

The complaint

Ms W complains that Aviva Life & Pensions UK Limited failed to provide her with sufficient information, or suitable advice, about making additional contributions to her pension savings in late 1993.

What happened

The advice that Ms W received in 1993 was provided by Commercial Union. That firm now forms part of Aviva, so it is Aviva that is responsible for dealing with this complaint. For ease, in this decision, I will simply refer to the business as Aviva throughout. And Ms W has been assisted in making her complaint by a claims management company. But, again for ease, in this decision I will largely refer to all communication on the complaint as being from, and to, Ms W herself.

I issued a provisional decision on this complaint in May 2023. In that decision I explained why I didn't think the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

In 1993 Ms W was aged 36 and employed as a teacher. She had been a member of her occupational pension scheme ("OPS") for around 13 years. She, along with her husband, met with an advisor employed by Aviva to discuss a number of financial matters.

The advisor recommended that Ms W should take out a pension policy in order that she could make free-standing additional voluntary contributions ("FSAVCs") to increase her savings for retirement. Ms W accepted the advice and agreed to make net monthly contributions of £50.

The advisor that met with Ms W was what was known as a "tied" advisor. That meant they could only recommend products offered by Aviva. They couldn't actively recommend any other products from any other product providers including the in-house options (AVCs or added years) offered by the OPS.

However, a tied adviser was required to follow rules set in 1988 by the regulator at that time - LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation). The LAUTRO Code said advisers should 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 representative in question.*

So, this means that tied advisers should have known that 'in-house' AVC options would most likely be available to consumers like Ms W. And in addition to highlighting the benefits of the FSAVC plan, a tied advisor needed to mention the generic benefits of the 'in-house options', including that:

- Money purchase 'in house' AVCs could potentially offer lower charges than the FSAVCs*
- Added years' might be available under a defined benefit OPS*
- The consumer's employer might match or top-up the amount the consumer paid into either in-house option.*

Given the time that has passed since the advice was given to Ms W it isn't entirely surprising that the copies of the paperwork that Aviva holds are of very poor quality. That does present some challenges in assessing the discussions that took place with Ms W at the time. But the section relating to her pension provision is just readable, and says the following;

"I have explained to Mr and Mrs [W] that the Teachers scheme does have an in house AVC facility with the Prudential but they wish to go ahead with FSAVC although the charges are higher than the in-house scheme"

There is obviously no recording or transcript of the discussion that took place between Ms W and Aviva, so I have no way of knowing for certain what was said. But I am persuaded that the text I have reproduced above does suggest some discussion took place between Ms W and Aviva about the alternative contribution options offered by the OPS. I think it likely that Ms W would have challenged the comments noted above, in a document that she signed, if no such discussion had occurred.

The comments that Aviva recorded reflected a discussion about one of the most fundamental differences between an AVC and FSAVC option – namely that the charges payable on an AVC were likely to be lower. And in fact Aviva went even further than that, by telling Ms W that the FSAVC charges would [my emphasis] be higher. So I think Ms W would have been left in little doubt that, in terms of the charges she would need to pay, taking the FSAVC would be more expensive. That comparison is something that the regulator would have suggested was the most important consideration when weighing up the choice between an AVC and FSAVC option.

There is little evidence that the other two aspects mentioned by the regulator were discussed with Ms W. That doesn't of course mean no discussion about them took place, but it does mean I need to give further consideration to those points.

I haven't seen anything to make me think that Ms W would have been attracted to purchasing added years benefits instead. The amount that she was intending to pay into the FSAVC plan was relatively modest compared to her salary. And, at that time, added years would likely have looked expensive compared to the projected returns and benefits of the FSAVC.

And my understanding is that Ms W's employer wouldn't have provided her with any additional benefits, such as matching her contributions, had she taken the AVC option. So I'm not persuaded that any failures by Aviva in these aspects would have caused Ms W to lose out.

As I have said earlier, the advisor from Aviva wasn't able to recommend to Ms W that she should start paying AVCs rather than FSAVCs. So, beyond making Ms W aware

of the “in house” alternative and drawing attention to the key differences, such as the charges in the FSAVC policy being higher, he didn’t need to justify to Ms W why the FSAVC plan might be more suitable than the alternative AVC option. But the advisor did need to ensure that the FSAVC product itself was suitable for Ms W’s needs.

It appears that Ms W wanted to increase her retirement savings, and could afford the £50 she had agreed to pay each month into the FSAVC. And it seems that the investment approach that was recommended, placing 50% of her savings into a with-profits fund, and 50% into a balanced investment fund would be suitable for her attitude to risk. So it seems to me that the FSAVC recommendation should be considered to be suitable for Ms W’s circumstances at that time.

I appreciate that Ms W says that Aviva should have documented its reasons why it thought the FSAVC plan would have been more beneficial to her than the AVC option. But I don’t agree. Aviva simply needed to ensure that it had met its regulatory obligations in telling Ms W, in the terms set out above, about the AVC option, and that a FSAVC arrangement would allow her to meet her needs of making additional provision for her retirement. I think that both those requirements were met, and so I don’t currently think the complaint should be upheld.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Aviva hasn’t provided us with anything further. Ms W has said that she doesn’t agree with my provisional findings and has provided some additional comments. Although I am only summarising here what Ms W has said, I want to reassure her that I have read, and carefully considered, her entire response.

Ms W says that the information in the suitability report regarding the charges difference is at best vague. She says it would mean little to a layman investor who was receiving financial advice from an expert financial adviser who was apparently exercising due skill, care and diligence in providing their services whilst not forgetting to take proper account of her interests. The report provided no comparison of how much the charges difference was in real terms.

Ms W asks why anyone would choose to go ahead with a product that has higher charges. She says there must have been some further justification provided or her decision would make no sense. That justification should have been recorded in the report. She says that if she had been given accurate, or more, information, then based on her career path and her knowledge of financial products, she would have undoubtedly preferred the alternative option that gave her better value for money.

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.

As I set out in my provisional decision, in deciding this complaint I’ve taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered all the submissions that have been made by Ms W and by Aviva. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn’t intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority.

Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional comments that Ms W has made in response to my provisional decision. I'm sorry to tell her that they haven't caused me to change my mind on the outcome of her complaint. But I would like to provide some further explanation about the matters she has raised.

As I said in my provisional decision, the advisor that Ms W dealt with was tied. So that meant he couldn't advise her on the benefits of any products that weren't offered by Aviva. And that restriction would also extend to not providing Ms W with specific information about those other products, such as the AVC arrangement offered by her employer. So it would not be possible, in the advice report that was given to Ms W, to provide her with specific comparisons of the cost differences between the FSAVC and AVC arrangements.

A tied advisor was only required to give information to Ms W about the AVC plan in generic terms. And as I said earlier, it would be reasonable to expect that information to make particular reference to the difference in charges. There is no recording of the meeting that took place between Ms W and the advisor – and given the time that has passed it would seem, quite understandably, that she cannot be sure what exactly was said. She hasn't provided any specific testimony, either in her original complaint or in her response to my provisional decision, that would give me confidence that she recalled in detail those discussions.

So I am left to rely on the documentary evidence from the time. That does show that Aviva made Ms W aware that the charges on the FSAVC plan would be higher than on a comparative AVC plan. So I'm satisfied that it is most likely Aviva met its regulatory obligations in that regard.

It isn't appropriate for me to second guess why Ms W might have chosen the FSAVC option over the AVC plan. But it would be unreasonable to suggest that there might be few, if any, reasons why that choice might be made. For some consumers a FSAVC plan might be more attractive than the AVC plan offered by their employer despite any differences in costs. Given that I have found Aviva most likely made Ms W aware of that cost difference, I must conclude that there were reasons why she agreed to Aviva's recommendation. I haven't seen anything that makes me think that agreement was given on the basis of false, or misleading, information about the FSAVC plan.

So in summary, I think the information Aviva gave to Ms W about the difference in the likely charges was clear, and sufficient to meet its regulatory obligations. And I don't think it was necessary for Aviva to compare the two plans in specific terms, or justify whether it thought a FSAVC plan would be more suitable. The FSAVC plan met Ms W's objectives to make additional provision for her retirement. So I don't think the complaint should be upheld.

My final decision

For the reasons given above, and in my provisional decision, I don't uphold the complaint or make any award against Aviva Life & Pensions UK Limited.

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

Paul Reilly
Ombudsman