DRN-4416937

The complaint

Mrs I complains that the redress approach Liverpool Victoria Financial Services Limited (LV) have proposed to put right the incorrect advice that they gave her to take out a Free Standing Additional Voluntary Contribution (FSAVC) plan, is unfair.

Mrs I would like LV to work on an assumption that she would have taken out 'added years', as opposed to a money purchase additional voluntary contribution plan, when working out the redress that's owed to her.

Mrs I is represented by a third-party but for simplicity, my decision will note all submissions as having come from Mrs I.

What happened

In 1992, Mrs I met with a representative of LV to look at what options she had for increasing her retirement benefits. At the time, she was working as a teacher and was a member of the Teachers' Final Salary pension scheme. Following those discussions, the representative recommended that Mrs I take out a FSAVC to help increment her pension benefits when she eventually stopped work. The aim was to help make up for around 15 years' worth of shortfalls that the representative had calculated Mrs I would have at retirement. Mrs I then met with LV's representative a further two times and on each of those occasions she incremented her monthly contribution. In 1998, she transferred her FSAVC plan away to a new provider and started taking the benefits through an annuity after utilising the open market option.

In January 2023, Mrs I decided to formally complain to LV. In summary, she explained that she didn't believe that the sale of the original FSAVC was appropriate for her. She went on to explain that LV didn't highlight the in-house AVC options that were available.

After reviewing Mrs I's concerns, LV conceded that their original recommendation failed to take account of the in-house pension top-up options, so they upheld her complaint. They also said, in summary, they believed that had she been given all of the relevant information at the time, they were of the view that she would have taken out a money purchase AVC. LV then explained that to put things right for her, they would undertake a comparison of costs between what she actually paid in their scheme versus what she would have paid had she taken the in-house AVC scheme out.

Mrs I was unhappy with LV's response, so she referred her complaint to this service. In summary, she said that based on her circumstances at the time, she would have taken out an added years AVC rather than a money purchase option. As such, she wanted LV to revise their redress to take account of this.

The complaint was then considered by one of our Investigators. He felt that LV were reasonable in concluding that Mrs I would have taken out the money purchase in-house AVC rather than the added years option.

Mrs I, however, disagreed with our Investigator's findings. In summary, she said that had she been given suitable advice in 1992, it's very unlikely that she would've taken out the FSAVC because she was averse to risk and as such, the added years scheme would have suited her risk profile more closely. In addition, she said that she wouldn't have needed to seek further advice in 1993 and 1995. That's because, she says, she would've taken out the added years option had she been made aware of it.

Our Investigator was not persuaded to change his view as he didn't believe that Mrs I had presented any new arguments that he'd not already considered or responded to. Unhappy with that outcome, Mrs I then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision on this case because I felt it was necessary to deal with the issue of jurisdiction that wasn't covered in our Investigator's initial view. In addition, I noted that I was minded to agree with the initial view issued by our Investigator and as such, I added additional context to their rationale.

<u>What I said in my provisional decision:</u>

1. *<u>Can this service consider Mrs I's complaint?</u>*

I can't look at all the complaints referred to me. The rules applying to this service say that I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware of their cause for complaint. Unless that is, the business being complained about agrees. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook. And in this case, LV hasn't agreed to us considering Mrs I's complaint because it believes she complained outside of these time limits.

I appreciate our Investigator has already issued a view on this complaint. However, after reviewing the file, given the time that's elapsed since the original advice (in 1992) and the fact that the complaint was only raised with this service some 25 years later, we must first look to see if it meets the regulatory rules on whether this service can or cannot look at the complaint. Those rules are in place to protect both the consumer and the business. The relevant time limits:

<u>The six-year period and what this means for Mrs I's complaint</u>

Mrs I referred her complaint to this service in June 2023. So, it's clear that the complaint has been brought more than six years after the event Mrs I is complaining about, which is the advice she received in March 1992, June 1993, and June 1995.

<u>The three-year period - Does this provide Mrs I longer than six years from when the advice was provided in order to complain?</u>

Even though Mrs I complained more than six years after the event she's now complaining about, this isn't the end of the matter. This is because the DISP rules can potentially provide Mrs I with longer than six years to complain, as long as she complains within three years of when she was aware, or she ought reasonably to have been aware, she had cause to. So, I've considered when Mrs I was aware, or she ought reasonably to have been aware, that she had cause to complain.

<u>When did Mrs I become aware that she had cause for complaint?</u>

I've thought carefully about whether there were any trigger events that should have helped Mrs I realise that something may not be right with her pension sooner, leading her to the point at which she ought to have known that she had cause for complaint. As I've already explained, Mrs I originally took her FSAVC plan out in 1992. She then incremented the plan on two further occasions after that, in 1993 and 1995. Both of those latter two events were with the same adviser.

However, in September 1998 when Mrs I was 54 years old, she retired from teaching and decided to draw the benefits from her final salary pension scheme. In November 1998, she sought guidance from an Independent Financial Adviser (IFA), who recommended that she move her FSAVC fund from LV to Friends Provident. The purpose of the switch allowed Mrs I to benefit from the 'open market option'. That's a feature that was made available to consumers that allowed them to shop around different providers to secure the best possible annuity rate. I think it's important to note here that Mrs I didn't use LV's representative to provide that guidance, and instead it was a new, independent financial adviser.

I've thought about whether taking her benefits in 1998 would have given Mrs I an inkling that something might have been up with the previous advice that she received six years earlier, even though she saw a new adviser, and I'm not convinced it would have. The focus of that meeting was arranging the transfer of her existing FSAVC from LV to Friends Provident, so she could access the open market option. I think that had the IFA identified that there might have been an issue with the earlier advice at that time, there's no reason why Mrs I wouldn't have complained to LV at that point.

I also asked LV whether Mrs I's pension was included in their review of past FSAVC sales in the early 2000s, following direction from the then regulator. LV have explained that Mrs I's FSAVC advice wasn't revisited. So, I think based on circumstances of this case, it seems to me that the point at which Mrs I realised that there might be a problem was when she saw the Claim Management Company's advert in 2023 and took guidance from them. Her complaint was then submitted to LV and, importantly, to this service within three years of that point.

I've therefore concluded that the complaint has been raised within three years of when Mrs I ought reasonably to have known that there was a problem and as such, has been brought in time so is a case that this service can consider.

2. <u>Is the redress approach that LV have proposed, fair and reasonable?</u>

LV have already reviewed the original advice that they provided in 1992 and determined that they didn't make Mrs I aware that she could have explored arranging an AVC through her employer's scheme rather than taking out a FSAVC with themselves. They've concluded that to put things right for Mrs I, they're prepared to undertake a cost comparison between what she paid in charges through their plan, versus what she would've paid had she taken out an in-house AVC. Mrs I's representative, though, claim that had she been properly advised, she would have taken out the teachers' added years AVC scheme instead, and believe that LV should undertake their redress calculations on that basis.

Having very carefully considered both sets of submissions, whilst I'm upholding Mrs I's complaint, I won't be instructing LV to take any action beyond what they've already set out in their final resolution letter to her. Given the considerable passage of time that's elapsed since Mrs I was provided with the original advice, and in circumstances where records are scarce, I have to base my decision on the limited information I have, but also what I consider to be fair and reasonable in the circumstances; and like our Investigator, I'm not persuaded that Mrs I would have likely chosen to buy added years in 1992. I appreciate that this will likely come as a disappointment to Mrs I, but I'll explain why.

I've looked very closely at Mrs I's circumstances at the time of the original and subsequent advice she received to invest in LV's FSAVC. The facts of the case are well known to both parties in the complaint, so I will focus on what I feel to be the main points. In February 1992, Mrs I was 47 years old and had been a member of the Teacher's Pension scheme for 13 years. At the point LV provided advice to her, their representative noted that she planned to give up work between age 57 to 60 years old. To accrue the maximum pension in the teachers' scheme, Mrs I would've had to have contributed for 40 years. Based on her circumstances, that meant Mrs I could potentially build up a further 10 to 13 years in the main scheme. LV's recommendation was therefore designed to plug some of the missing 14 years' worth of benefits that Mrs I was projected to miss out on.

Whilst LV's representative recommended a FSAVC to Mrs I, I should explain here, that Mrs I wouldn't have received advice on added years based on her specific circumstances from LV. Even if LV had made her aware of the existence of in-house AVCs and even if she chose to contact her employer - which isn't guaranteed in itself - she only would have been provided with information about added years. It would have been then up to Mrs I to make a decision on what she preferred.

A year later, in March 1993, Mrs I met with LV's representative again and increased her FSAVC monthly contribution to 9% of her salary. At this point, her retirement age was noted as 60 years old.

By the time of the May 1995 increment, there's evidence of an attitude to risk discussion having taken place where LV's representative has noted that Mrs I is happy to invest 20% of her monies in 'minimal risk', 30% in 'low risk' and 50% in 'medium risk'. I don't consider that level of risk as being at odds with either the fund that Mrs I's FSAVC was invested in (Managed Fund) or for someone who was recommended a FSAVC over the added years option to achieve their retirement goals. The premiums would then be invested over the 10+ years and run alongside the guaranteed benefits being built up within Mrs I's teachers' scheme. In addition, at the 1995 meeting, LV's representative had also recorded that Mrs I then held a Personal Equity Plan (PEP) worth around £17,400, of which she was funding £250 per month (it seems from the 1993 fact-find that this was arranged shortly after the topping up of the FSAVC for the first time). This investment supports the consumer's willingness to take risks and I think that had Mrs I been inherently cautious, or a non-risk taker, she wouldn't have invested in the PEP (which were medium to long term equity based).

So, whilst added years would have provided guaranteed benefits whereas AVC or FSAVCs were subject to investment risk, Mrs I was still many years from retirement and could accrue additional guaranteed benefits as well as take some risks with part of her pension. Whilst the two earlier fact-finds don't capture her attitude to risk, as I've already explained, the 1995 one does. This does reflect the fact that she's prepared to take risk with her monies and importantly, I think that she was willing to take some risk with her pension. Whilst Mrs I's representative has claimed that it wouldn't be reasonable to take Mrs I's risk appetite in 1995 as being the same in 1992, I don't agree. I've already explained that in shaping my decision, I've had to base some of my thinking on the balance of probabilities, and I think from what I've seen, it's more likely than not that Mrs I was comfortable taking risks. That's reflected in the fact that within three years of taking the FSAVC out, she'd also built a sizeable PEP investment.

In 1995, there's also evidence that LV's representative discussed buying extra years with Mrs I in the main teachers' pension scheme as well as a discussion taking place around their in-house AVC. Beyond suggesting that costs were covered, it doesn't go on to say a great deal more. I've no reason to doubt that discussion took place, so it seems in-house options were raised with Mrs I, but more likely than not, to a limited extent. However, I can see why a *money purchase arrangement may have looked more attractive to Mrs I than purchasing added years. Buying additional years in the main scheme is expensive, and there's good reason for that – it's because whilst the main scheme is subsidised by the employer, the added years scheme isn't and as such, the full cost is borne by the employee.*

I've thought about what scope Mrs I had to buy added years. In the 1990's, HRMC limited employee pension contributions to 15% of salary. As Mrs I was already contributing 6% of her monthly wages to the main scheme, that left her with 9% that she could contribute to either an in-house or FSVAC scheme. In 1992, Mrs I was noted as earning £23,886 per annum and to purchase a single added year would have cost her 1.73% of her salary. Therefore, to purchase the 14 years that she was missing would cost 24.22% of her pay (or £5,785), which was in excess of HMRC limits at the time. That meant Mrs I would've been limited to purchasing just five added years, leaving her short of her goal by nine years. To start with, Mrs I contributed 7.5% of her salary and whilst that was incremented the following year to the 9%, she still wouldn't have been able to fully bridge the 14 years of missing years with added years.

At the time of advice, added years might have looked expensive compared to the projected benefits of the FSAVC. Whilst recent investment returns and annuity rates have made final salary pension schemes look extremely attractive, I must consider the circumstances of Mrs I in 1992. That's because investment returns were much higher in the 1990s than they are now and that's reflected in the growth rates providers used at the time. In 1992 for example, providers projected potential returns being as high as 13% per annum. In the illustration provided to Mrs I, her contribution at that time (based on a growth rate of 13%) was projected to yield an annuity income of £5,030 per annum. So, it's clear to see why an FSAVC may have seemed much more attractive than added years - the goal of getting better benefits for a lower monthly contribution, when potential returns were so high.

In reaching my decision, I've also carefully considered the actions of Mrs I. In September 1998, at the age of 54, she took early retirement from teaching and started to draw the benefits from her occupational pension scheme. At the time, the normal scheme retirement age was 60, so Mrs I had finished work six years early. At that point, she took her tax-free lump sum from the main scheme and a reduced pension to take account of the fact it was being paid before normal pension age and therefore, in payment for longer. Mrs I then met with an IFA who advised her to switch her FSAVC fund to Friends Provident, where she took an annuity with the monies. Importantly, had Mrs I been a member of her scheme's added years AVC, that too would've faced an actuarial reduction because like her main scheme, the added years element would've been in payment for longer as well. That adjustment isn't intended to penalise the consumer, but it can result in significantly lower benefits.
What that means in practice is, given she was an early leaver, Mrs I was less likely to have benefited from the added years scheme; that's because she would've only made six years' worth of contributions needed into the scheme towards her maximum available allowance of five added years' worth of extra credit, which would then have been reduced to take account of the fact the pension was payable for longer. I've already explained that to accrue just five years' worth of added years, Mrs I would've needed to have paid her 9% contribution until she reached the normal retirement age of 60, which we know she didn't do. So, whilst LV's representative noted that Mrs I's planned retirement age of between age 57 to 60 years old, Mrs I gave up work earlier. And, I suspect that was likely always the plan, hence her desire to pay as much into her pension as possible.

Finally, I've also thought about the ancillary benefits that purchasing added years would've given Mrs I that her FSAVC wouldn't, such as an increased spouse's pension. Having looked at the fact-finds submitted with the complaint, it seems that whilst Mrs I is married, her husband's details or indeed his financial circumstances are not included; the fact-finds appear to suggest that that's through Mrs I's choice, indicating their finances are kept *separate. However, given Mrs I's income and the fact that even in 1992, the records show she is mortgage free with deposits and investments steadily growing between meetings, point towards a reasonable level of income coming into the household. So, whilst that suggests she has the capacity to take risks at the level she is doing with her AVCs, I also think it points towards a spouse's pension being more likely than not of secondary importance to Mrs I, with the primary focus on ensuring her own retirement benefits were maximised.*

I think overall, given the cost of the added years option compared to the high investment returns that were projected through the FSAVC, that would've more likely than not have made LV's proposition more attractive to Mrs I and as such, I have concluded that it is the in-house money purchase AVC scheme which would have been chosen - as such, that should form the basis for LV's redress calculation.

<u>Responses to my provisional decision:</u>

After receiving my provisional decision, LV didn't provide any further comment.

Mrs I's representative responded to my provisional decision, explaining that they didn't agree with the outcome that I'd reached. They said, in summary:

- Had Mrs I been given the correct advice to contact her employer in 1992 to explore the in-house AVC options, it's debatable that she would've needed to have seen LV's adviser in 1993 and 1995 because, they say, it's unlikely that she would've felt the need to seek further advice as she wouldn't have changed her mind.

- They wanted to highlight that the business's recommendation was to plug some of the missing 14 years' worth of benefits that Mrs I would potentially miss out on, not bridge all of them.

- They felt that it was implausible to suggest that anyone willing to contribute the maximum 9% of salary to a FSAVC would not have purchased added years just because they would not have reached the maximum 40 years.

- Mrs I's representative went on to say that there seemed little doubt that added years were affordable for Mrs I, so it came down to an argument of risk. They explained that as the majority of Mrs I's monies in 1992 were deposit based, that pointed towards a risk-free, added years solution.

- They also explained that, despite having disposable income, Mrs I chose not to increase the capital invested in her PEP in 1992, and they say that also pointed towards an added years investment.

- In addition, whilst Mrs I's representative conceded that the prospective investment returns on the FSAVC of 13% would've looked attractive, she would have had nothing to compare it to.

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.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mrs I and LV in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. I should also emphasise that a considerable passage of time has elapsed since the original advice. And, having considered the evidence and Mrs I's circumstances from the time, I'm upholding Mrs I's complaint, but I won't be asking LV to take any further action beyond what they've already put forward in their resolution letter - I'll explain why.

There's no dispute in this case that LV didn't highlight the availability of an in-house AVC scheme to Mrs I back in 1992 – the main point of contention in this case is on the balance of probabilities, had they done so, what action would she have taken?

Mrs I's representative believes that she was risk averse in 1992, so had LV highlighted the in-house added years AVCs, they say that she wouldn't have opted for the FSAVC. But, Mrs I held a Personal Equity Plan (the forerunner to investment ISAs), of which she was funding. So, I fail to be persuaded that Mrs I wasn't happy to take risks with her savings, and in particular, the absence of any large, risk-based investments at inception/1992, doesn't automatically point to Mrs I opting for added years. In 1992, she'd already saved around £3,000 into the PEP and, whilst I should acknowledge that she did have a large deposit based balance, that wasn't because she didn't wish to take risks with her money; the fact-find completed at that time, points to Mrs I holding a large deposit balance because she was planning on using those funds towards private school fees for her two children, not because she wasn't prepared to take risks with it. She clearly had the capacity to take risks – she was debt free, had disposable income and there didn't appear to be a reliance on her husband's income. The PEP investment supports the consumer's willingness to take risks and I think that, had Mrs I been inherently cautious, or a non-risk taker, she wouldn't have invested in the PEP (which was a medium to long term equity-based investment).

In addition to this, in 1995, LV's representative completed an attitude to risk discussion with Mrs I and determined that she was a medium risk investor. As I've already explained, I don't consider that level of risk as being at odds with either the fund that Mrs I's FSAVC was invested in, or for someone who was recommended a FSAVC over the added years option to achieve their retirement goals. Importantly, back in 1992, the then regulator's rules around documenting risk discussions weren't as robust as they are now, but just because the adviser at the time didn't capture the consumer's risk profile in 1992, it doesn't necessarily mean that a conversation didn't occur. I think it's more likely than not that a risk discussion did take place in light of Mrs I's existing investment and in 1995 it was documented, but the investments didn't alter, which seems to point to her always being content in taking some risks with her monies.

Mrs I's representative has conceded that the prospective investment returns on the FSAVC of 13% would've looked attractive, but, as Mrs I had nothing to compare those figures to, they don't see why an FSAVC would've appeared *more* attractive to her at the time. I don't agree though, and that's because, as a member of the teacher's final salary pension scheme, she would've known what monthly contribution she was making to the scheme and it would've been relatively straightforward to determine what income that premium would yield, albeit if only approximately. So, it's for that reason that the prospective returns of the FSAVC would've appeared more attractive based on the projections that Mrs I was provided with at the time.

I've already acknowledged that, although there's evidence on the file of a discussion having taken place in 1995 about the option of in-house AVCs and added years, the file is silent on what the outcome of that conversation was. But however brief that discussion was, it seems that the option of using added years was highlighted but Mrs I continued with the FSAVC. And importantly, as I've already pointed out, even by making Mrs I aware of the existence of in-house AVCs, it would've then been up to her to contact her employer, and at that point, she would have been provided with information only about added years. It would have then been up to Mrs I to make a decision on what she preferred.

Mrs I's representative has also said that, despite having disposable income, Mrs I chose not to increase the capital invested in her PEP in 1992 and that, they say, pointed towards an added years investment. However, I fail to be persuaded – and that's because it's not uncommon for consumers to place more weight, and therefore resources, on one priority need over another at different times. And, as I've already explained, the 1992 fact-find does suggest that the deposit monies at that time were being used in part to fund private school fees, so I can well understand Mrs I not immediately wishing to further fund her PEP. The focus of the March 1992 meeting was retirement planning, but the PEP investment was revisited only a year later.

Mrs I's representative has said that I shouldn't take account of the fact that she retired early from teaching in 1998, but I don't agree. I think it's relevant because Mrs I said in 1992, when she took the FSAVC plan out, that she was considering retiring early. And, as I've already pointed out, if Mrs I had no plans to work to the scheme's normal retirement date, given the likelihood of an actuarial reduction on the added years option, on the face of it, that route wouldn't appear to represent particularly good value for money and I believe would have pointed her towards the money purchase path.

Mrs I's representative has said that it was implausible to suggest that anyone willing to contribute the maximum 9% of their salary to a FSAVC would not have purchased added years, just because they would not have reached the maximum 40 years. As I've already explained though, just because Mrs I decided to pay 9% of her salary into the FSAVC, it doesn't automatically point to her definitely opting for the added years AVC – it's not as simple as that. Whilst the consumer's budget is a factor, so are their wider financial circumstances such as their risk profile, their other assets, time until retirement and existing pension benefits, along with their other personal circumstances; for example Mrs I's financial reliance on her partner.

So, having looked closely at the feedback that Mrs I's representative has made about the provisional decision, I've not seen anything new that's made me change my mind – as such I think it more likely than not that Mrs I would've opted for the money purchase AVCs. It therefore follows that I have reached the same decision, for the same reasons, that I set out in my provisional decision above.

Putting things right

LV have already agreed to undertake a charges redress calculation, in accordance with the regulator's FSAVC review guidance rules. Therefore, my final decision is that they should undertake that comparison in line with the rules that are set out by the regulator.

My final decision

Liverpool Victoria Financial Services Limited has already made an offer to undertake a charges comparison on Mrs I's FSAVC against the in-house money purchase AVC and I think that this offer is fair in all of the circumstances.

So, my final decision if that Liverpool Victoria Financial Services Limited should undertake the charges comparison above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 28 November 2023.

Simon Fox
Ombudsman