

complaint

Ms C has complained that Sun Life Assurance Company of Canada (U.K.) Limited ('SLoC') mis-sold her a Free-Standing Additional Voluntary Contributions ('FSAVC') policy, because it failed to refer her to her employer's pension scheme for full details of the in-house options.

background

Ms C's representative originally raised a number of grounds for complaint against SLoC when referring this matter to our service. SLoC objected to us considering the complaint on time limits grounds. Another ombudsman from this service issued a decision on our jurisdiction to consider the complaint. She held that only the narrow issue summarised above could be considered by this service, as the rest of Ms C's complaint had been referred to us too late. So, my decision now only covers one aspect of Ms C's original complaint.

The relevant background is set out, in brief, below.

Ms C started contributing to an FSAVC policy with SLoC in 1992. In October 1996 a second plan was set up as an increment to the first plan. A 'Personal Financial Planning Profile' (or 'fact-find') was completed as well as an application form. Both are dated October 1996. These documents recorded that Ms C was a member of her employer's final salary pension scheme, with a normal retirement age of 60. Also, she was contributing £200 a month to her first FSAVC policy and wanted to enhance her pension benefits.

The fact-find, under the heading 'Recommendations and Risk Profile', says:

"Once again we did discuss the potential use of your in-house AVC. However, as before, you are not keen on utilising this vehicle since you find their fund choice very limiting (mainly deposit based) as well as finding them to be quite inflexible. Despite the fact that your in-house AVC offers reduced setting up costs/charges etc. you prefer to stick with your FSAVC for the reasons stated above."

Ms C's representative complained to SLoC in 2014 about the sale of the FSAVC policies. SLoC didn't uphold the complaint. It said that Ms C was made aware of the differences between the in-house AVC scheme and the FSAVC policy, and still chose the FSAVC plan. SLoC also said that Ms C was referred to her employer's scheme for more information.

Our adjudicator felt that there wasn't anything to show that Ms C was referred to her employer to find out more about her in-house AVC scheme options. However, the adjudicator didn't uphold the complaint, because she didn't think that Ms C would have done anything differently. This is because Ms C continued to contribute to the FSAVC plan even when she became aware of the likely difference in charges between the two products.

The adjudicator felt that this would have been the most influential factor in Ms C's decision. The adjudicator also took into consideration that the fact-find recorded that Ms C felt that the in-house AVC scheme was inflexible and offered limited fund choice.

Ms C's representative disagreed. It said that, generally, in-house AVC schemes offered excellent funds. It also said that Ms C wasn't told that she could no longer contribute to the FSAVC plan if she moved abroad or no longer had an occupational scheme available.

The adjudicator responded to explain she didn't think this affected the outcome. She reiterated that she felt, on balance, that Ms C wouldn't have taken a different course of action. This view took into account Ms C's knowledge of the in-house AVC scheme and the likelihood of it being a cheaper alternative.

Ms C's representative asked for the matter to be reviewed by an ombudsman.

my findings

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 agree with the conclusions reached by the adjudicator, and broadly for the same reasons.

The regulatory guidance at the time of the sale in 1996 required SLoC to refer a consumer to their employer's in-house AVC scheme before recommending they set up an FSAVC policy. There is insufficient evidence to conclude that this referral occurred. However, the fact-find does show that Ms C was already aware of her employer's in-house AVC scheme. It also shows that she had an awareness of the likely difference in charging structures, and the fund choice available from the in-house plan. On that basis, I agree with the adjudicator that it's unlikely Ms C would've done something different – ie go with the in-house AVC scheme option – if that referral had happened. I think it more likely in the circumstances that Ms C would still have opted to take out the second FSAVC plan. I don't think Ms C has been disadvantaged, because she would've known that she could contact her employer's scheme for more information, even if SLoC didn't recommend she do so.

I'm therefore not satisfied that the absence of a referral to the employer's scheme caused Ms C to be mis-sold her second FSAVC policy. So, I'm not able to uphold Ms C's complaint.

Ms C's representative has most recently said that SLoC failed to tell Ms C that she could no longer contribute to the FSAVC plan if she moved abroad or stopped having access to an occupational pension scheme. The evidence is inconclusive about whether these matters were discussed with Ms C. But the fact-find records that in 1996 Ms C had no intention to move home in the near future. It also records that while Ms C didn't expect to stay with her current employer (of nine years) in the long term, she expected to stay in the same line of work. So I'm not sufficiently persuaded that Ms C wouldn't have taken out the second FSAVC policy if she'd been made aware of these conditions for contributing to the plan.

my final decision

I'm unable to uphold Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 5 February 2016.

Venetia Trayhurn
ombudsman