for any material loss or distress and inconvenience suffered by the complainant (Mrs P) as a result of this.

When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice *at the relevant time*. Ultimately, I'm required to make a decision that I consider to be fair and reasonable in all the circumstances of the case.

To decide this complaint, I need to consider whether Zurich complied with the applicable regulatory standards and guidance in place at the time of the advice. And, if I find that there were any failings, I need to decide whether these made a difference to what happened in this case. In other words, the question I need to answer is, would Mrs P have still taken out the FSAVC plan but for any failings on Zurich's part.

The advice was provided by Zurich in 1997. So, the most relevant regulatory guidance was contained in the May 1996 Regulatory Update 20 (RU20), which was produced by the Personal Investment Authority (PIA), one of the predecessors to the current regulator – the Financial Conduct Authority ('FCA'). RU20 gave guidance on the procedures for advising clients on the relative merits of FSAVC and in-house AVC plans. The guidance set out different requirements depending on whether the adviser was an independent financial adviser or a 'tied' adviser – one who is employed by, or contracted to, one organisation and can only recommend and sell that organisation's products. In this case the adviser was tied.

For tied advisers, RU20 specified that:

*"A representative should not recommend his own company's FSAVC until he has:*

- *drawn the client's attention to the in-scheme alternative;*
- *discussed the differences between the two routes in generic terms (taking account, among other things, of the features described in this article); and*
- *directed the client to his employer, or to the scheme trustees, for more information on the in-scheme option.*

*When these procedures are followed and documented, it is not necessary for the representative to undertake a full comparison of the in-scheme AVC and his company's FSAVC."* [my emphasis]

Among the features referred to in the article were that charges under in-house AVC plans would usually be lower. The regulator also expected the client's advice file to include documentary evidence demonstrating that the requirements of RU20 had been met.

This means that, in accordance with the then regulator's expectations, Zurich needed to make Mrs P aware of the in-house AVC plan and *discuss* the generic features of the in-house option and the FSAVC plan. Chief of these, in my view, the likelihood of lower charges for the in-house AVC arrangement. And I would expect Mrs P to have been directed to her employer and/or occupational pension scheme trustee to obtain more information on her in-house options.

From the evidence I've been provided from the time of advice, I can't reasonably say that the procedures required by RU20 were followed. There is very little documentation of what was discussed, or even whether a discussion took place about the *differences* between in-house AVC facilities and the FSAVC plan. Zurich points to the "topping up" booklet and the fact that it was noted at the time of the advice that Mrs P understood her options. However, this isn't qualified and there's nothing in the recommendation about charges, and no detail provided about any discussions that took place.

Overall, I'm not persuaded that Zurich did enough here to comply with the applicable regulatory standards at the time.

I don't think simply providing a booklet is enough for Zurich to comply with the regulator's requirements either, as the guidance required discussion, not just the provision of information. And, in any event, I think the booklet in question could be misleading as although it does indicate that charges are usually lower for in-house AVCs than its FSAVC plan, it then goes on to say in the same paragraph that over the life of the plan these may even out. In my view, this implies that there may be no difference in the overall charges, which I don't think is consistent with the guidance requirement. So, taking everything into account, in the circumstances of this case, I'm not persuaded that Zurich complied with the applicable regulatory standards in relation to the sale of the FSAVC plan to Mrs P.

There has been some dispute about Mrs P's circumstances and employment status at the time of the advice. I've set out details of this in the background to the complaint section earlier in this decision. The adviser's notes in the fact find's "Reasons & Action" section state that:

*"As [Mrs P] works as a ... she has opted for a FSAVC as opposed to her in house AVC scheme for flexibility as she feels that she will become s/employed soon and requires a suitable scheme that can adapt."* [my emphasis]

Mrs P says that this isn't accurate and that she had secured a permanent position before Zurich's advice. Whereas Zurich has queried why, if this wasn't accurate, Mrs P wouldn't have raised this at the time and maintained that the advice should be considered in light of the available contemporaneous evidence.

The fact find is signed by the adviser and based on the available information; I don't know that Mrs P had sight of this. The recommendation letter doesn't reference this information. Notably, the fact find, personalised illustration and recommendation letter were all dated on the same date, so it isn't clear that Mrs P had the opportunity to reflect on any of the information provided therein prior to deciding to proceed with the recommendation. This is,

however, a secondary point and for the reasons set out above, I'm satisfied that Zurich's advice in this case, didn't comply with the applicable standards at the time in any event. So, I've gone on to consider what would, more likely than not, have happened if it had complied with the applicable regulatory standards.

*What would Mrs P more likely than not have done if provided with information in line with the applicable regulatory guidance and requirements at the time?*

Mrs P has provided plausible testimony that she remained employed throughout the relevant time and, in fact had accepted a permanent position at the time of the advice. Mrs P, by that point, had been a member of her occupational pension scheme for over 20 years.

I agree with Zurich that there is no evidence that its adviser was told about Mrs P having taken a permanent position, so this reasonably could not have informed its recommendation – not that it could have advised on the in-house AVC in any event. However, this information is relevant in considering causation – or, in other words, what Mrs P would more likely than not have done, if provided with information in accordance with regulatory standards at the time.

Having considered this, I'm satisfied that, if Zurich had complied with RU20, then Mrs P would more likely than not have elected to contribute towards her available in-house AVC facility rather than take out an FSAVC plan with Zurich. Given that Mrs P's priority was to increase her income in retirement and the regulator's view that a critical factor that drove the choice between FSAVCs and AVCs was that the fees were usually lower in the latter.

Taking everything into account, I'm satisfied that Mrs P's complaint should be upheld.

### **Putting things right**

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 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 isn't possible or has protection or allowance implications, it should be paid directly to Mrs 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 reflects this.

**My final decision**

My final decision is that I uphold Mrs P's complaint about Zurich Assurance Ltd trading as Zurich, I direct it to pay Mrs P compensation calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 January 2026.

Nicola Curnow  
**Ombudsman**