

## **The complaint**

Mr C has complained about advice he was given to take out a Free Standing Additional Voluntary Contributions (FSAVC) plan. The advice was provided by Medical Sickness Society, which is now known as Wesleyan Assurance Society.

Mr C is being represented in his complaint by a third party. For ease I'll refer to all representations as being made by Mr C.

## **What happened**

Mr C met with an adviser from Wesleyan in 1995. There is no paperwork available from the time of the sale but it's known that Mr C was almost 31 years old, employed and was a member of the NHS Pension Scheme, having joined in 1987.

Following the meeting, Mr C set up an FSAVC plan, with a regular gross monthly contribution of £124.17. Contributions were increased periodically, up to a gross monthly amount of £289.17. Contributions ceased in April 2003.

Mr C left active NHS service in the Scheme on 30 April 2020 and took his scheme benefits from 1 August 2022, aged 59.

In 2022, Mr C complained to Wesleyan about the sale of his FSAVC plan. In summary he complained that:

- The plan was not suitable for his needs.
- The full risks, implications, and alternatives in respect of the FSAVC were not fully and properly explained.
- He was unaware of the higher charges for this type of scheme.
- He should have been advised to purchase added years through his employer's scheme.
- He was not provided with a full or descriptive comparison of benefits between his in-house scheme and the FSAVC plan.

Wesleyan reviewed the complaint. In its final response it said the sales paperwork wasn't available so it couldn't be sure Mr C was made aware of the in-house options he had for topping up his pension provision. So it said it was upholding the complaint and it would be forwarding Mr C's file to its actuary for a loss assessment to be completed on an added years basis.

Wesleyan's Actuary completed a loss assessment and Wesleyan wrote to Mr C to confirm the outcome in January 2023. Its letter confirmed:

- Over the period of liability (from his birthday in August 1995 to April 2003), the total contributions paid to the FSAVC plan represented 4.85% of pensionable pay. If 4.85% of pensionable pay had instead been directed to added years, Mr C could have purchased added years of 6 years 267 days up to age 60 if working full time throughout. However, the maximum allowed under the scheme was 40 years pensionable service, so Mr C had 'headroom' of 4 years 340 days, which he could've bought at 3.55% of pensionable salary through to age 60.
- Mr C retired at 59 and the added years benefit would have come into payment at the same time as the scheme benefits with an early retirement reduction. Taking account of this reduction and the Life Time Allowance (LTA) tax charge that would have been payable, Mr C would have received £3,221.29 from the added years arrangement.
- The FSAVC plan value in October 2022 (when the calculations were carried out) was £187,949.27. The plan benefitted from a valuable Guaranteed Annuity Option. At age 59, there was a Guaranteed Annuity Rate (GAR) of £3.989 per £100 fund value payable monthly in advance, guaranteed for five years, and with escalation at RPI. After applying the LTA tax charge reduction, this would have secured Mr C an income of £5,622.97.
- Mr C paid more to the FSAVC than he would have needed to pay into the added years arrangement so only 71.38% of the FSAVC contributions would have been paid towards added years. When this was factored into the calculation, it reduced the pension to £4,013.80.
- The letter set out the calculation as follows:

Loss arising in relation to past benefit payments

First monthly Scheme pension:	£268.44
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<b>Past loss</b>	<b>£268.44</b>
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Future income loss:

Scheme future gross income:	£116,709.84
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Less

Plan future gross income:	£146,154.20
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<b>Future gross gain</b>	<b>£29,444.37</b>
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Mr C didn't agree with the methodology Wesleyan had used in its calculation so the complaint was referred to this Service for consideration.

In summary, Mr C says he is concerned about Wesleyan's use of the GAR in the loss assessment. He doesn't think it's fair to include the guaranteed annuity rate (GAR) value to a notional fund value. He says he had no use of any guaranteed benefits due to his circumstances when taking pension benefits. He's also said that contributions made to the FSAVC in excess of those that could've been used to purchase added years have not been considered in the loss calculation.

One of our investigators review the complaint. She thought Wesleyan was correct to assess the loss on an added years basis. And having considered the calculation methodology she didn't think this was unfair. So the investigator didn't think Wesleyan needed to do anything further.

Mr C didn't accept the investigator's opinion and provided the following points for consideration:

- The calculation has been carried out in part, by using the Pension Review methodology. But strictly applying this isn't appropriate in the particular circumstances of his case.
- Mr C was paying in excess of what was needed to achieve maximum service and it is also clear that his FSAVC contribution level was marginally in excess of what the NHS would've allowed him to pay into the money purchase AVC. It's agreed that he has overpaid for the benefit he required by 26.75% of the FSAVC contribution over the whole period.
- The calculation is incorrect and unfair because Wesleyan is saying to achieve the 4 years and 340 days of extra service in the NHS Scheme, only 73.25% of the FSAVC contribution was needed and assessed. The investigator has said the excess contributions to the FSAVC have not been considered in the loss calculation. But when you come to the later stages of the calculation, the whole fund value has been used for the purposes of guaranteed annuity rate and lifetime allowance charge. This aspect of the calculation is flawed and heavily biased towards the business.
- The investigator has said these excess contributions were still invested within the FSAVC and not 'lost'. But Mr C did not need to make them to achieve the intended goal or benefit of 4 years and 340 days of extra service in the NHS Scheme. There are two options for redressing this. The first is that Wesleyan could reassess the calculation using 73.25% of the FSAVC contribution and following that through to use, 73.25% of the fund value and thus 25% tax free cash of a lower amount, a lower annuity amount and a lower LTA charge applicable in the hypothetical calculation. Or the second option is that Wesleyan could make a hypothetical refund of the excess FSAVC contributions with interest.

Another investigator reviewed Mr C's response and confirmed that his comments didn't alter the view previously issued. The investigator also confirmed the full fund value hadn't been used in the calculation.

The complaint has been passed to me to reach a final decision.

### **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.

Wesleyan has upheld the complaint on the basis that the FSAVC plan was mis-sold. And it considers that, had he been given adequate information during the sale, Mr C would've chosen to buy added years in the NHS Pension Scheme in 1995, rather than taking out the FSAVC plan. As both Wesleyan and Mr C are in agreement on this matter, my decision focuses on whether Wesleyan needs to do any more to put matters right; I don't intend to comment on the sale of the FSAVC plan and whether I agree that Mr P would've chosen added years in 1995 as these matters no longer seem to be in dispute.

In considering what needs to be done to put matters right, I've taken into account the law, any relevant regulatory rules, guidance and good industry practice.

This service doesn't have the resource to check the actual calculation that is in dispute. Instead, I've considered the calculation methodology Wesleyan has used. Having done this, I'm of the view that Wesleyan's calculation methodology is fair and I'm therefore not upholding the complaint. I'll explain why.

### Basing the calculation on FG17/9

Mr C doesn't think Wesleyan's use of the Financial Conduct Authority's (FCA) FG17/9 guidance is appropriate in the particular circumstances of his case. He says this is because the sale of his plan didn't fall within the scope of the original Pension Review and the guidance was written over 20 years ago. However, I think Mr C is mistaken here. While the original Pension Review guidance was introduced over 20 years ago, FG17/9 was, at the time of the calculation, the up to date guidance issued by the FCA for firms on how to calculate redress for unsuitable defined benefit transfers.

FG17/9 is also relevant for calculating loss suffered when it has been determined that an FSAVC policy has been mis-sold and the consumer would instead have bought added years. In the circumstances of Mr C's complaint, I'm satisfied it was appropriate for Wesleyan to use the FG17/9 guidance when calculating whether Mr C has suffered a loss.

### Inclusion of the GAR when calculating the FSAVC fund value

It appears that at the time Wesleyan completed its calculation, Mr C hadn't taken the FSAVC benefits and he's argued that it's unfair to include the value of the GAR in the notional fund value for loss assessment. However, I don't agree.

The GAR on Mr C's FSAVC plan will provide him with a guaranteed income, which Mr C can choose to have increase in line with RPI and to provide a 50% spouse's pension. If Mr C had purchased added years, this would have secured him a guaranteed increasing income with a spouse's pension. So, I don't think it's unreasonable that Wesleyan takes the value of the GAR into account when calculating the value of FSAVC fund in an added years loss assessment. The above mentioned GAR provides a benefit that is the closest match to the benefits Mr C has complained he should have bought.

Mr C says that he hasn't taken the GAR, in part, due to the LTA tax charge that he will incur. However, I can see that Wesleyan has factored this charge into its calculation.

I'd also add that, even if Mr C chooses not to utilise the GAR when he does take his FSAVC benefits, this doesn't make a difference to my findings on this aspect. I say this because Mr C has complained that his FSAVC plan was mis-sold and that he instead should have been advised to buy added years. The FSAVC gives Mr C the option to take benefits in a similar format to the added years arrangement. If Mr C chooses to take his benefits in any other format other than an annuity - which wouldn't have been an option for him if he had taken added years - then he's making that decision knowing that he is giving up a valuable GAR. I therefore don't think it's unfair for the notional fund value to include the value of the GAR.

### Excess contributions

I've next considered the excess contributions Mr C paid to the FSAVC above what he would have needed to pay to the added years arrangement.

Wesleyan has calculated that Mr C would have only needed to pay 73.25% of the FSAVC contributions to the added years arrangement. Mr C thinks that this hasn't been accounted for in Wesleyan's calculation. But I'm satisfied only 73.25% of the FSAVC fund value was used in the calculation when a gain of over £29,000 was determined. I think it was right for these contributions to be excluded from the calculation.

And, as Mr C seems to accept, prior to 2006 it wouldn't have been possible for him to have directed any excess contributions to the in-house money purchase arrangement through the NHS Pension Scheme.

I know Mr C thinks the calculation either needs to be rerun to exclude the excess contributions or that Wesleyan should make a hypothetical refund of the excess FSAVC contributions with interest. But as I've said above, I'm satisfied the excess contributions weren't included in the calculation so I won't be asking Wesleyan to do this.

I appreciate Mr C will be disappointed with my decision but I don't think the methodology Wesleyan has used is unfair so not I'm upholding his complaint.

**My final decision**

For the reasons explained above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 December 2023.

Lorna Goulding

**Ombudsman**