DRN-4259768

The complaint

Mrs P complains that the compensation she has been offered by Sun Life Assurance Company of Canada (U.K.) Limited trading as Sun Life Financial of Canada ("Sun Life"), as a result of some advice she was given in 1993 about making additional pension contributions, is insufficient.

What happened

The advice Mrs P was given was provided by Cannon Assurance. That firm was later acquired by Lincoln National, and then by Sun Life. So it is Sun Life that is responsible for dealing with Mrs P's complaint. In this decision, for ease, I will simply refer to Sun Life as the advising business throughout.

Mrs P is a teacher. In 1993 she met with an advisor from Sun Life to discuss her financial situation. She was advised to join her occupational pension scheme ("OPS"). And she was further advised to make free-standing additional voluntary contributions ("FSAVCs") to a personal pension with Sun Life in order to increase her income at retirement. Mrs P accepted that advice, joined her OPS, and started making FSAVC payments of £30 per month. Mrs P continued making those payments for around two and a half years before stopping her FSAVC payments due to them becoming unaffordable.

Following some recent press coverage Mrs P complained to Sun Life about the advice she'd received. She said that she would have been better off making additional contributions to her OPS instead. Sun Life accepted that it appeared the advice Mrs P had been given hadn't complied with the relevant regulations at that time. So it offered her compensation in line with the regulator's approach on the basis that she'd have instead chosen to pay additional voluntary contributions ("AVCs") to the OPS.

Mrs P didn't accept Sun Life's offer as she thought that rather than paying AVCs she would have most likely purchased "added years" benefits instead. Sun Life didn't agree to pay compensation on that basis so Mrs P brought her complaint to us.

Mrs P's complaint has been assessed by one of our investigators. He didn't think that her circumstances in 1993 had been such that she would have found purchasing added years benefits attractive. He thought it more likely that Mrs P, had she been fairly advised by Sun Life, would have chosen to make AVC payments to the OPS instead. So he thought the compensation Sun Life had offered to Mrs P was fair.

Mrs P didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

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 the submissions that have been made by Mrs P and by Sun Life. 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.

At the outset I think it is useful to reflect 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.

The advisor that met with Mrs P was what was known as a "tied" advisor. That meant they could only recommend products offered by Sun Life. 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 Mrs P. 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.

Sun Life accepts that the documentation from the time suggests that its advisor probably failed to meet the requirements of the regulator as set out above. So it has told Mrs P that it will pay her compensation to reflect the additional charges that she will have paid in holding the FSAVC plan rather than if her additional contributions had been made to the OPS. But Mrs P is unhappy with that approach – she says that she would have instead most likely purchased added years benefits. So here, I don't need to decide whether the advice Mrs P received was appropriate, or whether the information she was given was sufficient. I simply need to decide what I think Mrs P would have done if nothing had gone wrong, and that will allow me to determine what compensation Sun Life should pay.

The advice was provided to Mrs P around 30 years ago. Over such an extended period of time even the most careful of memories can, and do, fade. So I think it reasonable that I place the greatest weight on the written documentation from the time. I think that gives me the best indication of Mrs P's circumstances, and the objectives she was looking to meet at that time.

Sun Life has provided us with a copy of a letter that Mrs P sent around the time that the advice was given. The letter explained that Mrs P was wanting to make additional pension contributions as her intention was to take several career breaks and go abroad in the future. So whilst I have no doubts that Mrs P saw her long-term career in the teaching profession, I'm not persuaded that, at that time, she would have considered it likely that there would be no breaks in her employment.

In 1993 Mrs P was aged 24 and single. She agreed to make net FSAVC payments of £30 per month. She was provided with some projections that showed, taking account of the potential growth of those FSAVC savings and in line with the regulator's assumptions, the additional pension she might expect to receive at retirement. The assumptions in use at that time have, with the benefit of hindsight, proven to be very optimistic. But, at the time, there was no reason to anticipate they wouldn't be achieved.

Mrs P has provided us with some information from her OPS about the costs and benefits she might have received from purchasing added years benefits instead. That information shows that the maximum number of added years she could purchase would have been four, and at a similar cost to the FSAVC payments she was making.

Added years were completely different to the other options in that they provided a guaranteed benefit. However, as this depended on Mrs P's future salary, it would have been difficult to pinpoint precisely what that benefit would be at retirement. And at the time of advice, added years would likely have looked expensive compared to the projected returns and benefits of the FSAVC.

Mrs P might also have considered at the time that there were other disadvantages in taking the added years option. It seems that, at least initially, Mrs P might have been able to save more into an AVC arrangement than she could spend on added years. That would have allowed her to meet her objective of maximising her savings when she was working, to accommodate any times that she was enjoying a career break. And the added years option was a long-term commitment – to achieve the expected benefits Mrs P would have needed to continue making the agreed contributions, increasing in line with changes to her salary, until retirement.

Added years also provided Mrs P with automatic spouse's, partner's or dependants' pensions to match the benefits payable from the main scheme. So Mrs P might have wanted to have been confident that her marital status would change and that was happy to fund the extra benefits on this basis. By using the money purchase options, AVC or FSAVC, she could have chosen to draw her pension on a single life basis and get potentially more competitive terms.

With the benefit of hindsight, it might have been more beneficial to have chosen the added years option, given the significant changes in the rates of investment returns that have been seen over the years. But those couldn't be foreseen, so at that time I'm not persuaded that Mrs P would have found the added years benefits more attractive than she might have received from an AVC option. And we must remember that, given the likely difference in charges, returns from an AVC projection would have been more attractive than those Mrs P accepted under the FSAVC plan.

So although I appreciate my decision will be disappointing for Mrs P, I think that it is reasonable that the compensation Sun Life has offered to pay is on the basis that Mrs P would have made AVC payments, rather than purchasing added years. Sun Life accepts that the FSAVC plan was mis-sold to Mrs P in 1993. It now needs to calculate and pay her the appropriate compensation.

Putting things right

Sun Life 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, Sun Life 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 and direct Sun Life Assurance Company of Canada (U.K.) Limited to put things right as detailed above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 12 September 2023.
Paul Reilly
Ombudsman