DRN-4471227

The complaint

Mr G complains that St James's Place Wealth Management Plc incorrectly advised him to take out a Free Standing Additional Voluntary Contribution (FSAVC) plan, rather than join his cheaper, in-house Additional Voluntary Contribution (AVC) scheme.

Mr G would now like SJP to see if he's lost out financially because of their advice and recompense him accordingly.

Mr G is being represented by a third party but for ease, I'll refer to all submissions as coming from him.

What happened

In November 1999, Mr G met with an adviser from SJP to discuss his investment and retirement planning needs. At the time, he was 31 years old and wanted to explore investing monies that he'd received from a recent inheritance, with a view to increasing his benefits when he gave up work. Following a number of interactions, SJP's adviser recommended he repay some debts, fund his ISA and an investment bond, and set up a FSVAC with a premium of £250 per month, matching his medium attitude towards risk.

In September 2022, Mr G decided to formally complain to SJP. In summary, he said that he didn't believe SJP's advice to set up a FSAVC was appropriate when his company offered a cheaper, in-house option. He went on to say that at the time, he was an inexperienced investor who didn't wish to take any risk and as such, SJP should have advised him to join his company AVC scheme instead. Mr G said that, had he been shown the difference in charges, he would've most certainly opted for his in-house added years scheme compared to SJP's FSAVC.

After reviewing Mr G's complaint, SJP concluded that they were satisfied they'd done nothing wrong. They also said, in summary, that their adviser highlighted his employer's in-house scheme, but Mr G had decided not to explore it further. They went on to say that they didn't believe Mr G was risk averse based on the evidence that they held within their file and as such, he was open to taking risks with his monies.

Mr G was unhappy with SJP's response, so he referred his complaint to this service. In summary, he explained that he should've been advised to take his employer's in-house AVC. He also didn't think that SJP should have advised him to take out a FSAVC until his employer's in-house option had been fully funded.

The complaint was then considered by one of our Investigators. He concluded that SJP had treated Mr G fairly, as from what he'd seen, in-house AVCs were highlighted to him at the time of the advice in late 1999 and early 2000, but Mr G chose not to explore that option.

Mr G, however, disagreed with our Investigator's findings. In summary, he repeated his concern that he didn't feel a FSAVC was appropriate for a consumer until such time as the in-house option had been fully funded. He went on to say that SJP should've undertaken a comparison of charges between their plan and the in-house option, so that he was placed in an informed position about the costs before proceeding, and as he wasn't, that meant SJP's advice was unsuitable.

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

After reviewing the complaint, I issued a provisional decision on this case as I explained that, whilst I was minded to agree with our Investigator's initial view, I wanted to add my thinking to the general suitability of the FSAVC advice. That would allow both parties the opportunity to respond.

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

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr G and SJP 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. And, having done so, I'm not upholding Mr G's complaint and I'll explain why below.

Given that SJP advised Mr G to take out the FSAVC over 20 years ago, I've looked at what rules were in place by the various regulators at that time. The Life Assurance and Unit Trust Regulatory Organisation (LAUTRO) said advisers should have maintained high standards of integrity and fair dealing, whilst exercising 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 that they may have under an occupational scheme, and give the consumer all information relevant to their dealings with the representative in question.

The Personal Investment Authority (PIA - a predecessor of the Financial Conduct Authority) initially adopted the LAUTRO rules when it took over from them in 1994. And, in May 1996, the PIA issued Regulatory Update 20 (which is sometimes referred to as RU20), codifying the procedures it expected product providers to follow. The PIA was simply restating what was already there, saying that before selling a FSAVC, tied advisers (which in short, means those firms can only recommend the products of the business they're tied to, which in this case is SJP), should:

- *Draw the consumer's attention to the in-house alternative*
- *Discuss the generic differences between the two routes and explain the likelihood that the charges under the in-house AVC would be lower*
- *Direct the consumer to his employer or the Occupational Pension scheme for more information on the in-house option*

Even in the more general introduction to the article, RU20, it mentions the tax treatment of contributions and benefits, employers being willing to match or top-up benefits, and the ability to provide additional life cover. The article also refers to the lower charges under an in-house AVC in general terms. It says:

'Charges under in-scheme AVCs will usually be lower than those under FSAVCs, reflecting economies of scale, rebated commission or a contribution to administration expenses by the employer. Of all the differences between the two routes, this is likely to exert the greatest impact on which route would offer the greater benefits to the client.'

So, taking account of the regulator's rules of the time, the generic differences of AVCs and FSAVCs, along with the lower costs, ***should have*** *been explained to the consumer. I've looked closely at the records that were provided to Mr G at the time of SJP's recommendation in January 2000. In the suitability letter that SJP provided to Mr G (dated 7 January 2000) at the point of the advice, it states:*

'We discussed in detail the {name of Mr G's employer} occupational scheme together with the inhouse AVC, in particular that the inhouse schemes often carry lower charges than that of Free-Standing contracts. I also directed you to the Trustees of the Occupational Scheme to obtain details of the Inhouse Additional Voluntary Contribution Scheme which is available to you which we also discussed in detail.

I provided you with a copy of the document "Inhouse AVCs" together with {SJP} Retirement Plan Key Features Brochure. However, you were disinclined to make contributions to the Inhouse Scheme as you wished to maintain a spread of investment management skills together with the flexibility and portability of establishing your own personal arrangement over and above that of your employer's scheme'.

I've also looked at the fact-find that SJP's adviser completed with Mr G at the point that the advice was provided in 2000. In Section 17, the adviser has noted:

'We discussed both inhouse AVC and Free Standing and he preferred Free Standing due to portability, large spread of investment management groups and ability to switch funds and also to convert to personal pension if his circumstances altered'.

So, it therefore seems to me that SJP not only had a conversation with Mr G about the availability of in-house AVCs, but they also provided a leaflet that gave him more information about that option. Whilst I've not been provided with a copy of the leaflet that Mr G was given, I've no reason to doubt that one was provided and I suspect this shed further light on his options. Based on what I've seen, I'm therefore satisfied that SJP's adviser complied with the regulator's RU20 update and Mr G was made sufficiently aware that in-house AVC options were available.

I've also thought about what Mr G's representative has said about the FSAVC plan being unsuitable for him - I'm not persuaded that is was though. Looking at Mr G's circumstances at the time, he wanted to explore improving his income benefits at retirement, given his desire to retire by around 55 years old.

Mr G's representative states that he was risk averse at the time of the appointment with SJP and would've opted for the added years AVC, had it been clearly highlighted to him. However, I don't agree with that contention and that's because, at the time of the advice, Mr G already held a Personal Equity Plan (PEP) worth £3,000. PEPs were typically invested in a broad spectrum of equity-based investments that could go down as well as up in value. In addition to arranging the FSAVC, Mr G was also investing £34,000 into equity-based ISAs for himself and his wife and an Investment Bond. Those investments support the consumer's willingness to take risks and I think that, had Mr G been inherently cautious or a non-risk taker, he wouldn't have invested in the PEP or subsequent ISAs and Investment Bond.

So, whilst added years would have provided guaranteed benefits whereas AVC or FSAVCs were subject to investment risk, Mr G was still over 20 years from retirement and could accrue additional guaranteed benefits, as well as take some risks with part of his pension.

The suitability report that SJP provided to Mr G, at the time of the advice, demonstrates that a discussion about the level of risk he was prepared to take with his monies was covered, resulting in him being classed as a medium risk investor. I don't consider that level of risk as being at odds with either the funds that Mr G's FSAVC was invested in, or for someone who was recommended a FSAVC over the added years option to achieve his retirement goals.

At the time of the 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 Mr G in 1999. That's because investment returns were much higher in the 1990s than they are now and that's reflected in the growth rates that providers used at the time. In 1999, for example, providers projected potential returns being as high as 9% per annum. I've looked at the illustration that SJP gave to Mr G at the time. His (gross) regular contribution of £325 per month at that time (based on a growth rate of 9%) was projected to yield an annuity income of £61,300 per annum. So, it's clear to see why a 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.

Importantly, had Mr G been a member of his scheme's added years AVC, that would've faced an actuarial reduction if he retired at age 55, because like his main scheme, the added years element would've been in payment for longer. That adjustment isn't intended to penalise the consumer, but it can result in significantly lower benefits. What that means in practice is, if he were an early leaver, Mr G was less likely to have benefited from the added years scheme, which would then have been reduced to take account of the fact that the pension was payable for longer.

Mr G's representatives have stated that, before the FSAVC was considered, it was a requirement that in-house AVCs were first fully funded. However, whilst I accept that an AVC will generally be better value than a FSAVC because of the lower charges, I'm not aware of any requirement that stipulated the in-house AVC capacity must first be exhausted prior to exploring a FSAVC. As I've already explained, the only requirement at the time of the advice was that consumers must first be made aware of the availability of in-house schemes.

Finally, I've also thought about the ancillary benefits that purchasing added years would've given Mr G that his FSAVC wouldn't, such as an increased spouse's pension. Having looked at the fact-find submitted with the complaint, it seems that whilst Mr G is married, his spouse also had a final salary occupational scheme too and there seems to be little financial reliance on one another. In addition, in 1999, the records show that he is mortgage free with reasonable deposits and investments and a strong net disposable income. So, whilst that suggests that he has the capacity to take risks at the level that he is doing with his FSAVC, I also think it points towards a spouse's pension being more likely than not of secondary importance to Mr G, with the primary focus on ensuring that his own retirement benefits were maximised.

I think that 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 SJP's proposition more attractive to Mr G and as such, I am unable to agree with Mr G's representative that the FSAVC sale looks unfair. From what I've seen, the FSAVC appears to meet his stated objectives at the time and as such, I'm not upholding Mr G's complaint.

Responses to my provisional decision

After providing a copy of my provisional decision to both parties, neither added any further comments.

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 neither Mr G or his representative, nor SJP, provided any comments to the provisional decision, it therefore follows that I have reached the same conclusions for the same reasons that I set out in my provisional decision.

My final decision

I'm not upholding Mr G's complaint and as such, I do not require St James's Place Wealth Management Plc to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 December 2023.

Simon Fox
Ombudsman