DRN-4158844

The complaint

Mr H says that he was mis-sold a pension by Aviva Life & Pensions UK Limited (Aviva) and that he has suffered financially as a result.

What happened

A representative of Aviva (under a previous company name) visited Mr H's home in 1994 and discussed options around the purchase of a free-standing additional voluntary contribution scheme (FSAVC). Mr H held a final salary pension with his employer and, based on a retirement age of 60, was at the time entitled to 39 out of 40 available pension years.

The Client Profile completed by Aviva following this meeting included the specification that Mr H wished to retire at 55 and recommended an FSAVC because this would provide Mr H with the maximum allowable pension from age 55 provided he was able to take early retirement.

Mr H then chose to take out the FSAVC with Aviva and continued to make payments under it beginning in April 1994. The final payment was made in December 2013 and Mr H took his retirement benefits in January 2014 when he was aged 56.

Mr H complained to Aviva in January 2023 that he was unhappy with the advice he had received and that he had not been aware the Aviva representative was a 'tied adviser' and were only able to offer advice on products available from Aviva and not any others. Mr H also said that he should have been advised to speak to his employer about the pension options available from them.

Aviva investigated this complaint and advised Mr H that their representatives were expected to check that customers knew about the alternative option of an Additional Voluntary Contribution arrangement (AVC) from their employer. Aviva said that, in this case, they were unable to confirm that their representative had in fact made Mr H aware of the options available to him from him employer, including that of an AVC. In view of this, Aviva upheld Mr H's complaint and proposed to compensate him for the financial loss he suffered. The basis on which they did this was to assess the difference between the charges of the FSAVC policy Mr H took out and the in-house AVC available at the time of the sale. Aviva explained to Mr H that the option to buy extra service in the form of added years wasn't intended to help fund for early retirement. Aviva therefore suggested that the defined contribution AVC pension scheme offered by Mr H's employer would have been the option he would have chosen and they calculated the loss assessment on this basis.

Mr H disagreed and said that the Aviva representative should have advised him to purchase added years from his employer in order to maximise his pension.

Aviva sent a further reply to Mr H in which they said that their representative, as a tied adviser, wasn't required to discuss alternative options available through Mr H's employer. The only requirement was that the representative tell Mr H that an in-house AVC may provide better value for money and that he should contact his pension scheme for more information.

In addition, Aviva told Mr H that, because he could only achieve 39 years' service by the age of 60, there would only be scope to buy one added year. However, if Mr H was planning to retire at age 55, there would then be a 6-year shortfall which Mr H could reduce to 5 years by buying one added year. Aviva also suggested that there may have been the possibility of an early retirement benefit reduction in this case.

In response, Mr H said that even one added year may have been a better option for him and that, although he had aspired to retire at 55, in reality he had not retired until age 56. Mr H said that, if the Aviva representative had referred him to check with his employer, the option of added years would have been raised. He said he would expect the loss adjustment to consider both the difference between the FSAVC and the AVC plan as well as the purchase of added years.

In bringing his complaint to us, Mr H said that he should have been referred to check his options with his employer's pension authority and that Aviva should make two calculations between the Aviva FSAVC and his employer's AVC and decide compensation on the better of the two since his employer would have provided him with information on both options.

Our Investigator's initial view was that:

- They did not expect Aviva to complete two different loss assessments for Mr H.
- Mr H had said in 1994 that he wished to retire at age 55 and that he wanted to start saving to provide the maximum allowable pension from this age.
- Mr H would only have been able to accrue 34 years of service before retirement and to buy back one added year.
- Buying years is viewed as a more expensive option to either AVCs or FSAVCs.
- Mr H would only have received limited information from his employer on the difference between the two options available to him and less on the situation if he were to retire at age 55.
- Mr H would have been unlikely to choose the option of buying added years since the calculations done would have shown that the AVC would have been potentially more beneficial.

Mr H did not agree with our Investigator and said that he would have received sufficiently detailed information from his employer who would have used simple calculations to highlight the benefits of buying added years and that, although buying 1 added year may have been more expensive, Mr H would have been able to afford this and he may have been able to purchase additional years or an in-house AVC if not.

Our Investigator sent a response to Mr H which said that the additional information did not change their view that Mr H would have taken the in-house AVC option rather than chosen to buy added years.

Mr H did not agree and requested that the decision be reviewed by an Ombudsman.

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.

Having done so, I have reached the same conclusion as our Investigator and will not be upholding Mr H's complaint.

Aviva have told Mr H that they uphold his original complaint of mis-selling and so I haven't discussed the details of this part of the complaint. The outstanding issue concerns the basis on which Aviva have calculated the loss suffered by Mr H as a result of the mis-selling and it is this which I will focus on.

Mr H's view is that Aviva should have carried out two loss assessments and determined which of these was better for Mr H. Aviva have said that they consider a comparison of the FSAVC policy taken out by Mr H against the in-house AVC available from his employer to be the most appropriate. This is because, although they acknowledge that Mr H should have been directed to speak with his employer at the time the FSAVC was taken out, Mr H would still have been likely to choose the in-house AVC over the option of added years. In order to determine whether or not the loss assessment used by Aviva is reasonable, the relevant question here is therefore what Mr H would have been likely to do had he been advised to speak with his employer about his pension options.

In terms of the relative costs of each option, Mr H appears to agree that buying added years would have been more expensive than an AVC or the FSAVC however he may still have elected to do this if it was reasonably likely for it to be more beneficial. Because of the nature of the pension scheme Mr H held with his employer, he would have been able to purchase up to a maximum of 40 pensionable years. In 1994, because Mr H would have had 39 pensionable years at age 60, he would only have been able to purchase one added year.

Mr H had stated in the original fact find with Aviva that his intention was to retire at age 55. I appreciate that Mr H has since said that this was aspirational and that he did not ultimately retire until age 56 but I think it is fair to work on the basis that he was likely to have chosen the route that would have offered the most benefits if he were to retire at this age.

Looking at the illustrations for the FSAVC provided to Mr H as part of the original fact find, the lowest projection shows an annual income of £1,080. Therefore, if Mr H were to choose to purchase an added year rather than the FSAVC, it is reasonable to suggest that the added year would have to provide him with the same as or more than this amount in additional income each year to be considered worthwhile. Mr H has said that the applicable accrual rate for his employer pension was 1/80ths and, based on a retirement age of 55, Mr H would then have had to have been earning a salary of £86,400 per annum by this age for this extra year to yield £1,080 (1,080 ÷ 1/80).

It is then necessary to factor in the actuarial reductions which would have been made to Mr H's pension on the basis that he would be retiring early. In this case, the reduction to be applied for retiring 5 years early at age 55 would have been 0.8 and therefore Mr H's salary at this age would have had to be £108,000 in order to achieve the £1,080 annual payment (86,400 ÷ 0.8).

It should be noted that the above calculation is based on the lower illustration given to Mr H in relation to the benefits under the FSAVC. If we use the higher projection in making the comparison between the FSAVC and buying added years, a much higher final salary, one above £250,000, would have been needed to see the same returns for the added year than he would have seen under the FSAVC. This is without taking into account the actuarial reductions which would have been applied for early retirement.

Mr H has said that he believes he could have afforded either an AVC or the purchase of added years based on his potential career progression. Whilst Mr H may have considered these levels of salary achievable, we have to consider what Mr H would have thought at the time to be the best way of maximising his pension if he was presented with the information set out above. Given that the option of buying added years wasn't likely to be seen as better value on a pound-for-pound basis than an AVC combined with the fairly high final salary required to provide a pension at a similar level to the FSAVC or AVC, I suggest that Mr H would have been inclined to choose the AVC rather than to purchase added years had he been directed to speak to his employer.

In conclusion my view is that, if Mr H's objective was to maximise his pension and the benefits payable to him upon retiring, buying added years would not have represented the most efficient option taking all of the factors into account. On the balance of probabilities therefore, I think Mr H would was not likely to have chosen to do this.

Therefore, I consider the loss assessment offered by Aviva to have been appropriate in this case and that making the calculations on the basis that Mr H would have elected to pay into an AVC was reasonable.

My final decision

For the reasons explained above, I uphold Mr H's complaint. If it hasn't already done so, and Mr H accepts this final decision, Aviva Life & Pensions UK Limited must complete its loss assessment along the lines of the above and pay any losses to Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 March 2024.

Rana Chatterjee
Ombudsman