

The complaint

Ms R, through her representatives, says she was mis-sold a Free Standing Additional Voluntary Contribution plan (FSAVC) by Scottish Widows Limited, trading as Clerical Medical.

Ms R is represented by Greg Vaughan Financial Services (GVFS).

What happened

In July 1996, Ms R was advised by Scottish Widows to purchase a FSAVC pension plan. She agreed to a gross monthly contribution of about £66. The policy was initiated on 10 August 1996 and her selected retirement age was 60. At the time of bringing her complaint the policy was still in place. Her contributions were unaltered.

At the time of the advice Ms R was 28 years old, a single householder with a mortgage. She was employed as a civil servant and in 1996 had five years of service. She had a salary of around £18,000 per annum. She was a member of an occupational pension scheme, which provided for an accrual rate of pension benefits of 1/80th per year of service.

In 2023, Ms R read about the possibility that FSAVC policies had been mis-sold. So, she conducted her own online research into it, which resulted in asking GVFS to raise a complaint on her behalf. It did so on 22 September 2023.

Scottish Widows responded on 31 January 2024. It agreed there was insufficient evidence to show the advice provided to Ms R in 1996 had been suitable. They said the Added Years and in-house AVC options weren't properly explained to her in line with the regulations at the time. It upheld her complaint.

Scottish Widows concluded Ms R would likely have chosen the in-house AVC option instead of Added Years and said it would complete a financial loss assessment on that basis. GVFS were unhappy with this outcome, it said Ms R would've purchased three Added Years from her OPS, maximising the value of that pension.

As both parties couldn't agree what was a fair approach to redress, GVFS on behalf of Ms R asked this Service to consider the case. An investigator considered the arguments and concluded the approach proposed by Scottish Widows was appropriate in the circumstances of the case. GVFS disagreed.

As both parties couldn't agree with the Investigator's view, Ms R's case has been passed to me to review afresh and to provide a 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

The events complained about happened nearly three decades ago. I don't have all the information and evidence I'd like. There is no fact-find or suitability letter surviving from the time of the advice. I also need to try to avoid the benefit of hindsight when considering Ms R's case.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

Ms R was given advice by a tied adviser who could only recommend products provided by the company they worked for. At the time, they had to follow the rules set in 1988 by LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation) and adapted by the Personal Investment Authority (PIA) in 1994.

Amongst other matters, the LAUTRO code of conduct said advisers should exercise due skill, care and diligence and deal fairly with investors. And they had to have regard to any rights under an occupational scheme and give consumers all relevant information.

It's agreed between the parties the standards required of advisers were not met and that Ms R was likely mis-sold an FSAVC in 1996. It is also agreed Scottish Widows are responsible for putting things right. So, there's no reason to rehearse the merits of this case. Rather, this decision focusses on what is fair redress.

I'm not upholding Ms R's complaint. I'll explain why.

Had Scottish Widows adviser done what they should've then its agreed Ms R would either have chosen to purchase AVC's available through her pension administrator, or she'd have bought Added Years towards her OPS.

GVFS have made several reasonable arguments that had Ms R been given the right advice in 1996, she'd have purchased Added Years. Amongst these it says:

- She was a career civil servant, intending to stay in the profession until retirement.
- Added years would've cost less than AVC's, at least in the early years. And as she progressed in her career, the cost would've become less significant as her disposable income increased.
- Ms R could've purchased Added Years without any exposure to market risk.
- Added years would've provided additional benefits, for example in relation to dependents, and were index-linked and underwritten by HM Treasury.

I've thought carefully about what GVFS has said on behalf of Ms R. But there are also strong counter-arguments here. For example:

- There are many factors which influence if Added Years might be a suitable option for someone, including for example their age, marital status, retirement age, whether they are likely to remain with their employer and if their salaries are likely to increase substantially over time, their household finances and their attitude to risk.
- In 1996 Ms R was single. She had a mortgage. And she chose a pension policy with level contributions, which she never increased. With Added Years, Ms R would've

had to commit to an increasing contribution.

- And although Ms R had been a civil servant for 5 years, she still had more than 30 years ahead of her in the workplace. It's quite a leap in 1996 to assume the bulk of her future career would've been with the same employer.
- Further, Added Years would have looked expensive compared to the projected benefits of the FSAVC given the estimated investment returns in 1996, which were a lot higher than they are now. Added Years aren't subsidised by an employer like the regular defined benefit pensions are. And Added Years can also be less flexible than AVCs e.g. when needing to vary contributions or changing employer.
- Scottish Widows adviser didn't have to recommend Added Years to Ms R or even do a cost comparison. They just needed to point out possible available in-house options and refer her to her employer for more information. From the contemporaneous information available, I can't be certain she would've done this and then decided Added Years was the best option for her.

With hindsight and investment returns not matching expectations of the mid 1990s, Added Years have become a very valuable benefit. However, I think it's more likely than not Ms R would have seen AVCs as the more suitable option for her at the time of the advice.

So, on balance, I've concluded Scottish Widows proposal for providing redress based on the in-house AVC option available to Ms R in 1996, is reasonable.

My final decision

For the reasons I've outlined, I'm not upholding Ms R's complaint. Scottish Widows Limited should now honour the redress it was proposing.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 30 September 2024.

Kevin Williamson

Ombudsman